



OFFICE OF THE  
Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

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75-15

BRUCE E. BABBITT  
ATTORNEY GENERAL

February 4, 1975

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The Honorable Wm. Michael Smith  
Yuma County Attorney  
Post Office Box 1048  
Yuma, Arizona 85364

Re: Concurring Opinion No. 75-8-C

Dear Mr. Smith:

We are returning herewith a copy of your letter opinion dated January 6, 1975, addressed to Mr. Pete R. Woodard, Superintendent, Yuma School District No. 1, concerning teachers' association agreements with the Board of Trustees.

This office concurs in your opinion.

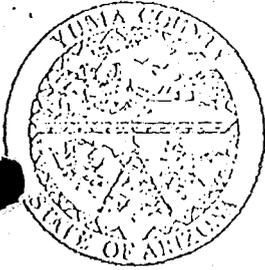
Sincerely,

BRUCE E. BABBITT  
Attorney General

*Ralph E. Willey*  
RALPH E. WILLEY  
Assistant Attorney General

REW:lf

Enclosure



Office of  
County Attorney  
Yuma County  
Yuma, Arizona 85364

P.O. BOX 1048  
PHONE: 782-4534

Wm. Michael Smith  
YUMA COUNTY ATTORNEY

January 6, 1975

Mr. Pete Woodard, Superintendent  
Yuma School District No. One  
450 Sixth Street  
Yuma, Arizona

Dear Mr. Woodard:

Re: School Opinion YCS-75-1

In November 1974 you posed the following questions to me for my opinion:

1. Can the Board of Trustees enter into this agreement for more than one year?
2. Does the Board of Trustees have a legal right to grant any group or organization the exclusive right to be the sole representative of all certified or any certified staff of the school district?
3. If the answer to #2 is affirmative, how does the Board of Trustees deal with non-members of YECTA who might want to negotiate?

The answers to these questions are as follows:

1. Yes. (See body of opinion).
2. No. (See body of opinion).
3. Since the answer to question number 2 is in the negative, we need not concern ourselves with this question.

A copy of the agreement referred to in the body of the opinion is attached.

The First Amendment to the United States Constitution and Article 2, Section 6 of the Constitution of the State of Arizona guarantees every citizen the right to peaceably assemble and organize for any proper purpose and to present their views to any public body whether the citizens be public employees or not. *City of Springfield v. Clouse*, 356 Mo. 1239, 206 S.W.2d 539 (1947), *Norwalk Teachers' Association v. Board of Education*, 138 Conn. 269, 83 A2d 482 (1951). The members of the Yuma Elementary Classroom Teachers' Association therefore may legally organize themselves and designate a representative to carry out their collective wishes including bringing to the attention of the Board their position concerning conditions of employment. *Board of Education v. Scottsdale Education Association*, 17 Ariz. App. 504 (1972). Reversed on review in 109 Ariz. 342 (1973).

The Arizona Court of Appeals stated in the *Board of Education v. Scottsdale*, supra:

A.R.S. §15-443 provides in part that "[t]he board of trustees may...enter into contracts with and fix the salaries of teachers...for the succeeding year. The contracts of all certified employees shall be in writing..." Further, the Board is empowered by A.R.S. §15-441 to "prescribe and enforce rules for the government of the schools..." and the "management" of the school is vested in the Board. A.R.S. §15-545.

In our opinion, this power to hire teachers, fix their salaries and to control the operation of the school district, necessarily carries with it the implied power or authority, if the Board so desires, to consult and confer with an individual teacher in order for the Board to make a sapient judgment as to wages and working conditions. In this regard we see little difference between 1200 teachers individually making known their desires to the Board concerning their wages and working conditions, and a representative of those 1200 teachers making known the same desires.

As we stated in *City of Springfield v. Clouse*, supra:

"Organization by citizens is a method of the democratic way of life and most helpful to the proper functioning of our representative form of government. It should be safeguarded and encouraged as a means for citizens to discuss their problems together and to bring them to the attention of public officers and legislative bodies. Organizations are likewise helpful to bring public officers and employees

together to survey their work and suggest improvements in the public service as well as in their own working conditions."

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"Now, collective bargaining means a good many things. There is [sic] many types of collective bargaining. When you sit down at a table, representative of the employees of the city sits down at a table and discusses the matter concerning employees relations between an employee and the city, that is collective bargaining."

"This is confusing collective bargaining with the rights of petition, peaceable assembly and free speech. Certainly public employees have these rights for which Mr. Wood was contending; and can properly exercise them individually, collectively or through chosen representatives, subject, of course, to reasonable legislative regulation as to time, place and manner in the interest of efficient public service for the general welfare of all the people." 206 S.W.2d at 542, 543.

This same conceptual idea of "collective bargaining" was approved in *State Board of Regents v. United Packing House, etc.*, Iowa, 175 N.W.2d 110 (1970):

"A public employer's general power to carry out its assigned functions is sufficiently inclusive to permit consultation with all persons affected by those functions... This consultation serves the public interest by permitting informed governmental action without abridging governmental freedom of action." 174 N.W.2d at 112, 113.

We therefore hold that the Board has authority to enter into "collective bargaining" with a representative of the teacher-employees when that "collective bargaining" is in the context of meeting and consulting with. However, the decision of whether the Board desires to enter into such a "collective bargaining" situation remains for the Board, and actions to compel or coerce the Board to so bargain collectively against its better judgment are improper. *The Communications Workers of America v. Arizona Board of Regents*, 17 Ariz. pp. 398, 498 P2d 472. 17 Ariz. App. at 508, 509.

It is my opinion that the Board of Trustees does not have a legal right in the State of Arizona to grant any group or organization the exclusive right to be the sole representative of all certified staff of the School District. The rights of petition, peaceable assembly and free speech guarantee to any employee who is not a member of the Yuma Elementary Classroom Teachers' Association the right to bring to the attention of the Board his or her position concerning the conditions of his or her employment independent of any group or organization. This right cannot be abridged by any agreement between the Board of Trustees and the Yuma Elementary Classroom Teachers' Association.

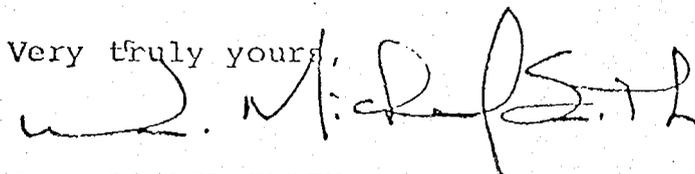
Whether or not this agreement can be entered into by the Board of Trustees for more than one year appears in my opinion to be a matter of policy. I find no prohibition either specifically or implied in any statute, case law or Attorney General's opinion in the State of Arizona. The agreement referred to does not concern a monetary matter effecting future budgets of the school district and is therefore not governed in my opinion by the implied prohibition of A.R.S. §15-1202, subparagraph J, as amended, which reads as follows:

"No expenditure shall be made by any school district for a purpose not particularly itemized and included in the budget and no expenditure shall be made and no debt, obligation, or liability shall be incurred or created in any year for any purpose itemized in excess of the amount specified for such item irrespective of whether the district at any time has received or has on hand funds in excess of those required to meet the expenditures, debts, obligations and liabilities provided for under such budget except pursuant to the provision of §15-1245."

I would recommend that any agreement, if it is to exceed one year, not exceed the term of the presently-constituted Board of Trustees. In other words, such agreement cannot exceed the term of office of the member or members of the Board next up for election.

A copy of the foregoing is being sent to the Attorney General for his concurrence.

Very truly yours,



WM. MICHAEL SMITH  
YUMA COUNTY ATTORNEY

WMS:mcg