Opinion No. 63-52

May 10, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Honorable Alex G. Martinez State Representative 1949 Hopi Street Santa Fe, New Mexico

QUESTION

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Does the State or its political subdivisions have the authority to enter into a collective bargaining agreement with public employees by way of an agreement with a public employee union?

CONCLUSION

No, but see analysis.

OPINION

*{*108}* **ANALYSIS**

The right of public employees in general to join or become members of labor unions or associations is becoming increasingly recognized, and such right has been upheld by this office. See Attorney General Opinion No. 59-90. But unlike the right of labor in private industry, public employees do not possess the right to picket, to strike or to demand collective bargaining. 31 ALR 2d 1149. Public employee unions are not entitled to a closed shop or closed union. **Petrucci v. Hogan,** 27 N.Y.S. 2d 718.

In the absence of specific legislation authorizing the public employer to enter into collective bargaining contracts, the rule is stated as follows in 31 ALR 2d 1170:

"Public employers cannot abdicate or bargain their **continuing** legislative discretion and are therefore **not authorized** to enter into collective bargaining agreements with public employee labor unions." (emphasis added)

In the case of **Springfield v. Clouse,** 356 Mo. 1239, 206 S.W. 2d 539, the court said any rule other than that stated above would, as applied to public employment, mean government by private agreement. Accord: **Mugford v. Mayor & City Council of Baltimore,** 185 Md. 266, 44 A. 2d 745; **State v. Brotherhood of Railway Trainmen,** 37 Cal. 2d. 412, 232 P. 2d 857; **Miami Water Works Local No. 654 v. Miami,** 157 Fla. 445, 26 So. 2d 194.

In the absence of legislative authorization, public employers simply cannot negotiate employment contracts which involve the surrender of any of the agency's continuing discretion in such matters. And a formal contract for a definite time period would be such a surrender. State statutes regulating labor relations in private industry, such as Section 59-13-1, et seq., N.M.S.A., 1953 Compilation, are not applicable to public employer - employee relations. 31 ALR 2d 1149.

It must also be remembered that the manner in which public authorities are to determine wages, hours, working conditions and tenure of public employees is generally governed by the constitution, statutes, municipal charters, municipal ordinances and resolutions. The State Personnel Act, for example, is such a law.

So long as there is no legislative restriction, a public employer can consult with, negotiate *{*109}* with, and listen to an employee union in regard to the promulgation of rules and regulations governing public employment. But the public employer must retain its authority to change such personnel regulations if it sees fit to do so. See also A.G. Opinions 6207 and 6308, which at least indicate the same conclusion.

By: Oliver E. Payne

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