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Pres. Arthur A. Hauck — University of Maine

Boyd L. Bailey, Asst. Att. General — Attorney General

ORGANIZED LABOR AT THE UNIVERSITY OF MAINE

You have inquired generally concerning organized labor as respects the University of Maine.

The law does not prevent a group of employees from selecting certain spokesmen and directing them to represent the employees as lobbyists or to negotiate grievance matters with officials of the University. There is, for example, the Maine State Employees Association which includes a very large percentage of classified employees in the State's service, the activities of which are completely within the law.

But, by Chapter 98, P.L. 1945, the Legislature provided:

> "The University of Maine is declared to be an instrumentality and agency of the state for the purpose for which it was established and for which it has been managed and maintained . . . ."

This declaration of legislative intent is wholly consistent, of course, with the several statutes affecting the University. The trustees of the University are appointed by the Governor with the consent of the Council. The University is dependent upon substantial regular grants from the State Treasury. (See, for example, Chapter 145, P & S 1954). The Commissioner of Education is ex-officio a trustee. (Section 111, Chap. 37, R.S. 1944)

There is an essential difference between private and public employers. Even so strong a friend of labor as President Franklin D. Roosevelt said:

> "All Government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of Government make it impossible to administrative officials to represent fully or to bind the employer in mutual discussions with Government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress." (Quoted by the Supreme Court of Missouri in Springfield v. Clouse, 1947, 356 Mo. 1239, 1247)

As was said about municipalities in the leading text on municipal law:

> "Inasmuch as the appointment, tenure, promotion, demotion, suspension, removal, reinstatement and working conditions of persons in the municipal service are regulated by constitutional and other laws, rules and regulations, it is generally agreed that labor unions have few functions which they may discharge with reference to municipal officers and appointees, and especially with reference to civil service appointees. Consequently, unless required to do so by statute or its charter, a city is under no legal duty to recognize a union of employees of a municipal government . . . . So, also, a city, by ordinance, validly may prohibit city employees from joining labor unions . . . ." (3 McQuillin, Municipal Corporations, section 12.140)

Municipalities are agents or instrumentalities of the State, just as is the University of Maine.

Whenever the question has come up in court it has been held that no public employer may recognize any union as a collective bargaining agent.

> State v. Brotherhood, 1951, 37 Calif. (2d) 412, cert. den. 342 U. S. 876
> Miami Water Works Local No. 654 v. Miami, 1946, 157 Fla. 445, 165 A.L.R. 967
> Springfield v. Clouse, 1947, 356 Mo. 1239
> Cleveland v. Division 268 of Amalgamated Asso., 1945, 30 Ohio Ops. 395

The principal reason why a union may not be recognized as a bargaining agent is that the public employer does not and cannot work out conditions of employment by the bargaining process. A public employer is governed by the people who express their will in statutes, ordinances, etc. Some authorities also comment on the freedom of the public employee to be represented or not as he chooses.

No public employee has a right to strike or picket. (Cases cit. 31 A.L.R. (2d) 1159. A strike of government employees is more than an interference with sovereignty, it is a strike against government. Norwalk Teachers' Asso. v. Board of Education, 1951, 138 Conn. 269, 31 A.L.R. (2d) 1133.

No official of government may agree to a closed shop, union shop, or other similar restriction. Public employment should be available to all needed, qualified persons, regardless of union membership or non-membership.

There are also cases involving the "check-off." By this expression, of course, is meant that union dues are deducted from the pay check by the employer and transmitted to the union. There is very little authority on this point, the cases being divided equally.

I understand that argument has been made that Section 10, Chap. 25, R. S. 1944, has been quoted to you as justifying certain union rights at the University. The pertinent language is: N.J. Me. Rev. Stat. Ann., Tit. 26, §911 (1964)

> "Workers shall have full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from interference, restraint, or coercion by their employers or other free persons, and it shall be the duty of the board to endeavor to settle disputes, strikes, and lock-outs between employers and employees."

There are several cases in which courts of last resort have held that such language does not apply to employment by the government. The most famous, probably, is U. S. v Mine Workers, 1947, 330 U. S. 258. This case involved the right of coal miners to strike after the mines had been seized by the United States. By the seizure the miners became employees of the United States. The Supreme Court held that the miners had no right to strike despite the Clayton Act and Norris LaGuardia Act which, of course, guarantees in general terms the right to strike. The Court held that the word "employer" did not apply to the United States Government. The general principle is that the rights of a sovereign government are not deemed restricted by general legislation; it is conceived that, generally speaking, laws are enacted to be applied to the citizens, and that restrictive legislation does not apply to the government unless the legislating body specifically says so. In their concurring opinion, Justices Black and Douglas said:

> "There was never an intimation in the progress of the Act's passage that a labor dispute within the Act's meaning would arise because of claims against the Government

asserted collectively by employees of the Interior, State, Justice, or any other Government department. Congress had never in its history provided a program for fixing wages, hours, and working conditions of its employees by collective bargaining. Working conditions of Government employees had not been the subject of collective bargaining, nor been settled as a result of labor disputes. It would require specific congressional language to persuade us that Congress intended to embark upon such a novel program or to treat the Government employer-employee relationship as giving rise to a 'labor dispute' in the industrial sense." (330 U.S. 328-9)

As the executive head of an instrumentality or agency of the State of Maine, you do not have power to enter into the usual bargaining agreement with any labor union. This is not a matter of your willingness or unwillingness; it is a matter of law.

The City of Portland has had the same problem for some time. It may be useful to you to consider that City's policies.

To summarize; There can be no bargaining with a sovereign government because bargaining presupposes of necessity that the parties are in a more or less equal status. Until and unless the sovereign people by appropriate legislation relinquish some of their present rights, there can be very little similarity between public and private employment. As stated above, the employees may organize but organizations of public employees have practically none of the powers exercised by labor unions in private industry.

Do not hesitate to let me know if I have not fully answered you.

(Signed) Boyd Bailey

Approved and concurred in

Alexander A. LaFleur
Attorney General

2/2/54