

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU
444-2026

MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

TO: DARLENE STAFFELDT, Director
Statewide Library Resources
Montana State Library

FROM: JIM SCHEIER
Assistant Attorney General

RE: Collective Bargaining and Librarians

DATE: October 17, 2001

You asked for some research on a question that has arisen in Jefferson County. There are two public libraries in the county library system, and the library directors in each library are both members of a union. Montana Code Annotated § 22-1-310 authorizes the library board of trustees (Board) to “appoint and set the compensation of the chief librarian, who shall . . . serve at the pleasure of the board.” A dispute has arisen regarding the compensation of the library directors, who are “chief librarians” of each library. The Board wants to establish their compensation, but the library directors want the union to negotiate their salary. The question is whether the union has the authority to negotiate the salary of the library directors, or whether the Board has the exclusive power to set their compensation despite their membership in the union.

As noted, Montana Code Annotated § 22-1-310 appears to give the Board the sole authority to set the compensation of the library director. The Attorney General has ruled that a *board of county commissioners* does not have authority to modify a library board’s decision concerning wage and salary amounts for library employees. 41 Op. Att’y Gen. No. 91 (1986). The Attorney General’s opinion, however, does not address the question presented here. Montana law recognizes and encourages collective bargaining between public employers and their employees. Montana Code Annotated § 39-31-101. By statute all public employees have the right to join labor organizations and to bargain collectively through their union representatives. Montana Code Annotated § 39-31-201. One obvious question that arises is whether library directors are “public employees” as defined in Montana’s collective bargaining statutes.

Montana's laws governing collective bargaining for public employees provide:

- (9) (a) "Public employee" means:
 - (i) except as provided in subsection (9)(b), a person employed by a public employer in any capacity; and
 - (ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.
- (b) Public employee does not mean:
 - ...
 - (iii) a supervisory employee, as defined in subsection (11);
 - (iv) a management official; as defined in subsection (7);
 - ...

Thus, supervisory employees and management officials are excluded from the definition of "public employee," and therefore do not possess the statutory right to join unions and bargain collectively. Montana Code Annotated § 39-31-103. Subsection (11) defines a "supervisory employee" as:

any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

Subsection (7) defines a "management official" as:

a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

Depending on the extent of their authority, a public library director could be described as either a supervisory employee or a management official, or both, which would mean that they do not possess the statutory right to engage in collective bargaining.

Moreover, the language of Montana Code Annotated § 22-1-310 suggests a legislative intent that militates against a conclusion that library directors are entitled to join unions and have their salaries and employment conditions negotiated through the collective bargaining process. Library directors are appointed by and serve "at the pleasure of" the Board. The phrase "at the pleasure of" is a phrase of art that embodies the concept of unfettered discretion.¹ See *Washburn v. State of Maine*, 432 A.2d 1237, 1239 (1981). And, the Board

¹ While the phrase implies unfettered discretion, the Montana Supreme Court has held that absent a specific

has the authority to “set the compensation of the chief librarian.” As noted, according to the Attorney General’s opinion, the Board’s decision regarding wage and salary amounts for library employees may not be changed by the board of county commissioners. The Attorney General observed that a library board of trustees possesses “substantial autonomy from the governing body of the local governmental unit within which the library has been established.” 41 Op. Att’y Gen. No. 91 (1986). Applying similar logic, the Board’s express statutory authority to set the compensation of library directors should not be undercut by permitting library directors to have their salaries negotiated through the collective bargaining process, particularly where it is questionable whether library directors have the statutory right to engage in collective bargaining. See Macera v. Cerra, 1999 R.I. Super. LEXIS 77 (Town Council cannot enter into a collective bargaining agreement that would, in effect, bargain away the Mayor’s right to have the Deputy Town Clerk serve “at his pleasure”).

Despite this conclusion, it is likely that any ongoing dispute regarding the compensation of the library directors in Jefferson County may have to be resolved before the Board of Personnel Appeals or in a court of law. The library directors are already members of the union. A public employer who attempts to interfere with an employee in the exercise of collective bargaining rights, or who refuses to bargain collectively and in good faith with a union may be found to have committed an unfair labor practice. Montana Code Annotated §§ 39-31-401 to 39-31-409. Moreover, despite its obligation to provide assistance and advice to public libraries, the State Library has no authority to interfere in a dispute between a public library and a union.

Give me a call if you have questions or would like to discuss this further.

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statutory provision to the contrary, even a public employee who serves at the pleasure of a public employer has rights under the Wrongful Discharge From Employment Act. MacMillan v. State Fund, 285 Mont. 202, 947 P.2d 75 (1997).