

OPINION
66-142

February 18, 1966 (OPINION)

Mr. Walter R. Hjelle

Highway Commissioner

RE: Labor - Right-to-Work Law - Agency Shop

Your letter dated January 18, 1966, provides as follows:

In an official opinion of the Attorney General, dated August 14, 1959, addressed to Mr. H. R. Martinson, Deputy (Labor) Commissioner, it was held that the right-to-work law does not prohibit agency shop clauses in labor-management contracts which require non-members to contribute toward actual cost of representation.

I am, at the present time, negotiating a memorandum of working rules and regulations with a union of highway maintenance employees and have been requested to approve a provision which would require maintenance employees who are not members to contribute pro-rata to the union for costs of representation.

In view of the provision of section 34-11-01 that public employers shall not 'attempt to or deter any public employ . . . from affiliating with any union, association or other group of public employees nor shall a public employer refuse to consider grievances concerning employment problems with the representatives duly chosen by such union association or affiliation of public employees', which appears to prohibit agreements of exclusive representation, can I legally approve of the proposed agency shop clause?"

Section 34-01-14 of the North Dakota Century Code provides as follows:

DECLARATION OF PUBLIC POLICY. The public policy of this state is declared to be that a worker shall be free to decline to associate with his fellows and shall be free to obtain employment wherever possible without interference or being hindered in any way, but that he shall also have the right to association and organization with his fellow employees and designation of representatives of his own choosing. A contract made and entered into between an employer of labor and a worker or workers or any agent, bargaining agent or representative of a worker or workers shall be binding and equally enforceable upon both parties to said contract. Elections by secret ballot held to determine the question of who shall be the bargaining representative of a worker or workers or whether a worker or workers shall strike against an employer shall be free and impartial without being influenced by either an employer or worker or any third parties. Secondary boycotts and sympathy

strikes are hereby declared to be against public interest and unlawful."

Chapter 34-12, the Labor Management Relations Act, is not applicable as employers and employees of the state and political subdivisions are specifically excepted.

We believe the portion of Section 34-11-01 of the North Dakota Century Code, to which you refer, talks about the same rights and privileges referred to in the statutes quoted above, except that section 34-11-01 is couched in negative terms and refers exclusively to public employers and employees.

As we see it, the question to be resolved is whether mandatory participation in paying costs of representation amounts to a denial of the employee's right as set forth in the above quoted statutes.

If the employees have selected a bargaining representative, it is our opinion that you have authority to withhold an amount from each employee's pay check sufficient to cover the costs incurred by the bargaining agent which were necessary to properly represent all the employees. Our office cannot determine this amount. It would be your duty to make certain only bargaining costs are deducted from employee's pay checks, unless the employee authorizes you to deduct a larger amount. Failure to limit the deduction to this sum would amount to an abridgement of the employee's rights set forth in the above quoted laws. You, of course, have authority as Commissioner to refuse to deduct any such amounts from employees' pay checks. The bargaining agent would then have the responsibility of collecting from the employees.

This opinion is in accordance with those issued on "agency shop" in 1952, 1956, and the 1959 opinion to which you made reference.

HELGI JOHANNESON

Attorney General