



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

April 14, 1997

The Honorable Keith Oakley
Chair, Committee on Public Safety
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 97-038

Re: Whether section 617.002 of the Government Code prohibits public sector employers from meeting with union representatives to discuss matters affecting employee working conditions (ID# 39350)

Dear Representative Oakley:

You ask whether section 617.002 of the Government Code prohibits public sector employers from meeting with union representatives to discuss matters affecting employee working conditions. This statute provides in part:

(a) An official of the state or of a political subdivision of the state may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees.

....

(c) An official of the state or of a political subdivision of the state may not recognize a labor organization as the bargaining agent for a group of public employees.

You state as follows:

Some Texas cities contend that [section 617.002 of the Government Code] . . . prohibits cities from recognizing the union as a representative for the cities' employees (the union's members) for any reason.

For example, if a union officer approaches city representatives to discuss employee concerns, city representatives will refuse to talk with the union representative. These cities apparently take the position that discussing any matter concerning working conditions with union representatives amounts to "collective bargaining" in violation of . . . [section 617.002].

Chapter 617 of the Government Code was adopted by a single bill and was codified as former article 5154c, V.T.C.S.¹ Section 617.002 must be read together with other provisions of this law. Section 617.005 provides as follows: "This chapter does not impair the right of public employees to present grievances concerning their wages, hours of employment, or conditions of work either individually or through a representative that does not claim the right to strike."²

Attorney General Opinion JM-156, which addressed questions related to the one you ask, stated as follows:

Section 1 [of former article 5154c, V.T.C.S., now section 617.002(a) of the Government Code] prohibits officials of political subdivisions from entering into "a collective bargaining contract with a labor organization respecting the wages, hours, or conditions of employment of public employees." In our opinion, the term "collective bargaining" necessarily contemplates a process in which officials of a political subdivision and representatives of a labor organization conduct negotiations with an eye towards reaching a binding, enforceable, bilateral agreement between the subdivision and the organization.³

It cited *Beverly v. City of Dallas*, 292 S.W.2d 172 (Tex. Civ. App.—El Paso 1956, writ ref'd n.r.e.), in which the court explained the difference between collective bargaining and the presentation of grievances:

The presentation of a grievance is in effect a unilateral procedure, whereas a contract or agreement resulting from collective bargaining must of necessity be a bilateral procedure culminating in a meeting of the minds involved and binding the parties to the agreement. . . . [I]t is clear that the statute carefully prohibits striking and collective bargaining, but does permit the presentation of grievances, a unilateral proceeding resulting in no loss of sovereignty by the municipality.⁴

¹Act of April 17, 1947, 50th Leg., R.S., ch. 135, 1947 Tex. Gen. Laws 231, 231-32, *repealed and reenacted by* Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 46, 1993 Tex. Gen. Laws 583, 686, 986 (codified at Gov't Code ch. 617).

²See Gov't Code § 617.003 (prohibits public employees from striking). Public employees have an absolute right to be represented in grievance presentations by a union that does not claim the right to strike. *Corpus Christi Am. Fed'n of Teachers v. Corpus Christi Indep. Sch. Dist.*, 572 S.W.2d 663, 664 (Tex. 1978).

³Attorney General Opinion JM-156 (1984); see *National Labor Relations Bd. v. Sands Mfg. Co.*, 306 U.S. 332 (1938); *Consol. Edison v. National Labor Relations Bd.*, 305 U.S. 197, 236 (1938) (discussion of collective bargaining).

⁴*Beverly*, 292 S.W.2d at 176.

Attorney General Opinion JM-156 determined that the political subdivision could discuss employment conditions with employee representatives without violating the predecessor of section 617.002. The opinion continued:

[A]lthough political subdivisions may not recognize a labor organization as the “bargaining” agent for any group of public employees, they may certainly allow such an organization to act as spokesman for employees in “consultations.”⁵

The political subdivision is not obligated to implement anything discussed during the consultations, and it retains the right unilaterally to prescribe employment conditions.⁶

Attorney General Opinion JM-156 also determined that the predecessor of section 617.005 did not apply only to formal grievances filed by an individual.⁷ Thus, an individual grievance is not necessary to authorize a political subdivision to discuss employee working conditions with a labor organization representing employees.⁸

Accordingly, section 617.002 of the Government Code does not prohibit public sector employers from meeting with representatives of an employee union that does not claim the right to strike to discuss matters affecting employee working conditions. The governing authorities of the political subdivision must retain the right unilaterally to establish employment conditions.

⁵The opinion relied on a dictionary defining “consult” as “to ask the advice or opinion of” or “to deliberate together.” Attorney General Opinion JM-156 (1984) at 4 (citing Webster’s New Intercollegiate Dictionary (1981) at 241).

⁶*Id.*

⁷Attorney General Opinion H-422 (1974) at 2 (under former article 5154c public employees have right to present grievances individually or through representative which does not claim right to strike).

⁸Attorney General Opinion JM-156 (1984) at 5; see *Dallas Indep. Sch. Dist. v. American Fed’n of State, County and Mun. Employees, Local Union No. 1442*, 330 S.W.2d 702, 706 (Tex. Civ. App.—Dallas 1959, writ ref’d n.r.e.).

S U M M A R Y

The term "collective bargaining" necessarily contemplates a process in which officials of a political subdivision and representatives of a labor organization conduct negotiations with an eye toward reaching a binding, enforceable, bilateral agreement between the subdivision and the organization, while the presentation of grievances is a unilateral proceeding resulting in no loss of sovereignty to the political subdivision. Section 617.002 of the Government Code does not prohibit public sector employers from meeting with representatives of an employee union that does not claim the right to strike to discuss matters affecting employee working conditions. The governing authorities of the political subdivision must retain the right unilaterally to establish employment conditions.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison
Assistant Attorney General
Opinion Committee