

benefits of said statute solely because he had been awarded, or was being considered for an award of funds provided from sources outside of the regular funds of the institution. The answer to such question was in the negative, without discussion or elaboration.

In answer to your second question, I am therefore of the opinion that a state educational institution named in said Act does not have authority to charge a child of a disabled veteran, meeting the requirements of said statute, an amount equal to a cash scholarship awarded such child and paid to such institution as a part of the child's matriculation or tuition fees. In such event, under the provisions of said statute the amount of the scholarship so paid shall be applied to the credit of such child in the payment of incidental expenses of his attendance at such institution, and the balance, if any, shall be paid to such child if the terms of the scholarship so permit.

OFFICIAL OPINION NO. 12

March 3, 1960

Hon. Robert S. Webb
Chairman, Public Service Commission of Indiana
401 State House
Indianapolis, Indiana

Dear Mr. Webb:

This is in answer to your request for an Official Opinion dated February 9, 1960, concerning wage payment for railroad employees. Your letter indicates that under a new method of payment adopted by one of the rail carriers in this state, wage payments are to be made every other Friday in lieu of semimonthly payments theretofore made. As your letter indicates:

"The question is whether or not the Baltimore & Ohio Railroad Company is complying with the Indiana Statute 40-101, and therefore, the Public Service Commission of Indiana respectfully requests an official opinion thereon."

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Burns' (1952 Repl.), Section 40-101, referred to above is the Acts of 1933, Ch. 47, Sec. 1, and reads, in part, as follows:

"Every person, firm, corporation or association, their trustees, lessees or receivers appointed by any court whatsoever doing business in this state shall pay each employee thereof at least twice each month, if requested, between the first and tenth and between the fifteenth and twenty-fifth of each month inclusive, the amount due such employee and such payment shall be made in the lawful money of the United States or by negotiable check, draft or money order and any contract to the contrary shall be void. Such payment shall be made for all wages earned to a date not more than ten [10] days prior to the date of such payment; Provided, That nothing herein shall be taken to prevent payments being made at shorter intervals than herein specified nor to repeal any law providing for such payments
* * *."

Whether the railroad is complying with the terms of Burns' 40-101, *supra*, depends upon the construction to be given to the contract cited in your letter. The problem with respect to collective bargaining contracts and compliance with Burns' 40-101, *supra*, was before the Indiana Appellate Court in the case of Standard Liquors, Inc. v. Narcowich (1951), 121 Ind. App. 600, 604, 99 N. E. (2d) 268, in which the Court made the following statement:

" * * * Statutes which have fixed the time for payment of wages have repeatedly been held unconstitutional as abridging the right of freedom of contract unless such statutes made provisions for a 'request' or 'demand' of payment by the employee. * * *

"It would therefore seem to necessarily follow that the 'request' or 'demand' for payment must be directly related to the contract of employment and must be concurrent with, if not prior to, the period of employment involved in order to bring it within the purview of the statute. * * *"

The implication to be drawn from the above language is that an authorized union contract between an employer and the

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union covering time and method of payment would be binding upon the individual union members since such a contract would show by express provision that the employees were not requesting that payment be made to its members pursuant to Burns' 40-101, *supra*, but rather according to the terms of their bargaining contract. It is only when there is a request made by the employees to be paid pursuant to the statute that the requirements of Burns' 40-101, *supra*, become binding upon the employer.

It is therefore possible that the request or demand for wage payment, as represented by the contract, could be inconsistent with the provisions contained in Burns' 40-101, *supra*, and if the actual payment did not fall within the two periods prescribed by the statute the contract would be void. However, the proviso clause contained in Burns' 40-101, *supra*, would be applicable under the facts set out in your letter. Biweekly payments total 26 pay days per year rather than 24 per year on the basis of semimonthly pay days, and therefore the payments are to be made at *shorter* intervals than those specified in the statute. To this extent then the contract would be within the exception to the requirement that payments be made between the first and tenth and between the fifteenth and twenty-fifth of each month.

Therefore, it is my opinion that, while the employer must pay in strict compliance with the provisions of Burns' 40-101, *supra*, when requested to do so, the pay days and periods may be varied in accordance with the desires of the employees by the execution of an authorized and valid collective bargaining contract. My Opinion therefore is limited in scope to the above explanation and application of the statute and the contents of a duly authorized collective bargaining contract.