

**OPINION
69-202**

April 24, 1969 (OPINION)

Mr. J. M. Glaser

Deputy Commissioner of Labor

RE: Labor - Mediation - Political Subdivision

This is in reply to your request for an opinion with regard to the construction of section 34-08-14 of the North Dakota Century Code. This statute enacted by the 1967 Legislative Assembly provides:

"MEDIATORS - APPOINTMENT - FUNCTIONS - COMPENSATION. The state labor commissioner shall have power to act as mediator, or to appoint any competent, impartial disinterested person to act as mediator, in any labor dispute either upon his own initiative or upon the request of one of the parties to the dispute. It shall be the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the state labor commissioner shall have any power of compulsion in mediation proceedings. The state labor commissioner shall provide necessary expenses for such mediators, other than for himself or his deputy, as he may appoint, under reasonable compensation plus per diem expenses for each such mediator, and prescribe reasonable rules of procedure for such mediators."

Your specific question is stated to be:

"In view of a specific statute dealing with disputes and grievances between state and subdivisions of government and their employees; would the Commissioner of Labor be acting within the proper meaning of Section 34-08-14 if he were to respond affirmatively to a request for mediation in a dispute or grievance involving a political subdivision of government and its employees?"

The only specific statute dealing with disputes and grievances between state and subdivisions of government we note in chapter 34-11 of the North Dakota Century Code entitled "Mediation of Disputes Between Public Employers and Employees" enacted in the year 1951. Section 34-08-14 is now a part of chapter 34-08 entitled "Labor Disputes and Court Proceedings Therein."

Section 34-08-14 would appear to be a very general measure designed to authorize a remedy in any "labor dispute." Section 34-08-11 would appear to be a very specific measure applicable only to the situations described therein.

Section 34-11-02 does impose a duty upon the employer or the employees in the circumstances there described to make a "request" to the effect that it is the "wish" of one or both parties concerned that the provisions of chapter 34-11 be utilized. There is no

specific provision that the "request" shall or may be granted though a procedure for granting same is provided. On such basis it is discretionary with the officer to whom the "request" is made as to whether the "request" will be granted and the "wish" fulfilled. In circumstances imposing the duty the "request" would appear to be mandatory though the granting of same would not.

In circumstances clearly falling within chapter 34-11 it would appear that the request must be made. Once the "request" had been granted the board appointed would have jurisdiction of the formal mediation proceedings prescribed in that chapter.

The circumstances to which chapter 34-11 is applicable would appear to involve situations where the dispute "cannot be settled amicably and without disruption of the public service" and where the state, county or city is involved in the dispute. Mediation under section 34-08-14 would appear to be one of the means by which a dispute could be settled amicably which could therefore be an attempted solution prior to mediation under chapter 34-11. Also in instances where the "request" would be refused under chapter 34-11 it would appear that the remedy under section 34-08-14 could in a proper case be available.

Thus to paraphrase your question it would be our opinion that in view of the provisions of chapter 34-11 of the North Dakota Century Code the Commissioner of Labor would not be acting within the proper meaning of section 34-08-14 if he were to respond affirmatively to a request for mediation in a dispute or grievance involving the state, a county or a city and its employees where a mediation board had been appointed pursuant to chapter 34-11 of the North Dakota Century Code. In other cases, excepting only the situation first described in this paragraph, it would be our opinion that in view of the provisions of chapter 34-11 of the North Dakota Century Code, the Commissioner of Labor would be acting within the proper meaning of section 34-08-14 if he were to respond affirmatively to a request for mediation in a dispute or grievance involving a political subdivision of government and its employees, though in cases where it appears that the dispute is one involving the state, a county or a city, and it appears that the dispute "cannot be settled amicably and without disruption of the public service" his sole function would be to assist in having the request provided for in chapter 34-11 submitted until such time as such request had been refused.

HELGI JOHANNESON

Attorney General