Opinion No. 70-07

January 23, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: E.P. Ripley General Counsel Department of Education Capitol Building Santa Fe, New Mexico 87501

QUESTION

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Does the Carlsbad Board of Education have authority to recognize a union as the exclusive bargaining agent for maintenance and custodial employees of the school system?

ANSWER

No.

OPINION

*{*11}* **ANALYSIS**

In, **International Bro. of E. Workers v. Town of Farmington,** 75 N.M. 393, 405 P.2d 233 (1965), the New Mexico Supreme Court held that the Town of Farmington had the authority to enter into a collective bargaining agreement with a union representing public employees as long as there was no civil service or merit system in existence which covered matters normally the subject of collective bargaining agreements. However, the question asked here goes far beyond that presented to the Court in the Farmington case and beyond the opinion expressed by this office in Attorney General Opinion No. 69-73, authorizing collective bargaining in certain instances. The issue here is whether a public employer can recognize a union as the **exclusive bargaining agent** for a group of employees when a majority of that group elect to be represented by the union.

The right to organize, the right to bargain collectively and the right to demand exclusive recognition are separate and distinct questions. The first Amendment to the Constitution of the United States as applied to the States through the Fourteenth Amendment guarantees public employees the right to organize. However, the right to organize does not necessarily mean that public employees have the right to collectively bargain in the same sense as individuals in private employment. **City of Springfield v. Clouse,** 256 Mo. 1239, 205 S.W.2d 539 (1947). The rights of individuals in private enterprise to collectively bargain are covered by the National Labor Relations Act and this Act has no application to political subdivisions of the State such as local school boards. 29 U.S.C.A. 152 (2).

The concept of giving exclusive recognition to a representative elected by a majority of the employees within a bargaining unit is also based upon the National Labor Relations Act which has no application to this situation. 29 U.S.C.A. 159 (a). Therefore, the question is whether the concept of exclusive recognition can be established absent statutory authorization.

The only jurisdictions which have allowed exclusive recognition of the representative of only a portion of the employees have done so on the basis that there is state legislation permitting it. Massachusetts Laws Annotated, Chapter 149, Section 178 H (2); Wisconsin Statutes Annotated, Section 111.70 (4) (d). In **Norwalk Teachers' Ass'n. v. Board of Education,** 138 Conn. 269, 83 A.2d 482 (1951), the court held that teachers could organize and seek collective bargaining, but that any agreement which was made with a representative must be confined to the members of the representative association. This position remained unchanged in Connecticut until 1965 when exclusive recognition was granted by statute. Connecticut General Statutes Annotated, Section 7-471 (1) (B). Absent similar legislation in New Mexico we are of the opinion that it would be improper for a public employer to give exclusive recognition to a representative of only a portion of the employees. The union may represent only its members in collective bargaining with the Board.

By: Ray Shollenbarger

Assistant Attorney General