OPINION
59-155

August 24, 1959 (OPINION)

LABOR AND EMPLOYMENT

RE: General Provisions - Right to Work Law

"Agency Shop"

We have received your letter of July 29, 1959, wherein you ask the following question:

> Is a clause in a union-management contract which provides that employees who are not union members shall pay their share of the cost of bargaining to the union in violation of our right-to-work law. (Section 34-0114, 1957 Supplement)?

There seems to be very little law on this question although nineteen of our states have right-to-work laws.

However, the appellate court of Indiana in the case of Meade Electric Company v. Hagberg, 159 N.E.2d. 408 held such clause not in violation of the Indiana right-to-work law. Indiana has a right-to-work law which provides that membership or nonmembership in a union shall not be a condition to the right-to-work or to become an employee of or to continue in the employment of any employer.

The plaintiff, and the defendant who is a business manager of a labor union, were negotiating a contract and agreed on all the terms except a provision that nonunion employees must as a condition to continued employment pay the union an amount of money equal to that paid by union members as compensation for representing them in the same manner as union members.

The court held that since the Indiana right-to-work law did not prohibit the payment of dues, fees and charges, but only applied to union membership was not intended to outlaw "agency shop" agreements which provide for the payment of fees and dues to labor organizations properly designated as collective bargaining representatives, that this contract was not in violation of its right-to-work law.

The court pointed out that out of nineteen states with right-to-work laws, fifteen had seen fit to specifically prohibit payment of any fees, dues, or other monetary considerations of any kind to any labor union or labor organization. The other four states, Indiana, Arizona, Nevada, and North Dakota, do not have specific provisions against payment of such fees, dues and charges to labor organizations although the right-to-work statutes specifically outlaw agreements conditioning employment upon membership in a union.

The court pointed out that this being a penal statute must be construed strictly and not construed to include anything beyond its letter, though within its spirit, and should not be enlarged upon by construction, implication, or intendment beyond the fair meaning of

the language used. The court added that language of the statute is clear and unambiguous and must be held to mean what it plainly expresses.

Our right-to-work law reads as follows:

> "No person shall be deprived of life, liberty or property without due process of law. 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 hereby declared to be invalid, void and unenforceable."

We are therefore in a similar position as Indiana in that our statute does not specifically prohibit the payment of fees or charges to a labor union or organization but only prohibits agreements which have as a condition to employment membership in a union and prohibits employers from denying employment by reason of membership or nonmembership in a union or labor organization.

We believe the reasoning of the court in the Indiana case is sound and hold that union agreement commonly known as "agency shop" which provides for charging service fees to nonunion members for the benefits they derive from bargaining efforts made by the union in their behalf is not in violation of section 34-0114 known as our right-to-work law. The Indiana court held that under the "agency shop" workers did not have to be members to be charged their share of the cost of bargaining equal to the dues and initiation fees of union members.

We understand all dues and fees charged union members are not used exclusively to pay costs of bargaining but are sometimes used for other purposes. We, therefore, believe the charge made to nonunion members should be only their prorata share of the cost of bargaining and should not be based on the dues and initiation fees charged union members.

It is therefore our view that our right-to-work law does not prohibit agency shop clauses in labor management contracts, but fees charged to nonunion employees for union representation should be on the basis of actual cost of such representation and should not include any fees or dues not a part of the cost of union representation.

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