

OPINION
73-269

March 22, 1973 (OPINION)

The Honorable Arthur A. Link
Governor
State Capitol
Bismarck, ND 58501

Dear Governor Link:

This is in response to your inquiry of March 21, 1973, in which you have enclosed a telegram that you recently received from officers of Local 7738, United Steelworkers of America. The telegram reads as follows:

"ZCZC 04089 NL TD AFG DICKINSON NDAK 114 03-18 750P CST

PMS GOVERNOR ARTHUR LINK, DELIVER

BISMARCK NDAK

WE CALL UPON YOU AND YOUR GOOD OFFICE TO ASSIST IN BRINGING ABOUT A SETTLEMENT OF THE LABOR DISPUTE AT HUSKY INDUSTRIES INC AT DICKINSON NORTH DAKOTA WE ALSO CALL UPON YOU TO STOP THE SHERIFF OF STARK COUNTY EDWARD MAOLE FROM USING HIS OFFICE AND HIS ARMED DEPUTIES AS STRIKE BREAKERS BY ESCORTING COMPANY SCABS ACROSS OUR PICKETS USWA

PRESIDENT LOCAL 7738 ROBER KOWIS 237 8TH AVE EAST DICKINSON NORTH DAKOTA

USWA PRESIDENT LOCAL 7738 USWA VICE PRESIDENT LOCAL 7738 ROBER LEISS 423 EAST SECOND DICKINSON NORTH DAKOTA

USWA RECORDING SECRETARY DENNIS INGER GLADSTONE NORTH DAKOTA

USWA TREASURER LOCAL 7738 JIM DUTTENHEFER RR8 EAST BROADWAY DICKINSON NORTH DAKOTA"

With reference to this telegram, you have asked the following questions:

1. Does this telegram constitute a 'charge' to require an investigation of a labor dispute by the Commissioner of Labor pursuant to section 34-12-08 of the North Dakota Century Code?
- . Does the Commissioner of Labor have an affirmative duty, pursuant to sections 34-05-01.3 and 34-12-08 of the North Dakota Century Code, to act as mediator or conciliator in all labor disputes to effect an equitable settlement?"

Section 34-12-03 of the North Dakota Century Code sets forth those actions which are considered to be "unfair labor practices." It contains two basic subsections, one relating to unfair labor

practices on the part of employers, and the other relating to unfair labor practices on the part of labor organizations and their agents.

The substance of the telegram relates to the activities of the Stark County sheriff, and not to those of the employer. As such, there does not appear to be a "charge" of an unfair labor practice, as the term is used in section 34-12-08 of the North Dakota Century Code. Without this "charge" it does not appear that the Commissioner of labor has the authority to intervene or investigate under this particular section.

With regard to your second question, it would appear that the only relevant subsections of section 34-05-01.3 would be the first three enumerated duties, which are:

"34-05-01.3. DUTIES OF THE COMMISSIONER OF LABOR. The Commissioner of Labor shall:

1. Improve working conditions and living conditions of employees and advance their opportunities for profitable employment;
2. Foster, promote, and develop the welfare of both wage earners and industries in North Dakota;
3. Promote friendly and cooperative relations between employers and employees;"

There is no specific authority for the Labor Commissioner to act as a mediator or conciliator in labor disputes. In fact, these three subsections could be somewhat contradictory in a given factual situation, since the first subsection would suggest that the commissioner has a duty to generally promote the interests of employees, while the other two subsections indicate a duty to promote the interests of both employees and employers. These subsections can be most accurately characterized as euphemisms - they are phrases that sound nice and are inoffensive, but they are of little value for practical application.

We would therefore conclude that these three subsections are a legislative expression of the general tenor with which the Labor Commissioner should approach his constitutional and legislative duties which are set forth in more specific detail elsewhere in title 34 of the North Dakota Century Code. It would be our opinion that the involvement of the commissioner of labor in matters involving labor organization and collective bargaining which does not involve governmental subdivisions is governed by the provisions of chapter 34-12 of the North Dakota Century Code, commonly referred to as the "North Dakota Labor-Management Relations Act."

Sincerely yours,

Allen I. Olson

Attorney General