Bloomberg Could Save Millions If City Seized Slush Funds

What the Unions Can Do

by **Wayne Barrett with special reporting by Cathy Bussewitz**
March 5 - 11, 2003

Randi Weingarten, whose teacher-union fund provides real health benefits, is open to talking about structural change.
(photo: Richard B. Levine)

The invisible empire of city-funded, union-run welfare funds costs over $820 million a year, the largest pool of virtually unregulated expenditure in Mike Bloomberg's beleaguered budget. These 104 different funds have nothing to do with vital medical, hospital, or pension plans. Instead they cover supplemental benefits like prescriptions, optical, dental, life insurance, and legal services, and, as an overview audit by City Comptroller William Thompson noted last June, "relatively few city guidelines govern them."

In the crunch that the city faces before the mayor unveils his executive budget on April 15, these funds are very much on the bargaining table. Jim Hanley, the salty 54-year-old labor commissioner who's served five mayors, is quietly talking to union leaders about consolidating this mishmash of funds, so often tarnished by charges of waste and worse, and letting the city administer them, as is the practice in most of the country. The economy-of-scale savings in administrative and contract costs could exceed $150 million and still, with a joint union-management board overseeing the new fund, preserve benefits for city workers.

"The answer is yes," Hanley said when asked if major changes might happen. "We're approaching it with a great deal of caution, but with an eye towards doing something. Some leaders would be happy to see us take over the costly prescription plans, as New York State has done. I am sounding out the more savvy negotiable people." The fact that such a switch was not one of the 21 proposed concessions Hanley gave the unions on January 31 may, ironically, underline its seriousness, since the list, which called for cuts in the city's contributions to the funds, so rankled labor.

Randi Weingarten, the teachers union president, who also heads the Municipal Labor Council, sees possibilities: "Sure, some kind of consolidation would be helpful. But the benefit structure from one fund to another is so different. How do you make sure that stays intact?" Norman Seabrook, whose Corrections Officers Benevolent Association (COBA) was the only city union to endorse

Officers Benevolent Association (COBA) was the only city union to endorse Bloomberg in 2001, said, "I do think something needs to be done. Drug costs are skyrocketing and the unions are suffering. If we pooled our resources together and reached out to a single vendor, we'd get the best price on the East Coast. What they used to give me for a dollar, we might, together, get for 30 cents. If we don't do something about it, I don't want to be the one to tell my members that we can't cover your children." Kevin Sullivan, who runs the United Fire Officers Association fund, added: "The theory is good and I'd support the theory if the city could provide a benefit as good or better than the benefit the members get now."

A three-month *Voice* investigation of the funds, which receive per-member city contributions of up to $1928 a year, uncovered abuses so recurring and rampant they cry out for reform:

Forty funds provide staff or outside attorneys for a wide variety of personal matters, with taxpayers footing the bill, for example, for thousands of divorces, contested and uncontested, as well as visitation and custody battles. The largest fund, DC 37's, even offers "representation where you are the parent in a child abuse, neglect, or foster care case." The funds also do house closings, meaning the city is paying for its own employees to move to counties as far away as Orange in New York or Middlesex in New Jersey, and for partial-investment properties as large as three-family homes. Seabrook said his fund alone handled 390 divorce cases last year, and has over 400 active real estate matters right now.

City workers charged with crimes—off or on duty—are frequently represented at taxpayer expense, with some funds only handling arraignments but others, like COBA's, going all the way through appeal. Seabrook said that COBA made 663 criminal court appearances in 2002. Local 371, which represents welfare and other social workers, limits the service to Class-B felonies and cuts it off after "two Criminal Matters each calendar year," but COBA, the PBA, and others have paid for cases ranging from murder to the bloody assault on Abner Louima. In fact, the $2.3 million paid by the PBA to settle the lawsuit filed against it for participating in the Louima cover-up came from its city-subsidized fund. Incredibly, the same criminal and civil representation is often provided for spouses and dependents.

Prescription plans have per-member-family caps as low as $4000 a year and as high as a million, with some funds having no real caps or co-pays at all and even reimbursing the small co-pays members have to spend under the medical plan for visits to doctors.

Hundreds of millions in fund contracts are routinely awarded without competitive bidding or performance review, ignoring audits so sporadic that DC 37 went 20 years without one, while the scandal-scarred PBA had its last audit a decade ago. Hanley executes contracts with each fund, but says he has "no oversight function," no power to set or enforce standards in the services they provide. Alone in the pantheon of billions in city contracts, the agreements with these funds, as well as the business the funds do with vendors, sidestep Procurement Policy Board bid and performance guidelines.

Among the stranger expenditures by these funds are $5000 bail bonds; funeral costs of up to $10,000; name changes; bankruptcies; $50,000 living benefit options for those with "a limited life expectancy"; full drug, optical, and dental benefits for seasonal workers like lifeguards; Viagra and fertility coverage; a multimillion-dollar mobile van service that gives firefighters physicals and blood tests; and $1.5 million a year in "advertising and public relations" expenses by the PBA.

Spending over $63 million for administration in 2000—the last audited year—some funds have seen 3000 percent increases in bureaucratic costs over a single year , spending more to manage the fund than it gets in city contributions. Thirty funds ran up $25 million in operating deficits in the audit

for 2000, with District Council 37 in the red for $15 million, the PBA Retiree Fund formally found to be insolvent, and three others rated as "possible risks of insolvency within one or two years." Eight funds received adverse opinions from their own accountants and six more got qualified opinions.

But, as unnoticed and shocking as some of these decades-old practices are, it is the conflict-ridden saga of the city's two biggest benefit contracts that sounds the loudest alarm for change. In 2001, National Prescription Administrators, a small, closely held New Jersey-based pharmaceutical-benefits manager (PBM), won both contracts, worth a potential three quarters of a billion dollars over the next few years. The selection processes were carefully wired by the company's labor friends, and shortly after the contracts were awarded, one of the nation's largest PBMs, Express Scripts, bought NPA for $515 million. It is a story that starts far away from the sometimes-sewer politics of DC 37, the largest municipal union, whose welfare funds get $205 million a year in city contributions.

Back in the late '70s, Gerry McEntee, who now the runs the nation's second-biggest union (American Federation of State County and Municipal Employees), was ensconced in Harrisburg, Pennsylvania, as head of the state federation, District Council 13, that he'd organized just a few years earlier. One of the breakthrough gains in Council 13's first collective bargaining contract was the state's agreement to support a welfare fund that started out providing only prescription benefits. The 75,000-member federation's first pharmaceutical manager was a company called Paid Prescriptions. The executive who supervised the contract was Richard Ullman, a pharmacist certified in Pennsylvania who commuted to Harrisburg from Jersey.

In 1978, Ullman started his own company, NPA, and by 1979, he was doing business with Council 13. Ernest Sessa, who ran the Pennsylvania Public Employee Health and Welfare Fund, told the *Voice*: "Dick did our eligibility work. NPA set up all our first data processing." Business manager Jesse Newcomer told a journalist hired years later to write the history of DC 13 that NPA "provided us with computer service," adding that the union used them "to work the state checkoff program," processing dues deductions from payroll checks. Then, in 1981, according to DC 13 officials, an NPA subsidiary, National Vision Administrators, took over the optical plan. Finally, the union switched its prescription contract to NPA, which by then had opened a mail-order facility in suburban Harrisburg, located to this day less than a mile from the headquarters building DC 13 built and owns.

Ullman, who owned NPA with a few minority shareholders, became a fixture in DC 13, developing what Sessa described as "a professional relationship" with McEntee and eventually putting McEntee's ex-wife Janet and daughter Christine Serenelli on the payroll, running NPA's Philadelphia office. The company also became a most unusual union shop, with a few hundred private employees, most of them working at its New Jersey locations, becoming members of a union that otherwise included only Pennsylvania state workers. NPA joined District Council 90, the Harrisburg local that was the only one to share an office with McEntee's statewide federation.

Once McEntee took over AFSCME and moved to Washington, D.C., in late 1981, leaving his best friend to run DC 13, NPA started securing national AFSCME-connected business, eventually snaring the grand prize of union PBM contracts, DC 37's. NPA got the contract, valued now at $125 million a year, by beating two other bidders in 1987, the year after the departure of Victor Gotbaum, the patriarch of DC 37, who had a strained relationship with McEntee. McEntee never spoke to Gotbaum about NPA, says Gotbaum, but then again, McEntee rarely spoke to him about anything. McEntee did speak far more regularly to Gotbaum's successor, Stanley Hill, by both Gotbaum's and Hill's account. "I had a good rapport with Jerry," Hill told the *Voice*. "We

talked, but not about the fund or NPA."

Hill says he left the fund's business to its respected and knowledgeable administrator, Roslyn Yasser, a Gotbaum protégée who ran it from 1978 until she was forced out last May. But a half-dozen sources from the union and elsewhere say that Yasser became extremely close to Ullman, a fact that even Ullman has privately conceded. One top union administrator said that NPA paid Yasser for at least two speeches at health-related conferences, both of which involved trips, one to Europe. Once NPA got its foot in the door at the union, its theoretically three-year contract was not put up for bid again for 14 years, even though the deal consumed more than half of the fund's expenditures. When the contract was finally bid again in 2001—after a scandal at the union that led to 38 indictments—lower bidders forced NPA to cut its own bid by $7 million a year. NPA won, but the competitive process is saving the union over $21 million.

Simultaneously, Yasser was the pivotal player in the award of a second contract to NPA. The city agreed in 2000 to carve out four categories of drugs (psychotropic, injectable, chemotherapy, and asthma) from fund coverage and pay for them with city money set aside in a Stabilization Fund, created through collective bargaining and jointly controlled by the city and the unions. The plan was designed to lighten the load on the welfare funds, stretched thin by rising drug prices, and to cover 425,000 employees and retirees, or "850,000 lives." With $141 million spent under this contract since July 2001 and another three and a half years to run, it could easily cost over $400 million due to rising drug prices. Not only is NPA paid millions in administrative fees for this and the DC 37 contract, it also collects rebates from pharmaceutical companies for preferring their high-priced drugs.

In addition to her DC 37 role, Yasser also ran the Municipal Labor Committee's Technical Health Subcommittee, which was charged with overseeing the award of this carve-out contract, together with Hanley's office. While MLC chair Weingarten initially attempted in a *Voice* interview to claim that Yasser had "recused" herself from the contract, she soon conceded that Yasser had in fact "run the names" of the three union representatives on the six-member selection committee past her and "played a role" in the discussions.

One of the union reps, Bob Croghan, president of the Organization of Staff Analysts, said that Yasser "put me on" the selection team knowing he was an unhappy prior customer of Merck-Medco, NPA's primary competitor and a national company that covers 65 million lives, nearly 10 times as many as NPA. "The first time I ever went to the MLC, I assailed Merck," recalled Croghan, who maintained he still fairly considered their bid. Another of the three union reps, the United Federation of Teachers' Arthur Pepper, also used NPA and met with Ullman every Tuesday for eight years at the union's offices to discuss business. Pepper was actually listed as one of three references on the NPA application, as was the administrator of the PBA fund, which also used NPA.

The third reference was Yasser herself, who brought the case for NPA personally to the full MLC steering committee meeting on May 10, 2001, asking the committee to endorse her own subcommittee's recommendation of NPA. Yasser's argument, according to minutes obtained by the *Voice*, was that NPA, which supposedly already handled prescriptions for 80 percent of the families that would get the new four-drug plan, would only have to issue new identification cards to the remaining 20 percent. Having priced out what it would cost to mail new cards to all the families if another bidder were chosen, she pushed for a vote for NPA. She did not mention that other bidders promised to produce cards at no additional cost. Nor did she tell the steering committee that NPA wasn't the lowest bidder, though Weingarten, Pepper, and others conceded it wasn't, even after NPA had dropped its initial price to get closer to Merck's.

Neither Yasser, Ullman, or McEntee would answer *Voice* questions, but Hanley says the cost of the carve-out program has been so astronomical that he listed its demise among the proposed concessions he put before the unions. Pepper swears by NPA, whose service record is strong but whose high costs prompted a recent end to its omnibus contract with the state of Illinois, as well as New York City's PBA.

In addition to these problems, a federal judge in Illinois ruled in 2000 that a letter the company sent to 500 or 600 prescription plans could be read "as an attempt to skim off by false pretenses" millions of dollars due third-party participants in a federal lawsuit. The judge said NPA's letter "might well constitute mail fraud or attempted mail fraud as well as violations of various state fraud statutes."

Ullman's other recent conduct that led to a legal complaint—this time from the Federal Election Commission—was his decision to sign off on $6 million in dividend payments to Doug Forrester, the 2001 Republican candidate for U.S. Senate in New Jersey. Forrester immediately funneled most of the dividend into his campaign committee, an act that state Democrats branded illegal in a letter to the Federal Election Commission. A repeated donor to Jersey and national GOP committees, Ullman, a 49/51 percent partner of Forrester's in another PBM (Benecard), was at that point releasing the funds that could finance the race many thought would decide the Senate.

Just as Ullman sold NPA in early 2002 to Express Scripts, another losing bidder in the city's carve-out contract, Lillian Roberts, the new DC 37 executive director, forced Yasser out of her job. Roberts promised a forensic audit of the fund but reneged, as recently disclosed in a *New York Sun* story. Roberts claimed the audit was unnecessary because Manhattan District Attorney Robert Morgenthau, then city comptroller Alan Hevesi, and KPMG, a top-flight accounting firm hired by AFSCME, had investigated the fund and found no wrongdoing. In fact, KPMG had been instructed by AFSCME not to look at the fund except for possible credit card abuses, and Hevesi mysteriously bypassed the NPA contract, though he regularly faulted other unions for not bidding major contracts.

As for Morgenthau, he hit such a pot of prosecutorial gold in the abuse of union funds that he never really examined the benefits side. A source close to the investigation said the D.A.'s office did indeed receive allegations about Yasser and McEntee's connections to NPA but was unable to pursue them. "We had information from large prescription companies that they couldn't even get a meeting" with the fund, said the source, adding that informants inside the union had detailed the close ties between Yasser and Ullman.

The NPA story—in addition to the scandal of a onetime powerful executive in DC 37 living rent-free in an extravagant penthouse atop the building the fund owned—is merely the latest example of the city's need to gain control of these renegade funds. Malfeasance in the PBA and the Transit PBA led to federal convictions just a couple of years ago. It's time a new administration, free of the compromises that usually affect dicey public decisions, grabs hold of these funds and refocuses them on health services to workers, minus the deal making and the boondoggles. Taking over the funds may not only achieve immediate structural savings. It may give us a cleaner city government.

Research assistance: Yi Chen, Alexa Hinton, Solana Pyne, E.B. Solomont, Will St. John, Clementine Wallace, and Steven I. Weiss