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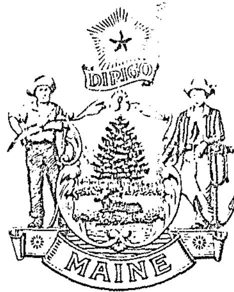
ATTORNEY GENERAL



STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 12, 1979

Honorable Joyce E. Lewis
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Lewis:

You requested an opinion from this office on two issues related to the State Employees Labor Relations Act (SELRA), 26 M.R.S.A. § 979, et seq. As we understand your questions, you have asked whether the SELRA prohibits the inclusion of an "agency shop or service fee in lieu of union dues" provision in collective bargaining contracts negotiated under that Act, and whether the Legislature could reject such a provision by refusing to accept either the provision itself or the entire contract. You indicated in later discussions that your inquiries related to the service fee provision included in the collective bargaining contract recently negotiated between the State and the Maine State Employees Association (MSEA). The service fee clause provides:

> It shall be a condition of employment that, on or after the thirtieth (30th) day following the execution of this Agreement, all employees covered by the Agreement or who thereafter become covered by the Agreement and who are not and do not become members of the MSEA shall pay a service fee equal to eighty (80) percent of the MSEA dues as a contribution towards the costs of collective bargaining, contract administration and the adjustment of grievance. MSEA shall indemnify, defend and hold the State harmless against all claims and suits which may arise as a result of deductions of said fees.

The specific issues raised by your questions and our conclusions on those issues are set out immediately below. Analysis and discussion follow:

1. Would the service fee provision under consideration be a violation of the SELRA?

We cannot sufficiently stress the fact that this is an extremely close question under present law. The SELRA neither expressly authorizes nor expressly prohibits the negotiation of such provisions. Our conclusion rests largely on a single Maine case which, while not addressing the specific issue here raised, addresses a closely related issue arising under similar legislation. In deciding that issue, the Court identifies key language common to both statutes and construes that language. Our conclusion, based on that construction and on our policy of according presumptive validity to governmental action which does not conflict with constitutional rights, is that the service fee provision under consideration here would not violate the SELRA. Having reached that conclusion, we reiterate the closeness of the question. We would urge final resolution through unequivocal legislative action, expressly authorizing or prohibiting such provisions, or through judicial interpretation.

2. Is the amount of the fee established by the service fee provision proper?

Since this issue involves significant questions of fact, it cannot be resolved in the context of an Attorney General's opinion. Its resolution would require a full evidentiary hearing in which the relevant information regarding permissible costs and their amounts could be analyzed. We would emphasize, however, that it is our opinion that any part of a service fee which is in fact unrelated to the cost of services from which non-members benefit would be illegal.

3. May the Legislature reject the service fee provision either by itself or by way of rejecting the entire contract?

Under the present wording of the SELRA, the Legislature's role with respect to contracts negotiated with State employees is limited to the approval or rejection of cost items. This conclusion is subject to two important qualifications. First, there do not appear to be any legal restrictions on the reasons for rejecting any, or all, cost items in a contract. Second, since the limits on the Legislature's authority are derived from statutory law, the Legislature could presumably amend the law to expand its role. Along these lines, legislative action inconsistent with the provisions of the SELRA might well be construed as amending those provisions by implication. While we believe the Legislature has broad, if not unlimited, power to alter its authority, either expressly or by implication, with respect to agreements which have not yet become binding, we deem it advisable to reserve final judgment on this matter until we have specific language to evaluate.

ANALYSIS AND DISCUSSION:

1. Would the service fee provision under consideration be a violation of the SELRA?

To determine whether the SELRA prohibits the negotiation and inclusion of such a clause it is necessary to examine the language of the Act. Section 979-D sets forth the bargaining obligations of the parties. Subsection 1(E), quoted here in its entirety, specifies the subjects of bargaining.

> E.
>
> (1) To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession. All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining, except those matters which are prescribed or controlled by public law. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by public law. (sic) Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by public law include but are not limited to:
>
> (a) Wage and salary schedules to the extent they are inconsistent with rates prevailing in commerce and industry for comparable work within the State;
>
> (b) Work schedules relating to assigned hours and days of the week;
>
> (c) Use of vacation or sick leave, or both;
>
> (d) General working conditions;
>
> (e) Overtime practices;
>
> (f) Rules and regulations for personnel, administration, except the following: Rules and regulations relating to applicants for employment in state service and classified employees in an initial probationary status, including any extensions thereof, provided such rules and regulations are not discriminatory by reason of an applicant's race, color, creed, sex or national origin.
>
> (2) Paragraph E subparagraph (1) shall not be construed to be in derogation of or contravene the spirit and intent of the merit system principles and personnel laws.

In light of this subsection, the issue becomes whether the negotiation and inclusion of the service fee provision in question is a matter "prescribed or controlled by public law."

The relevant law is the SELRA itself.[1/] There is no explicit prohibition of the negotiation and inclusion of service fee clauses in § 979-D(1)(E) or elsewhere in the Act.[2/] The section of the SELRA which could, however, be construed to establish such a prohibition is § 979-B, which provides:

> No one shall directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against state employees or a group of state employees in the free exercise of their rights, hereby given, voluntarily to join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining, or in the free exercise of any other right under this chapter.

If the service fee provision under scrutiny is an infringement of employees' rights as defined in this section, then the provision is "prescribed or controlled by public law" and therefore could not be a subject of bargaining under SELRA. The question thus becomes whether the clause interferes with or coerces employees "in the free exercise of their rights. . . voluntarily to join, form and participate in the activities of . . . . " a labor organization.[3/]

Section 979-B does not on its face resolve this question, nor does Maine case law provide a definitive answer. The only relevant Maine case is Churchill v. S.A.D. #49 Teachers Association, 380 A.2d 186 (Me. 1977), which arose under the

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1/ Your request relates specifically to the SELRA, and our research and this response focus on that Act. As a matter of information, we are aware of no provisions of public law outside the SELRA which would operate to prohibit the negotiation and inclusion of such a service fee provision in a SELRA contract.

2/ The SELRA's only explicit prohibition of a subject of bargaining is in § 979-D(1)(E)(1)(f), quoted supra.

3/ As a matter of information, the United States Supreme Court has ruled constitutional under the First and Fourteenth Amendments statutes permitting the negotiation of service fee provisions in public employee contracts, where the fee charged represents the non-member's proportional share of the costs of collective bargaining, contract administration and grievance adjustment. Abood v. Detroit Board of Education, 431 U.S. 209 (1977).

Municipal Public Employees Labor Relations Act (MPELRA), 26 M.R.S.A. § 961, et seq. In Churchill, a service fee provision was held invalid as violative of § 963 of the MPELRA, which is identical in all important respects to § 979-B. It must be emphasized, however, that the contract provision under scrutiny in Churchill was markedly different from the provision here in question, in that the Churchill provision required non-member employees to pay to the bargaining agent a fee "equal to but not in excess of . . . dues."[4/] 380 A.2d at 188. In the Churchill opinion, the Court specifically noted that it saw as a different issue a service fee provision which required non-members to pay "only their proportionate share of the costs of securing benefits conferred upon all members of the bargaining unit." 380 A.2d 192, fn. 5. The Court very clearly cautioned that no inferences as to its view of such a provision could be drawn from its decision in Churchill. To its holding that

> (a)bsent express authorization by the Legislature, an "agency shop" provision in a collective bargaining agreement between public employees and their public employer, which exacts from non-members as a condition of continued employment in the bargaining unit in the guise of an "equitable proportion of the cost of representation" by the bargaining agent "fees equal to but not in excess of the equivalent of" dues to belong to the employee organization, is unlawful as violative of the statute protecting the right of public employees "voluntarily to join, form, and participate in the activities of organizations of their own choosing. 380 A.2d at 192 (emphasis in original)

the Court appended the footnote:

> We do not intimate what our decision would be if the so-called agency shop clause in the instant case had required nonjoinder employees to pay to the bargaining agent only their proportionate share of the costs of securing benefits conferred upon all members of the bargaining unit.[5/]
> 380 A.2d at 192, fn. 5.

4/ It will be recalled that the service fee provision here in question requires non-members to pay a "fee equal to eighty (80) percent of . . . dues."

5/ In our opinion, a service fee provision which requires non-members to pay a fee equal to their proportionate share of the costs of collective bargaining, contract administration and the adjustment of grievance is such a clause as the Court describes in the Churchill footnote.

Thus, it is clear from Churchill that interpretation of § 979-B is essential to the resolution of the question here. However, since Churchill and the present issue involve the application of identical statutory language to different contract provisions, the question becomes whether the contract provision here in question violates employees' rights "voluntarily to join, form and participate in the activities of" labor organizations.

In Churchill, the Court stated that the service fee provision there in issue was

> . . . strictly a union security clause designed to induce union membership. . . (T)he forced payment of dues or their equivalent. . . is tantamount to coercion toward membership or, at the very least, toward participation in a labor organization. . . . 380 A.2d at 192. (emphasis added)

It is clear that the Court could find no rationale for a "dues equivalent" provision other than that of inducement or coercion to join or participate in the union.6/ The Court, however, specifically left open the question of the legality of a clause which might be justified on other grounds.

The clause in question here is subject to a rationale other than forced membership or participation, in that the required payment is predicated on the performance by the union of services from which members and non-members alike benefit.7/ This rationale is suggested by the SELRA itself, which in requiring the union to represent "all the public employees within the unit without regard to membership," § 979-F(2)(E), compels the union to perform certain services for non-members and compels non-members to accept certain services. It is consistent with the relationship thus imposed by the statute on the union and the non-member employee to require payment from the employee for the services rendered by the union.8/ Further, it is apparent

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6/ The Court dismissed the contract language which called for payment of "an equitable proportion of the cost of representation," as a "guise," pointing out that other language required the payment of "fees equal to but not in excess of the equivalent of" dues.

7/ The required payment is also limited by the performance of those services in that it may not exceed the non-members' proportionate share of the costs of performance.

8/ Churchill, too, suggests that the difference the Court saw in the "proportionate share" type of clause lay in its basis in the costs of "benefits conferred upon all members of the bargaining unit." 380 at 192, fn. 5. What the Court does not decide in Churchill is whether it sees legal significance in that difference.

that the Legislature did not consider that the requirement that representation by the union be accepted by the non-member employee to be in violation of the rights set out in § 979-B. If the requirement of acceptance of representation does not involve coercion towards membership or participation, it can be argued that requiring the employee to pay for benefits conferred or services performed via representation would also not involve coercion towards membership or participation. Although the question is clearly not free from doubt, we find this rationale, with support in the SELRA and in Churchill[9/] sufficient to conclude that the service fee provision under examination here does not coerce non-member employees to involuntarily join or participate in the activities of a labor organization, in violation of § 979-B.[10/]

9/ Cases cited by the Court in Churchill, all of which reject contract provisions requiring the payment by non-members of union dues or their equivalent, distinguish provisions requiring payment of a proportionate share of the costs of benefits accruing to non-members. Several cases suggest other rationales for proportionate share provisions. See Smigel v. Southgate Community Schl. Dist., 202 N.W.2d 305 (Mich. 1972); N.J. Turnpike Employees Union, Local 194 v. N.J. Turnpike Auth., 303 A.2d 599 (N.J. 1973); N.J. Turnpike Employees Union, Local 194 v. N.J. Turnpike Auth., 284 A.2d 566 (N.J. 1971); Town of No. Kingston v. No. Kingston Teachers' Ass'n., 297 A.2d 342 (R.I. 1972). Several cases rely on the presence or absence of particular statutory language, such as that which explicitly gives the "right to refrain" from union involvement or that which explicitly assures voluntariness in "assisting" the union. See City of Hayward v. United Public Employees, Local 390, 54 Cal. App.3rd 61 (1976); State Employees Ass'n. of N.H., Inc. v. Mills, 344 A.2d 6 N.H. 1975); N.J. Turnpike Employees Union, Local 194 v. N.J. Turnpike Auth., 319 A.2d 224 (N.J. 1974); N.J. Turnpike Employees Union, Local 194 v. N.J. Turnpike Auth., supra (2 opinions); Farrigan v. Helsky, 327 N.Y.S.2d 909 (1971); Town of No. Kingston v. No. Kingston Teachers Ass'n., supra.

10/ This conclusion assumes that 80% of dues does not exceed non-members' proportionate share of the costs of collective bargaining, contract administration and grievance adjustment.

The legislative history of the Act does not conflict with this conclusion. The SELRA was introduced in the 106th Legislature as L.D. 2314, "An Act Extending Collective Bargaining Rights to State Employees." As originally introduced, the L.D., in § 979-F(3), provided in the following language for service fee clauses.

> 3. Service fee; withholding
>
> A. Nothing in this chapter shall preclude a labor organization that is the certified bargaining agent from entering into an agreement with the employer whereby, during the life of a collective bargaining agreement so providing, the State Controller shall deduct from each payment of salary made to each employee within the bargaining unit represented by the certified bargaining agent and pay over to said agent, as an agency service fee, such sum, proportionately commensurate with the cost of collective bargaining and contract administration, as the collective bargaining agreement shall state; provided that such collective bargaining agreement shall first have been formally executed pursuant to a vote of a majority of all employees in the bargaining unit.
>
> B. If the collective bargaining agreement provides for the deduction of an agency service fee and fails to specify the amount of such fee, the board shall determine the amount of such fee; provided that such fee shall be reasonable and shall not be an amount that exceeds the regular and usual dues of the employees within the bargaining unit who are members of the labor organization.
>
> C. If a labor organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction shall terminate.

Senate Amendment "C," S-413, removing the whole of sub-§ 3 from the bill, was offered on the floor and was, after some debate, adopted. The statement of fact on the amendment read:

> The purpose of this amendment is to remove the compulsory payment of fees to a union by a state employee.

The sponsor of the amendment described it as follows:

> Mr. President, this amendment takes out the provision for collection of dues on a mandatory basis from those not members of the bargaining unit. I suggest that there are two roads that the proponents can follow to get a dues check-off: one through legislative action, and one through collective bargaining.
>
> The intent of my amendment today is to say that I do not support the inclusion in a legislative document of this procedure. On the other hand, as far as I can see, the door is wide open if this bill were to pass, for those who were involved in collective bargaining to attempt to gain by collective bargaining that which they seek from the legislature. Legislative Record, 106th Legislature, p. 1957.

While the sponsor did not address the question of service fee provisions directly, it appears from his remarks that his concern was to ensure that there be no statutory requirement of a dues check-off for non-members. It also appears that he believed that if his amendment were adopted, the non-member dues check-off would be a subject of bargaining to be negotiated between the parties. Since it was apparently not his intent to prohibit negotiation of non-member dues check-off, it may be inferred that he was not attempting to prohibit negotiation of a provision requiring contribution of an amount less than dues.

By the appearance of sub-§ 3 in the bill, the introduction of amendment "C" and the ensuing debate, the several specific issues had been brought to the Legislature's attention, among them the issue of service fee clauses. Further, comments of the sponsor and other speakers reveal that the Legislature was aware that non-member service fee provisions were being negotiated between public employee unions and their employees under the Maine Public Employees Labor Relations Act. The sponsor of the amendment said,

> In the public employee's bargaining bill presently used by the teachers, this dues check-off system is not in the law, but it is certainly bargained for collectively over the counter by the parties, and I understand it has presently been accepted by one unit. So we are not closing the door, but we are saying go out and earn it through collective bargaining. Id.

and the sponsor of the original bill, L.D. 2314, concurred:

> Now, they are doing this in the municipal sector . . . . They are doing this on a voluntary basis. This merely seeks to reaffirm what is presently being done on the municipal level and to write in the law what they apparently feel is in the law without it being specified specifically. So I don't see why this particular section ought to be removed from the law. It is, as I say, enabling legislation and it permits the parties to enter into negotiations in this area. Id.

Since the Legislature was aware that service fee clauses were being included in agreements negotiated under a law identical in all material respects to the SELRA, it would not be unreasonable to conclude that had the Legislature wished to prohibit the negotiation and inclusion of such clauses, it would have done so explicitly. In any event, the legislative history of the amendment to L.D. 2314 to remove sub-§ 3 does not alter our conclusion that the service fee provision is not prohibited under the SELRA. See Jefferson v. United States, 178 F.2d 518 (4th Cir. 1949), aff'd., 340 U.S. 135 (1950); Lovell v. Democratic Central Comm. of Pulaski County, 327 S.W.2d 387 (1959).

We have briefly examined the actions of the Legislature with respect to the SELRA subsequent to its enactment. We have found no relevant amendatory legislation to have been introduced in the 107th Legislature. In the 108th, L.D. 391 was introduced. It provided:

> F. If an exclusive bargaining agent has been recognized or determined for the employees in an appropriate bargaining unit, each employee in such unit who is not a member of the exclusive bargaining agent shall be required, as a condition of continued employment, to pay to such organization for the period that it is the exclusive bargaining agent an amount equal to the dues, fees and assessments that a member of that organization pays.

In the Senate, L.D. 391 was adopted as amended by Committee Amendment "A" (S-70), which struck the entire substantive portion of the bill,[11] substituting:

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11 / S-70 amended § 979-C, the "prohibited practices" provision of the SELRA; L.D. 391 would have amended § 979-F, the "determination of bargaining agent" provision.

> 4. Negotiation of union security. Nothing in this chapter shall be interpreted to prohibit the negotiation of union security, excepting closed shop.

On reconsideration, Committee Amendment "A" was amended by Senate Amendment "A", S-81, which modified the exception clause to read:

> . . . excepting union shop and closed shop.

In this form, the bill passed the Senate[12/] and the House,[13/] survived a motion to reconsider in the Senate, was passed to be enacted, was sent to the Governor[14/] and was vetoed;[15/] the veto was sustained.[16/]

The extensive debate on L.D. 391 leaves the impression that the 108th Legislature believed that legislative authorization was necessary for service fee provisions to be a subject of negotiation.[17/] The issue here is the weight to be given to the actions of a later Legislature in attempting to discern the intent of a former Legislature. Case law indicates that the actions of a subsequent Legislature are not binding or controlling as to the intent of a former Legislature. D. C. v. Schwerman Trucking Co., 327 A.2d 818 (D.C. App. 1974); Crinkleton Elec. Co. v. Barkdoll, 177 A.2d 252 (Md. 1962). An amendment which is interpretive of

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12/ Legislative Record, 108th Legislature, p. 612.

13/ Id., p. 819.

14/ Id., p. 887.

15/ Id., p. 1123.

16/ Id., p. 1161

17/ See, e.g., remarks of Senator Pray, the sponsor of the original version of L.D. 391, Legislative Record, 108th Legislature, p. 546; remarks of Representative Tierney, Id., p. 640; remarks of Senator Merrill, Id., p. 886. The remarks of Senator Conley, Id., p. 886, suggest the view that service fee provisions were negotiable under the Act without specific authorization; the bulk of the debate suggests the opposite. It is worth noting that the debate on L.D. 391 took place in April and May of 1977; Churchill was not decided until the following November.

the original act, as was the final version of L.D. 391, is not conclusive of the intent of the enacting Legislature. Toothaker v. Maine Employment Security Comm., 217 A.2d 203 (Me. 1966); Sutherland, Statutory Construction, V. 1A, § 22.30. The Governor's veto, as a part of the legislative process, can be an aid in statutory construction, Dept. of Health v. Sol Schnoll Dressed Poultry Co., 345 A.2d 532 (N.J. 1968); Recreation Lines, Inc. v. Public Service Comm'n., 179 N.Y.S.2d 1001 (1958), but the failure to amend a statute, whether by failure of the amendment itself or by failure to override a veto, is inconclusive. Society of Divine Word v. County of Cook, 247 N.E.2d 21 (Ill. 1969); Gannon v. C., M., St. P. and P. Ry. Co., 175 N.E.2d 785 (Ill. 1961); Garden State Farms Inc. v. Bay, 370 A.2d 37 (N.J. 1977). In light of these principles, the apparent view of the 108th Legislature that authorization of the negotiation of service fee provisions was necessary is an insufficient basis for a conclusion that the 106th Legislature in enacting the SELRA intended that negotiation of such provisions be prohibited, particularly in view of the indications that the 106th Legislature thought that such provisions were negotiable under the SELRA as enacted.[18/]

To summarize our analysis of this issue, we reiterate our statement that the legality of a service fee provision in a contract negotiated under the SELRA is an extremely close question. For the reasons stated above, however, we cannot conclude from existing case law that a provision requiring non-members to pay a fee commensurate with the benefits they receive from the union is prohibited by the Act.[19/]

18/ L.D. 493 and L.D. 597, which would amend the SELRA in a manner very similar to that of L.D. 391, have been introduced in the 109th Legislature. Both are presently in committee.

19/ As we noted previously, an issue involving such fundamental questions of public policy is best resolved through unequivocal legislative action, or in the alternative, through judicial interpretation. Along these lines, we would note a compromise procedure utilized to resolve a similar dispute between the New Jersey Turnpike Authority and the union representing Authority employees. There, the Authority and the union negotiated a contract which included an agreement to file a declaratory judgment action seeking determination of the legality of a service fee provision. The agreement provided that if the provision were found legal, it would go into effect at a specified time. The remaining provisions of the contract were unaffected by the agreement. N.J. Turnpike Employees Union, Local 194 v. N.J. Turnpike Auth., 303 A.2d 599 (N.J. 1973).

2. Is the amount of the fee established by the service fee provision proper?

Under both Abood, supra, and later cases decided by state courts, it is clear that a service fee, the payment of which is a condition of continued public employment, may not include costs to the union of activities unrelated to collective bargaining, contract administration and grievance adjustment. Nor may the amount of the fee exceed a pro rata share of the union's costs of activities in these three areas. Abood, supra, at pp. 1798-1800; Ball v. City of Detroit, 269 N.W.2d 607 (Mich. 1978); Assoc. of Capitol Powerhouse Engineers v. Div. of Bldg., 570 P.2d 1042 (Wash. 1977); Browne v. Milwaukee Bd. of School Dir., 265 N.W.2d 559 (Wis. 1978). Churchill, supra, suggests these same limitations in speaking of the "proportionate share of the costs of securing the benefits conferred upon all members of the bargaining unit." 380 A.2d at 192, fn. 5. Determination of the propriety of specific items included as costs to be borne by members and non-members alike and determination of the proper amount of the pro rata share payable by non-members require the presentation and analysis of detailed factual information. Such determinations are not practicably or properly undertaken by this office. Here we note only the existence of the issues and our opinion that the fee would be illegal to the extent that it included impermissible costs or exceeded the proper proportionate share.

3. May the Legislature reject the service fee provision either by itself or by way of rejecting the entire contract?

The Legislature's role in accepting or rejecting contracts negotiated under the SELRA is defined by the terms of the Act. Section 979-A(5) provides in relevant part that:

> . . . It is the responsibility of the legislative branch to act upon those portions of tenatative agreements negotiated by the executive branch which require legislative action.

The same section also provides:

> To coordinate the employer position in . . . negotiation. . . , the Legislative Council . . . shall maintain close liaison with the Governor. . . relative to the negotiation of cost items in any proposed agreement.

Section 979-D(1)(E)(3) provides:

> Cost items shall be submitted for inclusion in the Governor's next operating budget within 10 days after the date on which the agreement is ratified by the parties. If the Legislature rejects any of the cost items submitted to it, all cost items submitted shall be returned to the parties for further bargaining.

Section 979-A(3) defines "cost items" as

> . . . the provisions of a collective bargaining agreement which requires (sic) an appropriation by the Legislature.

These sections strongly suggest that the Legislature's role in approving or rejecting SELRA contracts is limited to approval or rejection of "cost items," that is, of those provisions of a contract which require an appropriation by the Legislature. It does not appear that the Legislature intended to retain the authority to accept or reject an entire contract or to accept or reject any part of a contract which is not a "cost item."

If the Legislature had intended to retain the authority to accept or reject entire contracts, it is unlikely that it would have specifically defined its responsibility as

> . . . to act upon <u>those portions</u> (of agreements) which <u>require legislative</u> action. (emphasis added)

or that it would have required the Legislative Council to

> . . . maintain close liaison with the Governor. . . <u>relative to the negotiation of cost items</u>. . . . (emphasis added)

The specific references to cost items, repeatedly used in connection with the legislative role in the bargaining process, militate against the conclusion that the Legislature intended to retain the power to reject any and all provisions of a SELRA agreement. While the present language of the Act thus restricts legislative approval to cost items, it is important to note that the statute does not limit the grounds on which those items may be rejected.

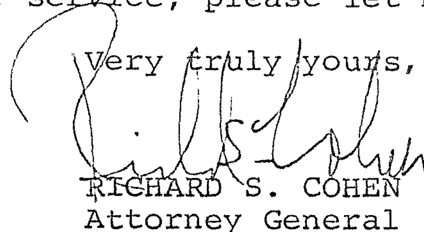
Since the Legislature's role is defined by statutory law, the question inevitably arises as to its authority to amend that law as it applies to proposed or future contracts. Such an amendment might take the form of express changes in the language of the SELRA. Alternatively, legislative action inconsistent with the provisions of that Act could be construed as amending or repealing those provisions by implication.

It is axiomatic that a Legislature has the power to enact any and all laws which do not conflict with either the state or federal constitutions. This applies to amending legislation as well as original enactments. It is a corollary of the above axiom that a legislature cannot, through the enactment of statutes, preclude future legislatures from altering or repealing those statutes. In short, the Legislature clearly has broad authority to depart from self-imposed restrictions.

Having stated the general principles, we must refrain from drawing any final conclusion as to the validity of legislative actions on the proposed contract which go beyond the approval or rejection of cost items. Since the options available to the Legislature are virtually infinite in number, we must reserve judgment on this subject until we are presented with a more concrete set of facts.

If we can be of further service, please let me know.

Very truly yours,



RICHARD S. COHEN
Attorney General

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