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FILE NO. S-804

LABOR:
County Highway Employees

Honorable Donald E. Irvin
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Jefferson County
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Dear Mr. Irvin:

I have your letter wherein you state:

"Will you please give me your opinion regarding the following questions?"

1. Can the employees of the Jefferson County Highway Department strike?
2. Can the employees of the Jefferson County Highway Department picket, and if so, under what conditions?
3. If a majority of the employees of the Jefferson County Highway Department vote to be represented by a certain

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union, is the County Board obligated to negotiate with this union?

4. If the County Board desires to negotiate with a union, are all of the employees of the Highway Department required to join the union?
5. If collective bargaining is possible, is the County Board required or permitted to deduct union dues from the paychecks of the Highway Department employees?
6. If the employees of the County Highway Department desire to join a union, what are the procedures which must be followed with regard to formulating that union?
7. What agency supervises the election to determine whether a particular union will represent the employees?

I would appreciate your immediate response to the above questions."

In your first question you have asked whether employees of your county highway department may strike. The leading Illinois decision reviewing this subject is Board of Education v. Redding, 32 Ill. 2d 567. The issue before the court in this case was the question whether custodial employees of the plaintiff school board could strike or picket. In holding that these employees could not strike the court said at page 571:

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"Although this is a case of first impression in a reviewing court of this jurisdiction, it is, so far as we can ascertain, the universal view that there is no inherent right in municipal employees to strike against their governmental employer, whether Federal, State, or a political subdivision thereof, and that a strike of municipal employees for any purpose is illegal. (E.g. City of Manchester v. Manchester Teachers Guild, 100 N.H. 507, 131 A. 2d 59; City of Pawtucket v. Pawtucket Teachers' Alliance, 87 R.I. 364, 141 A. 2d 624; Norwalk Teachers Assn. v. Board of Education, 138 Conn. 269, 83 A. 2d 482; International Brotherhood of Electrical Workers v. Grand River Dam Authority, _____ Okla. _____, 292 P. 2d 1018; City of Alcoa v. International Brotherhood of Electrical Workers, 203 Tenn. 12, 308 S.W. 2d 476; Port of Seattle v. International Longshoremen's & Warehousemen, 52 Wash. 2d 317, 324 P. 2d 1099; Donevero v. Jersey City Incinerator Authority, 75 N.J. Super. 217, 182 A. 2d 596; South Atlantic et al., v. Harris County-Houston et al., _____ Texas _____, 358 S.W. 2d 658; Petrucci v. Hogan, 27 N.Y.S. 2d 718; City of Los Angeles v. Los Angeles Building and Construction Trades Council, 94 Cal. App. 2d 36, 210 P. 2d 305; City of Detroit v. Division 26 of Amalgamated Ass'n., 332 Mich. 237, 51 N.W. 2d 228; 31 A.L.R. 2d 1141; U. of Ill. Law Forum, Fall 1961, p. 377, Strayhorn, 'Municipal Employees and the Law'; 41 Ill. Bar. Jour. 432, Sullivan, 'Labor Problems in Public Employment'.) The underlying basis for the policy against strikes by public employees is the sound and demanding notion that governmental functions may not be impeded or obstructed, as well as the concept that the profit motive, inherent in the principle of free enterprise, is absent in the governmental function."

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The doctrine that governmental employees have no legal right to engage in a strike has been reiterated. (See, City of Rockford v. Local 413, Int'l. Ass'n. of Firefighters, 98 Ill. App. 2d 36; Board of Junior College District No. 508 v. Cook County College Teachers Union, 126 Ill. App. 2d 418, cert. den., 402 U.S. 998, 29 L. Ed. 2d 165, 91 S. Ct. 2168 (1970); Fletcher v. Civil Service Com. of Waukegan, 6 Ill. App. 3d 593; Allen v. Maurer, 6 Ill. App. 3d 633; Board of Education v. Kankakee Federation of Teachers, 46 Ill. 2d 439, cert. den. 403 U.S. 904, 29 L. Ed. 2d 679, 91 S. Ct. 2203 (1971).

Recently, the Illinois Supreme Court has again declared that as a matter of public policy strikes by governmental employees are illegal. City of Pana v. Crowe, Docket No. 46208, copy enclosed. (Petition for rehearing pending.)

In City of Pana, all the employees of the city went on strike, including sewer and water employees as well as members of the police department. The circuit court of Christian County, on June 12, 1972, issued a temporary injunction and, on July 23, 1972, a permanent injunction restraining the defendants from

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engaging in a strike against the city. The appellate court reversed the circuit court, declaring that the anti-injunction act (Ill. Rev. Stat. 1973, ch. 48, par. 2a) was applicable to the strike. City of Pana v. Crowe, 13 Ill. App. 3d 90.

The Illinois Supreme Court reversed the appellate court. It specifically noted that the public policy of the State is not found solely in the State Constitution. It reaffirmed that strikes by public employees are illegal and therefore not within the scope of the anti-injunction act.

Secondly, you have asked whether employees of your county highway department can picket, and if so, under what conditions. The aforesaid case of Board of Education v. Redding, 32 Ill. 2d 567, also sets forth the general rule pertaining to picketing. Beginning at page 574, the court said:

"Turning to the matter of picketing, which the trial court also refused to restrain, it is the position of defendants, and was apparently that of the trial court, that the right of working men to communicate their complaints by peaceful picketing is completely inviolable. That is to say, defendants insist that picketing is a form of free speech and when done in a peaceful and truthful manner may not otherwise be regulated or enjoined. However, the premise that peaceful picketing is immune from all

regulation and control is a false one. While picketing has an ingredient of communication, the cases make it clear that it cannot be dogmatically equated with constitutionally protected freedom of speech, and that picketing is more than free speech because picket lines are designed to exert, and do exert, influences which produce actions and consequences different from other modes of communication. (Hughes v. Superior Court of California, 339 U.S. 460, 94 L. Ed. 985; International Brotherhood of Teamsters, Local 309, v. Hanke, 339 U.S. 470, 94 L. Ed. 995.) Indeed, these by-products of picketing which go beyond free speech are self-evident in this case. It is now well established that the latter aspects of picketing may be subject to restrictive regulations (Bakery & Pastry Drivers and Helpers Local 802 of I.B.T. v. Wohl, 315 U.S. 769, 86 L. Ed. 1178,) and while the specific situation must control decision, it is more than clear that a State may, without abridging the right of free speech, restrain picketing where such curtailment is necessary to protect the public interest and property rights and where the picketing is for a purpose unlawful under State laws or policies, whether such policies have been expressed by the judicial organ or the legislature of the State. (Hughes v. Superior Court of California, 339 U.S. 460, 94 L. Ed. 985; International Brotherhood of Teamsters Local 695 v. Vogt, Inc., 354 U.S. 284, 1 L. Ed. 2d 1347; Building Service Employees International Union, Local 262 v. Gazzam, 339 U.S. 532, 94 L. Ed. 1045; Montgomery Ward & Co. v. United Retail, Wholesale & Department Store Employees, 400 Ill. 38; Austin Congress Corp. v. Mannina, 46 Ill. App. 2d 192.) As stated by the late Mr. Justice Frankfurter in the Hughes case: 'It has been amply recognized that picketing, not

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being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance. * * * 'A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual.' 339 U.S. at 465-466, 94 L. Ed. at 992.

The picketing here, though peaceful, was for the purpose of fostering and supporting an unlawful strike against a governmental employer and, being for an unlawful purpose, should have been enjoined for this reason alone. Apart from this, however, the effect of the influences exerted by the picketing was to impede and obstruct a vital and important governmental function--the proper and efficient education of our children--making its curtailment necessary to protect the patently overriding public interest."

The aforesaid decision sets forth the general rule in Illinois in regard to picketing by public employees. Whether or not picketing is lawful depends upon the particular factual situation. It can be said, however, that any picketing by public employees is unlawful if it fosters and supports unlawful actions against a governmental employer or if its effect is to impede and obstruct a vital and important governmental function.

In your third question you have asked if a majority of the employees of your county highway department vote to be

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represented by a certain union, is the county board obligated to negotiate with this union. By the term "negotiate" it is presumed that you mean bargain collectively. Your attention is first called to Chicago Division of Illinois Education Association v. Board of Education, 76 Ill. App. 2d 456. In this decision the court held that the Board of Education of the city of Chicago did not need legislative authority to enter into a collective bargaining agreement with a sole collective bargaining agency selected by its teachers and such agreement was held not to be against public policy. Because of these and other authorities, I am of the opinion that your county board may bargain collectively with a sole collective bargaining agency selected by the county highway department employees. Your specific question, however, is whether the county board is obligated to negotiate with such a union. It has been consistently held by many court decisions that public employees do not have the right of collective bargaining, consequently, a county board would not be obligated to bargain collectively. (Cook County Police Association v. City of Harvey, 8 Ill. App. 3d 147; Nutter v. Santa Monica, 74 Cal. App. 2d 292, 168 P. 2d 741 (1946); City of Springfield v. Clouse, 356 Mo. 1239, 206

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S.W. 2d 539 (1947); 31 A.L.R. 1142.) Because of the weight of authority in this country and in Illinois, I am of the opinion that your county board is not obligated to negotiate with a union representing county highway department employees.

Fourthly, you have asked if the county board desires to negotiate with a union, are all of the employees of the county highway department required to join the union. A county is a political subdivision of the State for governmental purposes and it possesses no powers except those expressly granted by statutes constitutionally enacted and such powers as are necessarily incidental to carry out the granted powers. (Heidenreich v. Ronske, 26 Ill. 2d 360; People ex rel. Johnson v. Southern Ry. Co., 367 Ill. 389.) The county board does not have the same freedom of action as a private employer with respect to contracts of employment. It has only those powers given to it by law and as are necessarily implied from those granted, and no others. (City of Edwardsville v. Madison County, 251 Ill. 265.) Counties have not been given the power by the legislature

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to require that county employees must become members of a union. (See, also, Benson v. School District No. 1 of Silver Bow County, 136 Mont. 77, 344 P. 2d 117 (1959); Los Angeles v. Los Angeles Bldg. & Constr. Trades Council, 94 Cal. App. 2d 36, 210 P. 2d 305 (1949); Petrucci v. Hogan, 5 Misc. 2d 490, 27 N.Y. S 2d 718 (Sup. Ct., 1941); Norwalk Teachers Association v. Board of Education, 138 Conn. 269, 83 A. 2d 482 (1951); 31 A.L.R. 2d 1133.) I am, therefore, of the opinion that even if the county board desires to negotiate with a union representing county highway department employees, all of the employees of the highway department cannot be required to join the union.

In your fifth question you have asked if collective bargaining is possible is the county board required or permitted to deduct union dues from the paychecks of the highway department employees. Illinois has enacted legislation in this area. Sections 1 and 2 of "AN ACT defining the powers and duties of local governmental agencies, * * * " (Ill. Rev. Stat. 1973, ch. 85, pars. 471 and 472) provide:

" ' Local governmental agency,' as used in this

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Act, means and includes county, * * *

Any local governmental agency, unless provided otherwise in any statute specifically creating or governing any such agency, may by ordinance or resolution of its corporate authority authorize the withholding from the compensation of employees the union dues of such employees payable to any labor organization and membership dues of such employees payable to professional organizations upon the written request of the employee, which the employee may revoke in writing at any time. The appropriate officer of the local governmental agency shall pay over the amounts withheld to the treasury of the union or professional organization at the times specified in the ordinance or resolution of the corporate authority of such local governmental agency."

Because of the foregoing statute, I am of the opinion that in Illinois, union dues of a county highway department employee may be deducted and paid to the union provided that a county ordinance or resolution authorizes such procedure and also provided that the employee makes a written request to have this done.

It should also be noted that any agreement between a county and a union that attempted to require that an employee of the county must involuntarily pay dues to the union would be contrary to section 2 of "AN ACT defining the powers and duties of local governmental agencies, * * * " See,

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Devita v. Scher, 52 Misc. 2d 138 (N.Y. Sup. Ct., 1966).

In your sixth question you have asked if the employees of a county highway department desire to join a union, what procedures must be followed with regard to formulating that union. The United States Courts of Appeals for the Seventh and Eighth Circuits have ruled that public employees have a constitutionally protected right to belong to a labor union under the first and fourteenth amendments. (McLaughlin v. Tilendis, 398 F. 2d 287 (7th Cir. 1968); American Federation of State, County, and Municipal Employees, AFL-CIO v. Woodward, 406 F. 2d 137 (8th Cir. 1969); see, also, Classroom Teachers Association v. Board of Education, 15 Ill. App. 3d 224.)

In Illinois there is no statute which establishes procedures to be followed with regard to formulating a union in the public employment sector.

In your last question you have asked what agency supervises the election to determine whether a particular union will represent the employees. It should be noted that the National Labor Relations Act does not apply to public employment. (Labor

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Management Relations Act, 1947, 29 U.S.C.A., Sec. 152(2) (1973).) Also, there is no Illinois statute on this subject. Consequently, in Illinois there is no agency which is specifically directed by law to supervise an election to determine whether a particular union will represent county highway department employees. However, the Illinois Department of Labor upon joint request of the interested parties will supervise such an election.

Very truly yours,

A T T O R N E Y G E N E R A L