

**OPINION
69-301**

February 7, 1969 (OPINION)

Mr. Harold D. Schaft

Shaft, Benson, Shaft and McConn

Grand Forks, North Dakota

RE: Schools - Contracts With Labor Unions - Authority

This is in reply to your letter of February 4, 1969, relative to the authority of a school district to enter into a working agreement with a labor union representing all custodial, janitorial and engineering employees of the school district.

You state the following facts and questions:

On behalf of the Grand Forks Public School District No. 1, we request your opinion as to the authority of the School Board to enter into a working agreement with a labor union representing all custodial, janitorial and engineering employees of the School District.

The contract proposed by the union would require all new employees either to join the union within thirty days, or to pay into the union the equivalent of union dues for services rendered. It would likewise provide for withholding union dues or such payments in lieu of dues, by the school district, would set up a seniority system and a grievance system."

As you are aware, section 34-01-34 of the North Dakota Century Code provides that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization, and all contracts in negation or abrogation of such rights are invalid, void and unenforceable. Therefore, no employer, public or otherwise, may enter into an agreement with a union whereby the employer agrees that, as a condition of employment, the employee must belong to a union, or join a labor union in order to continue employment. However, this office has issued a series of opinions in which we have held valid the "agency shop" agreements, permitting fees to be charged to non-union employees for union representation on the basis of actual cost of such representation. The opinions further indicate that such fees should not include any fees or dues not a part of the cost of union representation. I am enclosing herewith copies of the following opinions for your consideration: Opinion dated August 24, 1959, to Mr. H. R. Martinson, Deputy Labor Commissioner; Opinion dated September 22, 1959, to Mr. Michael Kelly, Grand Forks, North Dakota; Opinion dated February 18, 1966, to Mr. Walter Hjelle, State Highway Commissioner. Also enclosed is a copy of a letter dated May 7, 1962, addressed to Mr. R. W. Wheeler, Attorney at Law, Bismarck, North Dakota. The opinion addressed to Mr. Hjelle is of particular significance, since it concerns public employees, i.e. employees of the state.

Implicit in any contracts involving governing boards of political subdivisions is the fact that such bodies have only such powers as are specifically granted to them by the legislature or must necessarily be implied from the powers specifically granted. See, e.g., *Gillespie v. Common School District No. 8*, 56 ND 194, 216 N.W. 564. This necessarily implies, with regard to employment contracts, that one school board cannot enter into binding agreements extending over a period of years, which would, in fact, deny future school boards the right to determine these matters. Therefore the following conclusions must not be considered as authorizing a school board to enter into any agreements which would deny a future school board the right to consider these same matters and reach a different conclusion.

We believe the school board may negotiate with union representatives. We do not, however, believe the school board may restrict their negotiations to only union representatives. In other words, if employees who are not members of the union desire to negotiate their own contracts, we believe they must be entitled to do so. If, on the other hand, an employee does not belong to the union, but agrees to accept the benefits of the negotiations between the union representative and the school board, we believe the school board may deduct an amount equal to the actual cost of representation but cannot deduct any fees or dues not a part of the cost of union representation.

We would note the specific contract to which you refer was not enclosed with your letter and, therefore, we are unable to comment on some of the aspects contained in the copies of letters attached to your request to this office.

HELGI JOHANNESON

Attorney General