

Note from the Attorney General's Office:

1967 Op. Att'y Gen. No. 67-083 was overruled by
1979 Op. Att'y Gen. No. 79-054.

OPINION NO. 67-083**Syllabus:**

1. The Ohio State University may establish a grievance procedure for its employees which would be available to all employees on equal terms.
2. The Ohio State University may not negotiate or enter into a contract with a labor union providing for wages, hours, working conditions or other conditions of employment for University employees.
3. The Ohio State University may discuss and listen to the position of a labor union on working conditions and other conditions of employment which are not subject to the requirements of the Ohio Civil Service laws.
4. The Ohio State University may not recognize any labor union as a bargaining agent of its University employees for the purpose of establishing contract terms for such employees.
5. The Ohio State University may recognize a labor union for the purpose of the check-off of union dues as authorized by Section 9.41, Revised Code.

To: Gordon B. Carson, Vice Pres., Business and Finance, Ohio State University, Columbus, Ohio
By: William B. Saxbe, Attorney General, August 14, 1967

I have before me your request for my opinion wherein you pose the following questions:

1. What authority does The Ohio State University have to establish a grievance procedure for its employees?
2. What authority does The Ohio State University have to enter into a contract with a union, which contract would provide for wages, hours,

working conditions and other conditions of employment for university employees?

3. What authority does The Ohio State University have to negotiate with a union representative on wages, hours, working conditions and other conditions of employment for university employees?
4. What authority does The Ohio State University have to grant "recognition" to a labor union?

It is firmly established in the jurisprudence of our system of state government that the various governmental boards have only such powers as are expressly conferred upon them by statute and those which may necessarily be implied therefrom. Davis, et al. v. State, ex rel. Kennedy, 127 Ohio St. 261, 263, 264.

The government of The Ohio State University is vested in the Board of Trustees of the University by Chapter 3335., Revised Code. Section 3335.09, Revised Code, authorizes the Board of Trustees of The Ohio State University to hire and terminate the employment of teachers and other employees for the University. That Section provides in part as follows:

"The board of trustees of the Ohio state university shall elect, fix the compensation of, and remove, the president and such number of professors, teachers, and other employees as are necessary;* * *"

Section 3335.08, Revised Code, in granting rule-making power to the Board of Trustees, provides as follows:

"The board of trustees of the Ohio state university may adopt bylaws, rules, and regulations for the government of the university."

These Sections authorize the Board of Trustees to direct the conditions of employment of University personnel, and in such direction, to promulgate rules. In the exercise of this authority the Board may establish a system by which it could apprise itself of complaints or grievances which might reasonably produce dissatisfaction in its employees which could impede the efficient operation of the University. However, for reasons which will be set out below, such procedures cannot be the subject of a contract between the Board of Trustees and any labor union.

The equal protection clauses of the Ohio Constitution and the U. S. Constitution would require that any grievance

procedure established by the University be available to all employees of the University on equal terms. The constitutional mandates are clear that the University may not establish a grievance procedure which would be available exclusively to a certain class, and the University cannot establish a grievance procedure available only to union members or by which union members would be given special or preferential treatment. Conversely, for the same reasons, a union may not be placed under any restriction or disqualification because of its nature as a union and a union member may not be restricted or disqualified because of his union membership. Union members must be entitled to use the procedures equally with non union members and employees may not be prohibited from being represented by union officials if other employees are given the right of representation.

You further inquire as to the authority of The Ohio State University to enter into a contract with a labor union. There is no authority for the University to enter a contract with a union which would provide for wages and hours of its employees for the reason that Sections 143.10 and 143.11, Revised Code, mandatorily provide, respectively, for wages and hours of University employees. Chapter 143., Revised Code, sets out what are the rights, privileges, duties, and obligations of Civil Service employees. These provisions embody the contract between all public employees and employers. Nowhere in this Chapter of the Code is there any authority for the University to change or alter these statutory provisions by contract with a labor union. Rather, the intent of the Legislature was to allow the Civil Service laws to be exclusive. My opinion on this question is consistent with The Ohio Supreme Court's decision in Hagerman v. Dayton, 147 Ohio St. 313 (1947), and the Eighth District Court of Appeals' decision in Cleveland v. Association, 84 Ohio App., 43 (1945).

In addition to your inquiry as to the authority of the University to enter into a contract with a union, you inquire whether the University may negotiate with the union representative on wages, hours, working conditions and other conditions of employment of University employees. If the term negotiate is used to describe an inherent part of any contracting procedure, it is my opinion, consistent with and for the same reasons set forth above, that the University may not negotiate with a representative of a labor union. However, if the term negotiate is used to mean an informal discussion and presentation of positions for the purpose of establishing harmonious employment relationships, the University has authority to so negotiate. The University may discuss and listen to a presentation of the position of a labor union on working conditions and other conditions of employment (for example, parking for employees) which are not subject to the requirements of the Ohio Civil Service Law.

You also pose the question as to what authority The

Ohio State University has to grant union recognition. Before this question can be answered, a determination must be made to what is meant by the term recognition. In the area of labor relations, "union recognition" is generally construed to mean acknowledgment of an employee's organization as bargaining agent to establish contract terms for a group of employees. For the reason that The Ohio State University may not enter into a contract with a labor union it may not acknowledge a labor union as a bargaining agent for establishing contract terms. However, if by the term recognition, it is meant the right of a Civil Service employee to join a labor union, then clearly The Ohio State University has authority to so recognize a labor union. This authority must necessarily be implied from the terms of Section 9.41, Revised Code, which vests in the various appointing authorities the discretion to provide for the check-off of union dues. In enacting this provision, the Ohio General Assembly obviously recognized the right of Civil Service employees to join a labor union. Such grant of authority to an instrumentality of a state to check-off dues of a labor organization necessarily presupposes the membership of its employees in such organization. Section 143.27, Revised Code, sets forth the only absolute limitation on membership in organizations found in the Civil Service Chapter and nowhere in that statutory provision is membership in a labor union prohibited.

It is, therefore, my opinion:

1. The Ohio State University may establish a grievance procedure for its employees which would be available to all employees on equal terms.
2. The Ohio State University may not negotiate or enter into a contract with a labor union providing for wages, hours, working conditions or other conditions of employment for University employees.
3. The Ohio State University may discuss and listen to the position of a labor union on working conditions and other conditions of employment which are not subject to the requirements of the Ohio Civil Service laws.
4. The Ohio State University may not recognize any labor union as a bargaining agent of its University employees for the purpose of establishing contract terms for such employees.
5. The Ohio State University may recognize a labor union for the purpose of the check-off of union dues as authorized by Section 9.41, Revised Code.