Opinion No. 74-03

January 15, 1974

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Ben Roybal, President New Mexico Highlands University 7841 Vista Del Arroyo, N.E. Albuquerque, New Mexico

QUESTIONS

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1. May institutions of higher learning legally enter into collective bargaining agreements which provide for modified Agency Shop and dues check-off system?

2. May institutions of higher learning enter into collective bargaining agreements which contain provisions for settlements of disputes by way of compulsory arbitration?

CONCLUSION

The answer to both questions is in the affirmative.

OPINION

*{*4}* **ANALYSIS**

An Agency Shop provision requires all employees covered by the agreement to pay to the union amounts equivalent to regular dues and fees required of union members. The Agency Shop provision is generally considered to be closely related to the "Union Shop" provision since the only membership obligations enforceable under a Union Shop contract are those relating to payment of periodic dues and fees.

It is my opinion that neither a Union Shop provision nor an Agency shop provision would be illegal in this state if same were placed in a collective bargaining agreement with institutions of higher learning. Neither of these provisions are specifically prohibited by state law and state law does provide a declared public policy of giving employees the fullest possible freedom with regard to self organization, choice of bargaining representative and collective bargaining. Section 59-13-1B, N.M.S.A., 1953 Comp. provides:

"B. Public Policy. An (in)interpretation and the application of this Act (59-13-1 to 59-13-3), it is hereby declared to be the public policy of this state to mitigate and eliminate certain coercive and collusive practices of labor organizations and employers with the view of promoting and protecting the exercise of employees of the fullest possible freedom with respect to self-organization, choice of bargaining and all other legitimate

concerted activities, **it being fully recognized by the legislature that employees should have an equal freedom to refrain from any such activity or activities except to the extent that such activity or activities except to the extent that such freedom may be limited by a valid agreement in writing requiring membership in a *{*5}* labor organization as a condition of employment.** " (emphasis supplied)

The legislature, in the above-quoted statute, specifically contemplated and approved agreements requiring membership in a labor organization as a condition of employment.

Section 43-1-12, N.M.S.A., 1953 Comp. does provide that a wage assignment or salary assignment, to be valid, must be acknowledged before a notary public and if the person is married and living with his wife, the assignment must be recorded with the County Clerk. It is my opinion that the legislature, in passing that statute, intended to restrict the right of creditors to force or require employees to enter into substantial wage assignments thereby depriving their families of the necessities of life. I do not conclude that the check-off of union dues comes within the purview of that statute.

New Mexico has adopted the Uniform Arbitration Act. See Section 22-3-9 et seq., NMSA, 1953 Comp. By adoption of that act, it is obvious that the legislative intent was to favor arbitration and it is the normal procedure to incorporate arbitration clauses in collective bargaining agreements. If this were not the case, collective bargaining would be thwarted at the outset. Seldom have the courts in New Mexico held any delegation of power to be unconstitutional unless such delegation of authority included the right to adopt rules or regulations which abridge, enlarge, extend, or modify the statute creating the right or imposing the duty. See **State ex rel. McCulloch v. Ashby,** 387 P.2d 588, 73. N.M. 267.

The authority by which the board governs was established by Art. XII, Sec. 13, N.M. Constitution and Sec. 73-22-7, N.M.S.A., 1953 Comp. I find no authority which would suggest that inclusion of a compulsory arbitration clause in a collective bargaining agreement would run afoul of said provisions and, in fact, a long line of authorities in New Mexico, although not squarely in point, would support such conclusion. See **State v. Spears,** 259 P.2d 356, 57 N.M. 400, 39 ALR 2d 595; **McCormick v. Board of Ed. of Hobbs Municipal School Dist. No. 16,** 274 P.2d 299, 58 N.M. 648; and **City of Albuquerque v. Burrell,** 326 P.2d 1088, 64 N.M. 204.