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Phoenix, Arizona 85007

Robert R. Corbin

January 2, 1987

Ms. Janis Sandler  
Udall, Shumway, Blackhurst,  
Allen, Lyons & Davis, P.C.  
30 West First Street  
Mesa, Arizona 85201

Re: 187-001 (R86-157)

Dear Ms. Sandler:

We decline to review your opinion dated October 30, 1986, to the Assistant Superintendent of the Mesa Public Schools, concerning the grant of exclusive recognition and rights to one teachers' organization as the representative of all teachers employed by the district.

Sincerely,

for BOB CORBIN  
Attorney General

JGF:gm

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EDUCATION OPINION  
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October 30, 1986

886-157  
11/3/86  
Martin

Mr. Pat Pomeroy  
Assistant Superintendent  
for Personnel  
Mesa Public Schools  
549 N. Stapley Dr.  
Mesa, Arizona 85203

Opinion Letter Re: Exclusive Recognition of a  
Teachers' Organization by  
the District

Dear Mr. Pomeroy:

You have requested an opinion on the legality of granting exclusive recognition and exclusive rights to one teachers' association as the representative of all teachers employed by the District. For the reasons set forth below, it is our opinion that the District may not grant exclusive recognition or exclusive rights to one teachers' organization.

Exclusive recognition constitutes a pledge that the employer will not negotiate with other representatives of the same employer. A binding collective bargaining agreement commits an employer to establish certain terms and conditions of employment. As a practical matter, execution of a collective bargaining contract almost never occurs without some form of exclusive recognition. 54 Iowa L. Rev. 539, 542-543 (1969).

The majority view seems to be that public employers may not engage in collective bargaining in the absence of legislative authority to do so. In the states that do have authorizing statutes, almost all use the exclusive representation approach. The union selected by the majority of the employees in a given unit represents all employees, both those who voted for the union and those who did not. The winning union is then granted certain privileges, usually to the exclusion of other unions and individual employees. 72 Virginia L. Rev. 91, 92-93 (1986). The grant of exclusive recognition and privileges has been upheld as constitutional by various federal courts and the U.S. Supreme Court, but in all of those cases, the respective states had

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statutes authorizing binding collective bargaining. See, Perry Education Association v. Perry Local Educators Association, 103 S. Ct. 844 (1983); Memphis Am. Fed. of Teachers, Local 2032 v. Board of Education, 534 F.2d 699 (6th Cir. 1976); Fed. of Delaware Teachers v. Delaware Board of Education, 335 F. Supp. 385 (1971).

Arizona follows the majority view that binding collective bargaining is permissible only if specifically authorized by the legislature. Board of Education v. Scottsdale Education Association, 17 Ariz. App. 504, 498 P.2d 578 (1972). To date, the Arizona legislature has not enacted authorizing legislation. The rationale advanced by the courts that prohibit binding collective bargaining agreements in the absence of legislation is that these agreements involve an improper delegation to private persons of governmental authority over the terms and conditions of employment. Whether or not this reasoning is sound, it is the reasoning that the Arizona Court of Appeals followed in holding that the Scottsdale Board of Education could not enter into a binding collective bargaining agreement with the organization that had been chosen by the teachers to be the exclusive bargaining agent for all teachers in future negotiations with the Board. Board of Education, 498 P.2d at 581. The same reasoning was also applied by the Arizona Attorney General in Ariz. Atty. Gen. Op. 174-11, where the Attorney General held that a county could not recognize a public employees' union as the exclusive bargaining agent for its members.

Although public employers in Arizona may not engage in binding collective bargaining, they may agree to "meet and confer" with individual employees or a representative of a group of employees. Board of Education, 498 P.2d at 582. In Board of Education, the court held that the power to hire teachers, fix their salaries and to control the school district's operation necessarily carried with it the implied power to consult and confer with its employees, if the board so desired. This power extended to the right of the board to enter into a written contract with a representative of a teachers' organization binding all members of that organization, so long as the contract terms were within the statutory authority of the board and contained no terms that could not be included in a standard contract for individual teachers. Although the court did not explicitly prohibit meeting and conferring with only one teachers' organization, the language of other cases cited in the opinion

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indicates that any form of exclusive representation brings this process within the purview of impermissible collective bargaining. Board of Education, 498 P.2d at 585.

The issue of exclusive representation in a school district was discussed again in Ariz. Atty. Gen. Op. 179-126. The Attorney General was asked whether a Meet and Confer proposal submitted by the Wilson Classroom Teachers Association to the Wilson School Board was legal. The proposal required the district to hold an election to determine the "major source of employee input" if a petition with the requisite number of signatures was presented to the board. The proposed policy also stated that "nothing in this policy is to be construed to preclude the personal appearance before the board by any employee on his/her behalf." Relying on Ariz. Atty. Gen. Op. 174-11 (cited above), the Attorney General concluded that the proposal was legal because it specifically recognized the right of other employees to appear and negotiate on their own behalf, thereby eliminating the problem that would be posed by exclusive representation. As in Ariz. Atty. Gen. Op. 174-11, nothing was said about the right of individual employees to choose representatives to appear on their behalf.

The Arizona Attorney General declined to review several more County Attorney opinion letters regarding exclusive recognition and the granting of exclusive rights to teacher associations in the years following Ariz. Atty. Gen. Op. 179-126. While these Opinions cannot be relied upon, they are worth reviewing to examine the reasoning of the County Attorneys and to take note of the Attorney General's comments.

For example, in Ariz. Atty. Gen. Op. 181-040, the Attorney General declined to interpret a district policy to decide whether it granted exclusive meet and confer rights to the Sierra Vista CTA. County Attorney Max Jarrett had interpreted the policy and determined that it did grant exclusive rights to the CTA. He had then reminded the Sierra Vista Assistant Superintendent that the Arizona Attorney General had concluded that a school district may not grant to any group or organization the exclusive right to be the sole representative of all certified staff in the district. (Citing Ariz. Atty. Gen. Ops. 74-11, 75-8-C, and 79-126).

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The Attorney General also declined to decide whether a school board was required to meet and confer with employees. Mr. Jarrett's opinion was that the board was not legally required to meet and confer with employees.

The Attorney General did state in I81-040 that if a board decided to allow a teachers' organization to provide input, it could not then refuse to hear the opinions of individual teachers on those matters. The Attorney General was not sure whether individual teachers who would be eligible to meet and confer with the board would be entitled to have the board meet and confer with another teacher association those individuals chose to represent them for that purpose. The Attorney General noted that there was no Arizona case law on point, but that in Memphis Am. Fed. of Tchrs., L.2032 v. Board of Education, 534 F.2d 699 (6th Cir. 1976), the court held that the grant of exclusive rights to one teacher organization did not create a constitutional infringement on the rights of a rival association. It is imperative to note, however, that Tennessee provides explicit statutory authority for recognizing professional employees' organizations as the exclusive representative of all of the professional employees employed by that board of education for the purpose of negotiating. T.C.A. 49-5-606. As Scottsdale Board of Education and Ariz. Atty. Gen. Op. 174-11 hold, a public employer in Arizona may not grant exclusive rights to a particular union in the absence of statutory authority, and Arizona does not have such statutory authority.

The Attorney General was again asked about exclusive meet and confer agreements with a teachers' organization in Ariz. Atty. Gen. Op. 182-021. Mr. Stephen D. Neely, Pima County Attorney, had reviewed the Ajo Board of Education's meet and confer policy, and had concluded that the Board of Education had the right to recognize only one employee [group] in meet and confer, although the Board was not required to be so restrictive. (Relying on Ariz. Atty. Gen. Ops. 174-11 and I81-040.) Mr. Neely seemed to rely most heavily on I81-040, wherein the Attorney General had cited Memphis Am. Federation of Teachers, 534 F.2d 699 (6th Cir. 1976) with apparent favor. (See discussion of Ariz. Atty. Gen. Op. I81-040 above for the reason why Mr. Neely's reliance on Memphis Am. Federation of Teachers was misplaced.) The Attorney General declined to review this opinion, but did note that the U.S. Supreme Court had a case concerning this issue

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pending before it. That case was Perry Education Association v. Perry Local Educators Association, 103 S. Ct. 844 (1983). In Perry, the U.S. Supreme Court upheld a labor contract wherein the PEA (the exclusive bargaining representative) was granted exclusive access to teacher mailboxes. However, the court did not need to address whether the PEA could legally or constitutionally be the exclusive bargaining representative, because Indiana has explicitly provided for exclusive representation in its statutes. Ind. Code Ann. s 20-7.5-1-2.(1). Again, statutory authority for exclusive collective bargaining agreements does not exist in Arizona.

Based on the foregoing, it is our opinion that a school board in Arizona:

(1) May not enter into a binding collective bargaining agreement absent statutory authority to do so. Collective bargaining agreements almost always include the grant of exclusive rights of representation to one union or group.

(2) May meet and confer with an employee organization if it so desires.

(3) May enter into a written contract with a representative of a teachers' organization binding all members of that organization, so long as the contract terms are within the board's statutory authority and contain no terms that could not be included in a standard contract for individual employees.

(4) May not deny individuals access to the board if the board has granted access to a particular teachers' organization.

It is not clear whether the right of these individual teachers to appear before the board for meet and confer purposes applies to organizations that are chosen to represent those teachers. Still, if a major distinction between impermissible "collective bargaining" and permissible "meet and confer agreements" is the right of a union to be the exclusive employee representative, then allowing the board to meet and confer with only one employee organization enables the group of its choice to become the exclusive bargaining agent in fact, if not in theory, thereby nullifying the distinction between collective bargaining

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and "meet and confer". (See, State Board of Regents v. United Packing House, etc., 175 N.W. 2d 110, 119 (1970).

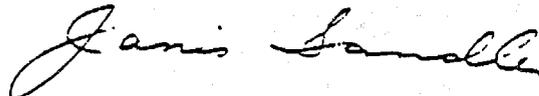
5. Pursuant to Board of Education, a school board may not grant exclusive rights to a particular teachers' group, because a board may not include terms in a meet and confer agreement that could not be included in a standard contract for individual teachers. For example, because it would be inappropriate to give individual teachers exclusive rights to use the teacher mailboxes, it would be inappropriate to include such a term in a meet and confer agreement with a particular teachers' organization.

This opinion is being sent to the Attorney General's office for review pursuant to A.R.S. §15-253(B).

If you have any further questions, please do not hesitate to contact the undersigned.

Sincerely,

UDALL, SHUMWAY, BLACKHURST,  
ALLEN, LYONS & DAVIS, P.C.



Janis Sandler

cc: Dr. James Zaharis  
Dr. Chuck Essigs

JRS6LL