



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

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JIM JONES
ATTORNEY GENERAL

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September 13, 1989

Jim Kerns, President
Idaho State AFL-CIO
225 North 16th Street
Boise, Idaho 83702

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Idaho Right to Work Statutes

Dear Mr. Kerns:

Idaho Attorney General Jim Jones asked me to respond to your request of June 27, 1989. In your letter you ask whether public employers and employees are included in chapter 20, title 44 of the Idaho Code, if the public employers deny the employees' desire to be represented by a labor organization.

Chapter 20, title 44, the "Right to Work" law, requires union activity to be completely voluntary. Employment may not be conditioned on membership in a labor organization. Idaho Code § 44-2003. The most pertinent section in the Right to Work law that appears to apply to your fact situation is Idaho Code § 44-2003(1), which states:

No person shall be required, as a condition of employment or continuation of employment, (1) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization

The issue you pose is whether this section enables public employees to voluntarily join a labor organization and to have

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that labor organization represent the employees as the collective bargaining agent in dealings with a public employer.

The Idaho Supreme Court faced the same issue in a similar context in Local Union 283, Int. Bro. of Elec. Workers v. Robison, 91 Idaho 445, 423 P.2d 999 (1967). In Local Union 283, the union tried to compel the certification of municipal employees pursuant to Idaho Code § 44-107. That section applied generically to relations between "employees" and "employers" in such matters as "hours of labor, wages and working conditions," etc. The Right to Work law similarly concerns relations between a "labor organization" and "employers" regarding such matters as "wages, rates of pay, hours of work" and other conditions of employment. Idaho Code § 44-2002. The court held that "[t]he use of general language in a statute is insufficient to indicate a legislative intent that the government should fall within the statutory coverage. Legislative acts are normally directed to activities in the private sector of society and effect a modification, limitation, or extension of the private individual's rights and duties." Id. at 447.

After contrasting the role of the individual, who is relatively free to pursue his own self-interest, with that of the government, which must act in a disinterested manner for the public good, the court said that, "A judicial rule of statutory construction, whereby broad language in a statute is construed to govern the conduct of the state and its political subdivision, would undoubtedly result in dire consequences." Id. The court concluded: "[I]n order to maintain the operations of state and local government on an efficient, unimpaired basis, this court will not interpret broad language in a statute 'to include the government, or affect its rights, unless that construction be clear and indisputable upon the text of the act.'" [Citations omitted.] Id. at 447-448. Applying these general principles, the court refused to extend the collective bargaining provisions of Idaho Code § 44-107 to the public employment arena.

Local Union 283 is still valid law in Idaho. See School Dist. No. 351 v. Oneida Education Assoc., 98 Idaho 486, 489, 567 P.2d 830 (1977). The Right to Work law, chapter 20, title 44, Idaho Code, does not expressly apply to the state and its political subdivisions. Thus, based upon the rule of construction

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contained in Local Union 283, we must conclude that the provisions of Idaho Code § 44-2003(1) apply only to the private sector and not to public employers. Consequently, neither the prosecuting attorney nor attorney general has jurisdiction to investigate under this chapter.

If you have any questions about this matter, please do not hesitate to call me.

Sincerely,

DANIEL G. CHADWICK
Chief, Intergovernmental
Affairs Division