



Attorney General
STATE CAPITOL
Phoenix, Arizona 85007



Robert R. Corbin

DATE: March 24, 1980

I 80-039

The Honorable Carolyn Warner
Superintendent of Public Instruction
1535 West Jefferson Street
Phoenix, Arizona 85007

Dear Mrs. Warner:

Pursuant to subsection B of A.R.S. § 15-122, we enclose a copy of Attorney General Opinion No. I 80-39, which was issued on March 18, 1980, and which pertains to school matters.

Please furnish copies of the enclosed opinion to the persons specified in paragraph 6 of subsection A of A.R.S. § 15-122. Please also direct each county school superintendent to furnish copies of the opinion to all school districts in his county pursuant to paragraph 6 of subsection A of A.R.S. § 15-122.

Please let us know if you have any questions concerning the enclosed opinion.

Sincerely,

Bob Corbin
Attorney General
Marilyn Pollard
Marilyn Pollard
Assistant Attorney General

Enc.





Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

March 18, 1980

Mr. John T. Hestand
Deputy Pinal County Attorney
Courthouse
Pinal, AZ 85232

Re: I80-039 (R80-012)

Dear Mr. Hestand:

We concur with your conclusion that public school teachers do not have the right to strike. See Ariz. Att'y Gen. Op. No. 71-12. However, it has been the long-standing policy of this office to decline to comment on specific employment policies adopted by school district boards. We therefore express no comment on the proposed District Staff Job Action Policy.

Sincerely,

A handwritten signature in cursive script that reads "Bob Corbin".

BOB CORBIN
Attorney General

BC/mm

ROY A. MENDOZA
PINAL COUNTY ATTORNEY

OFFICE OF THE

County Attorney

K80- 012

JACK D. EXLINE
DIRECTOR, DEFERRED
PROSECUTION PROGRAM

RAY R. VASQUEZ
INVESTIGATOR

TELEPHONE:
AREA CODE 602
868-5801, EXT. 271
P. O. BOX 887

PINAL COUNTY
FLORENCE, ARIZONA 85232

June 22,
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9

W. ALLEN STOOKS
CHIEF DEPUTY

JOHN T. HESTAND
N. VICTOR COOK
TIM HOLTZEN
JOHN A. PAULSON
MONTGOMERY LEE
WILLIAM J. PEARLMAN
BARRY A. McNAUGHTON
DEPUTIES

Dr. Dean Skaggs, Superintendent
Casa Grande Elementary School District
1460 N. Pinal Avenue
Casa Grande, Arizona 85222

Dear Dr. Skaggs:

You requested a County Attorney's Opinion on the legality of a proposed District Staff Job Action Policy.

QUESTION: Does the policy, attached as Exhibit "A" to this opinion, comply with Arizona law and would it be legally enforceable.

ANSWER: Yes, as qualified in the body of the opinion.

OPINION: The first legal issue which must be resolved is whether it is permissible for an Arizona school district to take disciplinary action against teachers who engage in a strike against the district.

There is a split in the authorities on whether public employees have a right to strike. The following cases state what appears to be the better law in the area: In School District No. 351, Oneida County v. Oneida Education Association, 567 P.2d 830, 98 Idaho 486 (1977), the Idaho Supreme Court at 567 P.2d 833 explained that teachers as public employees do not have a right to strike against their public employers in Idaho. The Court explained that at common law there was no right to strike on behalf of public employees.

In Head v. Special School District No. 1, 182 N.W.2d 887 (1971) the Supreme Court of Minnesota upheld a trial court's refusal to allow a school district to make increased wage payments achieved through a teachers' strike. The Court noted at 182 N.W.2d, 894:

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"Public employees have no common law right to strike. It is clearly established common law that a strike by public employees for any purpose is illegal. Kirker v. Moore (S.D.W.Va.), 308 F.Supp. 615; City of San Diego v. American Federation of State, County & Municipal Employees, Local 127, 8 Cal.App.3d 308, 87 Cal.Rptr. 258. In Anderson Federation of Teachers, Local 519, v. School City of Anderson, Ind., 254 N.E.2d 329, the Indiana court held that public employees do not have the right to strike and can only acquire it through legislation."

In Crowley v. City and County of San Francisco, 134 Cal. Rptr. 533, 64 Cal.App.3d 450 (1977) the Court of Appeals for the First District, Division 4 of California examined the issue of striking by public employees. It stated at 134 Cal.Rptr. 535:

"It is true that, absent an authorizing statute, public employees in California do not have the right to strike. (Los Angeles Met. Transit Authority v. Brotherhood of Railroad Trainmen (1960), 54 Cal.2d 684, 687, 8 Cal.Rptr. 1, 355 P.2d 905; Los Angeles Unified School Dist. v. United Teachers (1972) 24 Cal.App.3d 142, 145, 100 Cal.Rptr. 806.)"

That court went on to note that it was, however, not illegal for a governmental entity to negotiate and enter into binding contracts with striking employees if they in good faith felt that such negotiations were in the entity's best interest.

In Board of Trustees, etc. v. Public Employees Council, 571 S.W.2d 616 (1978) the Supreme Court of Kentucky examined the issue of whether the Board of Trustees of the University of Kentucky were mandated to collectively bargain with their nonacademic employees. In examining this issue the Court stated at 571 S.W.2d 619:

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"Under the common law, it is well settled that public employees do not have the right to strike or to engage in concerted work stoppages. The right to strike on the part of public employees is not protected by either the Federal or the Kentucky Constitution, nor has the legislature granted such right to public employees. Jefferson County Teachers Association v. Board of Education of Jefferson County, Ky., 463 S.W.2d 627 (1971)."

Arizona has a shortage of law directly on this point. The only Arizona case I have been able to find concerning the right of public employees to strike is Local 266, Intern. Broth. of Elec. Workers, A. F. of L. v. Salt River Project Agr. Imp. and Power Dist., 275 P.2d 393, 78 Ariz. 30 (1954), in which the State Supreme Court determined that employees of Salt River Project are not bound by any prohibition against public employees striking. The Court ruled that SRP is far too much a private rather than a public entity to prohibit strikes. The Court also specifically and strongly refused to hint what would be their response if those who were clearly public employees went on strike.

Arizona does however retain the common law, except when it is modified by statute or the Court decides it no longer applies to our society. See 529 P.2d 706, 22 Ariz.App. 552 (1974). Arizona has passed no statutes specifically allowing or prohibiting strikes by public employees.

While there is no statute directly on point, there are indications of what the Arizona Legislature intended concerning a teacher's right to strike. A. R. S. §15-201 explains the duties of a teacher and provides that

"Every teacher shall: . . .

3. Enforce the course of study, use of adopted textbooks and the rules and regulations prescribed for schools.

4. Hold pupils to strict account for disorderly conduct.

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5. Exercise supervision over pupils on the playgrounds and during recess if assigned to such duty."

It would be remarkably difficult to fulfill these obligations from a picket line. A. R. S. §15-208 provides that:

"A teacher who fails to comply with any provision of this chapter is guilty of unprofessional conduct and his certificate shall be revoked."

It is my understanding that failure to honor a teaching contract is one of the most common reasons for a teacher to lose his or her certificate.

Arizona law provides that a teacher's contract is to be interpreted under normal principles of contract law, applying any special statutory provisions dealing with teachers. Both parties are bound by the terms of the contract. See Carlson v. School District No. 6 of Maricopa County, 468 P.2d 944, 12 Ariz.App. 179 (1970) and Cords v. Window Rock School District No. 8, Apache County, 526 P.2d 757, 22 Ariz.App. 233 (1974).

Normal principles of contract law indicate that if one party totally refuses to perform, then you have a breach of contract. Several states have examined the effect of such a breach.

In Miller v. Noe, 432 S.W.2d 818 (1968) the Court of Appeals of Kentucky examined a labor dispute between a teacher and his former employer. In that case the teacher took an indeterminate voluntary leave of absence which had been denied by his school board. The Court stated:

"We believe an act of resignation occurred when the teacher took an indeterminate voluntary leave of absence without the consent of the Board. Welch v. Board of Education of Magoffin County, Ky. 247 S.W.2d 536; Marshall v. Conley, Ky., 258 S.W.2d 911; 47 Am.Jur. 395, Schools, Sec. 138. The school

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board was under no obligation to take appellant back after he voluntarily absented himself from his position.

A very strong argument can be made that when a teacher voluntarily absents his or herself from employment for the purpose of a strike or labor dispute, without the concurrence of the board, then a resignation has occurred.

In Farrelly v. Timberline Regional School District, 324 A.2d 723 (1974) the Supreme Court of New Hampshire reviewed a denial of an injunction. Several teachers sought to prevent the District from not renewing their contract. The District chose not to renew their contract for the following reasons:

"Failure to carry out their teaching responsibilities; failure to report to carry out their teaching duties; participating in a strike; and breach of contract by failing to report to work." 324 A.2d 725.

The Court at pages 726 and 727 explained that by striking, the teachers left themselves open to dismissal.

"The parties and the matter presumed in this case that plaintiffs had retained their tenured status and so were entitled to the benefits of RSA 189:14-a. If this were a strike arising out of an ordinary labor dispute the master would be correct in holding by inference that the plaintiffs had not lost their status as employees and were therefore entitled to benefits of their employment provided by statute . . . However their continued status as teachers was not guaranteed during the strike if the strike were illegal (Auto. Workers v. Wisconsin Bd.) . . . or in violation of an employment contract . . .

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Timberlane Reg. School Dist. v. Timberlane Reg. Educ. Ass'n, 114 N.H.____, 317 A.2d 555 (1974) did not declare a strike by public employees legal. Rather it reaffirmed the ruling in Manchester v. Guild, 100 N.H. 507, 131 A.2d 59 (1957) and noted that in most jurisdictions a strike by public employees is prohibited either by statute or by judicial decision . . . 'It is not a proper judicial function to make policy judgments as to the merits of providing public employees with the right to strike or of developing alternative processes such as compulsory mediation or arbitration to resolve government labor disputes. . . .[citations omitted]. This decision must be made by the legislature.' Timberlane Reg. School Dist. v. Timberlane Reg. Ed. Ass'n, 114 N.H.____, 317 A.2d 555, 557-558 (1974) . . . When the plaintiffs elected to engage in an illegal strike the defendant was not required to continue to treat them as employees and accord them the rights of tenured teachers . . .

In Manchester v. Guild, 100 N.H. 507, 131 A.2d 59 (1957) the relevancy of the individual teaching contracts to the legality of the strike was noted. The plaintiffs in this case struck during the term of their employment contracts, thereby breaking and abandoning their contracts. The statutory safeguards provided by RSA ch. 189 were intended to protect tenured teachers from arbitrary or unreasonable actions of school authorities while the teachers are under contract . . . These provisions, however, cannot be read to the exclusion of the ordinary rules of contract law, which are also applicable to contracts between teachers and school boards . . .

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Whether the plaintiffs' voluntary cessation of their teaching duties is referred to as a strike, a walk-out or a defacto resignation, the record indicates that they left their teaching posts on February 27, 1974, have not yet returned and expressed no willingness to return when the district superintendent indicated that they would be renominated if they did so. Under these circumstances the actions of the plaintiffs justified the school board in viewing its contracts with the plaintiffs as terminated through abandonment. 'One who is himself guilty of a wrong for breach of a contract . . . should not seek to hold his counter-promisor liable.' . . . It cannot be said that plaintiffs retained 'an objective expectancy of reemployment', and they have thereby placed themselves in the same position as untenured teachers who may be discharged without a hearing."

From a review of the law in this area, it is the opinion of this office that it is not legal for teachers as public employees, to strike. It would be a breach of contract which can properly result in district imposed penalties, job forfeiture, and even revocation of the teaching certificate.

Additionally, if teachers were to strike midyear, it is the opinion of this office that it would be illegal to increase their compensation for the contract year currently underway. Arizona law makes it illegal for a district to make a gift of district property. See Prescott Community Hospital Commission v. Prescott School Dist. No. 1 of Yavapai County, 115 P.2d 160, 57 Ariz. 492 (1941). If the district were to pay the teachers more than the contract amount, without receiving additional services, it would be a gift of district property.

Therefore your district may implement a policy such as you outline. However, there is one provision which I feel must

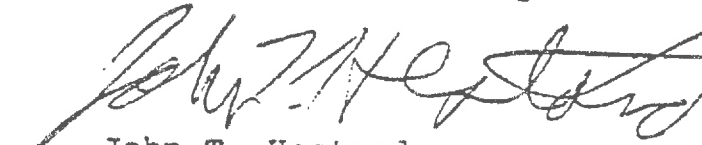
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be added to your policy. While you allude to the fact that the teachers will receive a due process hearing, this is not clearly drawn. We feel it is imperative that no punishment be given to any teacher under this policy unless they have been accorded a due process hearing with the right to hear the evidence to be presented against them, to cross-examine witnesses, to be represented by counsel if they desire, and to present evidence on their own behalf. With this addition, this office feels your policy is legally sufficient.

Should you have any further questions, do not hesitate to call me.

Sincerely,

ROY A. MENDOZA
Pinal County Attorney



John T. Hestand
Deputy County Attorney

JTH:ct

STAFF JOB ACTIONS (Emergency Regulations)

WHEREAS, under A.R.S. §15-442 (A) (1), it is the responsibility of the Board of Trustees of the Casa Grande Elementary School District to provide for the operation of the schools of the district for the purpose of education of the pupils thereof for a minimum of 175 days; and

WHEREAS, any strike, walk-out, slowdown, or other such strike-related type activities by employees of the district could materially disrupt the operation of the schools of the district; and

WHEREAS, Arizona law provides at A.R.S. § 15-201 that:
"Every teacher shall: . . .

"3. Enforce the course of study, use of adopted textbooks and the rules and regulations prescribed for schools."; and

WHEREAS, Arizona law provides at A.R.S. § 15-208: "A teacher who fails to comply with any provision of this chapter is guilty of unprofessional conduct and his certificate shall be revoked."; and

WHEREAS, any strike, walk-out, slowdown, or other such strike-related type activities by employees of the district is a violation of the employees' contract with the district and the duty imposed by Arizona law; and

WHEREAS, there may exist a threat of strike, walk-out, slowdown, or other such strike-related type activities by a number of the certificated and/or classified employees of the district; and

STAFF JOB ACTIONS

(Continued)

WHEREAS, this Board intends to keep the schools of this district open and operating; NOW, THEREFORE,

IT IS RESOLVED that if this Board should find at any time that an emergency exists with respect to the operation of the schools of the district because of the above cited reasons, the following emergency regulations shall be in effect:

1. Leaves of Absence:
 - a. Personal business leaves. No employee of the district shall be granted a leave of absence for personal business.
 - b. Limited Emergency or Bereavement leaves. Personal necessity leaves are authorized for district employees only when the same is taken due to:
 - (1) Death or serious illness of a member of such employee's immediate family; or
 - (2) Accident involving such employee's person or property, or the person or property of a member of such employee's immediate family.

District employees who take personal necessity leave for one of the reasons set forth above may be required to file with this Board satisfactory evidence of entitlement to such leave, prior to the taking of such leave.
 - c. Sick leave. In order to be granted sick leave for absences claimed to be due to illness or injury (other than pursuant to an industrial accident or illness leave) a district employee must file with the superintendent of the district a statement signed by his or her physician or medical advisor in substantially the following form:

STAFF JOB ACTIONS
(Continued)

CERTIFICATE OF PHYSICIAN

STATE OF ARIZONA)
COUNTY OF PINAL) ss

I, _____, hereby declare:
(Name of Physician)

1. I am a physician duly licensed to practice medicine in the State of Arizona and am presently engaged in the State of Arizona and am presently engaged in the practice of medicine with offices at:

(street address)

(city)

Arizona _____
(zip code)

My business telephone is _____.

2. On the following dates I treated _____
for _____ (name of employee)
(describe illness or injury) and I know of my own
knowledge that during the period of _____
both dates inclusive, he or she was unable to report to work
due to said illness or injury. The said treatment dates were:

I declare under penalty of perjury that the foregoing statements of fact are true and correct.

In witness whereof I have hereunto set my hand this _____ day
of _____, 19 ____, at _____, Arizona.

(signature of physician)

Type name of physician here:

STAFF JOB ACTIONS
(Continued)

Said certificate must be filed immediately upon return to work. In the event a district employee fails or refuses to furnish said certificate, said absences shall be treated as and be deemed to be absences without leave.

- d. Except as otherwise provided herein, all of the leave policies and regulations of the district shall remain in full force and effect.

2. Absences Without Leave: Walk-Out; Slowdown; Work Stoppage:

- a. Disciplinary report. The district superintendent, or such person or persons as he/she may designate, shall prepare for submission to this Board a disciplinary report, setting forth the name and relevant information concerning each employee who is believed to have:

- (1) been absent without leave on any work day or portion thereof;
- (2) engaged in a walk-out, slowdown, work stoppage, or similar strike-related activity;
- (3) engaged in acts of vandalism directed against real or personal property of the school district or the personal property of others located on school property;
- (4) suggested, encouraged, intimidated, coerced, or by any other means attempted to initiate or aid in a boycott of school by pupils of the district;
- (5) suggested, encouraged, intimidated, coerced, or by any other means attempted to persuade one or more pupils of the district not to attend school; or
- (6) by any means unduly intimidated or coerced substitute teachers, non-striking personnel, administrators, volunteers, Board members, or members of any of the families; or
- (7) in any manner damaged or caused to have damaged the real or personal property of the personnel outlined in 2.a.(6) above; or
- (8) acted or failed to act in a manner which the district superintendent believes warrants disciplinary action by this Board.

Procedures with respect to said disciplinary reports shall be as follows:

STAFF JOB ACTIONS
(Continued)

- ONE: The superintendent will submit to the Board of Trustees a report on each teacher accused of participating in a strike, walk-out, slowdown, work stoppage or absence without leave in which he/she delineates the actions which the teacher is accused of doing or failing to do and an allegation that these actions or failures to act constitute unprofessional conduct, and/or a breach of contract, along with his/her recommendation for disciplinary action.
- TWO: A copy of the above listed report will be sent to the teacher at the same time that the copy is sent to the Board of Trustees;
- THREE: Pursuant to A.R.S. § 38-431.03 (A)(1) the Board of Trustees will examine the report or reports on striking activity in executive session unless individual teachers request that the reports on them be examined in open meeting.
- FOUR: In an open meeting, the Board of Trustees will vote to determine whether the teacher or teachers have performed acts or failed to perform acts which constitute a strike, absence without leave, walk-out, slowdown or work stoppage. If the Board of Trustees determines that such actions or failures to act took place and constituted a strike, absence without leave, walk-out, slowdown or work stoppage, it will vote to take appropriate disciplinary action including, but not limited to:
- (1) letters of reprimand to be placed in the teacher's permanent file;
 - (2) docking of the employee's pay and/or term rate of employee benefits for the days not worked due to the strike, absence without leave, walk-out, slowdown or work stoppage;
 - (3) suspension of the teacher for a specified number of days;
 - (4) instituting proceedings under A.R.S. § 15-253 to dismiss the teacher for breach of contract and unprofessional conduct;
 - (5) instituting court proceedings against the teachers for breach of contract and seeking to recover the damages and attorney's fees which are incurred as a direct result of the breach of contract; and
 - (6) instituting proceedings before the Arizona Department of Education for the revocation of

STAFF JOB ACTIONS
(Continued)

(6) Continued:

the teaching certificates of teachers involved in a strike, absence without leave, walk-out, slowdown or work stoppage.

3. Delegation of Authority to District Superintendent:

a. Authority to Contract:

(1) Substitute Employees. The district superintendent is hereby authorized to employ additional substitutes as needed. All substitutes shall be paid the average daily rate of the beginning regular employees who are performing a like service to the district during this emergency period.

(2) Supplemental Contracts. The district superintendent is hereby authorized to enter into contracts for performance of supplemental assignments, such as coaching, band directing, clerical, maintenance trades, etc., as and if the need arises.

(3) Legal Services. The district superintendent is hereby authorized to take all steps necessary to obtain requisite legal services and to cause to be instituted or defended in the name of the district any litigation arising out of or related to any strike, slowdown, walk-out, etc., of employees of the district.

(4) Consultant Services. The district superintendent is hereby authorized to contract for such consultant services as are necessary in order to obtain professional advice for her/himself and staff on strike and strike-related matters.

b. Assignment of district employees. The district superintendent is authorized to reassign any and all employees, as needed, in order to keep the schools open and operating.

c. Organization of personnel and resources. The district superintendent is authorized to organize the district's personnel and its material resources in any manner necessary in order to keep the schools open and operating.

STAFF JOB ACTIONS
(Continued)

- d. District property. The district superintendent is authorized to require that any district property held by district employees be immediately delivered to her/him or his/her designated representatives. As used herein "district property" includes, but is not limited to, keys, AV equipment, instructional materials, registers, grade books, attendance records, seating charts, pupil scholastic data.
 - e. Emergency communications systems. The district superintendent is authorized to establish emergency communications systems.
 - f. Transportation. The district superintendent is authorized to enter into contract with public or private agencies for pupil transportation services and may assign district buses to the contracted agency until the resolution of the emergency.
4. Official Board Spokesman. The President of this Board is hereby designated as the official spokesman of the Board.
 5. Publication and Posting. In the event that an emergency is so declared by this Board of Trustees, a copy of these emergency regulations shall be published in a newspaper of general circulation in the district and will be posted in a minimum of three public places in the school district.
 6. Effective Date. These emergency regulations shall become operative immediately upon declaration of an emergency by this Board, and shall prevail to the extent that these regulations are not in conflict with or inconsistent with the law and shall remain in effect until further order of the Board of Trustees of the Casa Grande Elementary School District No. Four.

