

VOLUME NO. 38

OPINION NO. 116

HOLIDAYS - Public employees may bargain for paid leave in addition to those granted by state law;

LABOR UNIONS - Public employees may bargain for paid leave in addition to those granted by state law;
PUBLIC EMPLOYEES - Public employees may bargain for paid leave in addition to those granted by state law;
MONTANA CODE ANNOTATED - Title 2, chapter 18, part 6; sections 1-1-216, 2-18-601(8), 2-18-618, 7-4-102, 39-31-201;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op Att'y Gen. No. 20 (1979), 37 Op. Att'y Gen. No. 113, 36 Op. Att'y Gen. No. 105 (1976).

HELD: The board of county commissioners may enter into a collective bargaining agreement with county employees which grants a day of paid leave in addition to those legal holidays set forth in section 1-1-216, MCA.

10 December 1980

Harold Hanser, Esq.
Yellowstone County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

May the board of county commissioners enter into a collective bargaining agreement with county employees which grants days of paid leave in addition to those legal holidays set forth in section 1-1-216, MCA?

Your question involves the application of the holding in 38 Op. Att'y Gen. No. 20 (1979), that the vacation and sick leave benefits of Title 2, chapter 18, part 6, MCA, may not be varied through collective bargaining or other negotiation. Your letter informs me that Yellowstone County has entered into a collective bargaining agreement with the representative of road and bridge maintenance employees of the county which provides a holiday to allow those employees to attend the county fair, contingent on a ruling as to the legality of such an additional holiday.

38 Op. Att'y Gen. No. 20 (1979), built on a consistent body of precedent in holding that vacation and sick leave benefits set by statute are not subject to variation through collective bargaining. In City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221 (1971), the Montana Supreme Court

held that salary levels set by statute could not be varied by contract. In Abshire v. School District No. 1, 124 Mont. 244, 220 P.2d 1058 (1950), the Court held that the school board could not alter a legislative declaration of public policy regarding the mandatory retirement age for teachers through adoption of a different policy. In School District No. 12 v. Hughes, 170 Mont. 267, 274, 552 P.2d 328 (1976), the Court stated in dicta that school boards as employers are bound by legislative expressions of policy regarding conditions of employment for their employees. None of these cases dealt explicitly with collectively bargained agreements, and they therefore fail to resolve the tension between statutes setting benefit levels and the provisions of the Public Employees Collective Bargaining Act which allow public employees to bargain for fringe benefits. § 39-31-201, MCA. In 37 Op. Att'y Gen. No. 113 (1978), I held that a school district could bargain collectively for severance pay benefits, reasoning that since such benefits were not set by statute, the board was free to act. 38 Op. Att'y Gen. No. 20 (1979), decided the other side of the coin--that where benefits are set by statute, the board may not vary them by collective bargaining or otherwise.

However, it does not necessarily follow that public employees may not bargain for additional days of paid leave. The vacation and sick leave benefits dealt with in 38 Op. Att'y Gen. No. 20 (1979) encompass certain statutorily defined rights. "Vacation leave" is defined as "a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer." § 2-18-601(8), MCA. An employee accumulates leave credits at a rate set by statute, § 2-18-612, MCA, and is entitled to a cash payment upon termination for unused vacation leave. Sick leave comprises a similar package of benefits. § 2-18-618, MCA. 38 Op. Att'y Gen. No. 20 (1979), merely holds that where the statutes define vacation and sick leave benefits and the rights which accompany those benefits and also set the rate at which the benefits accrue, that rate may not be altered by collective bargaining. Nothing in the opinion holds, however, that state statutes define all of the circumstances in which an employee may receive paid leave.

Title 2, chapter 18, part 6, MCA, encompasses all paid leave granted to public employees by statute, but it does not limit, explicitly or implicitly, the public employee's right to bargain collectively for "wages, hours, fringe benefits, and other conditions of employment" which are not expressly

set by statute. See § 39-31-201, MCA. Nor does section 1-1-216, MCA, purport to be an exclusive listing of the days of paid leave allowed to public employees. The statute merely defines the term "legal holiday." The definition then takes on significance from other provisions of the law, such as the requirement that county and state offices remain open on all days "except Saturdays and legal holidays." § 7-4-102, MCA. There is no explicit provision granting public employees a paid day off on a legal holiday, although that right is well established by implication. See 36 Op. Att'y Gen. No. 105 (1976). The listing of legal holidays in section 1-1-216, MCA, is simply not a definition of employee benefits such as is found in the statutes relating to vacation and sick leave.

As I understand the "fair day" provision of the collective bargaining agreement in question here, it does not purport to grant an additional "legal holiday" on which all county offices will close. The commissioners would be powerless to enter into such a contract, since section 7-4-102, MCA, requires that county offices be kept open for business "continuously from 8 a.m. until 5 p.m. each day except Saturdays and legal holidays." (Emphasis added.) Rather, the provision in question merely provides an additional paid day off to attend the county fair for those employees covered by the contract. The provision does not make "fair day" a "legal holiday" nor does it suggest that an employee may accumulate "fair days" as vacation. The provision contravenes no statutory determination of employee benefits. I therefore conclude that it falls within the "fringe benefits and other conditions of employment" which are proper subjects of collective bargaining under section 39-31-201, MCA.

THEREFORE, IT IS MY OPINION:

The board of county commissioners may enter into a collective bargaining agreement with county employees which grants a day of paid leave in addition to those legal holidays set forth in section 1-1-216, MCA.

Very truly yours,

MIKE GREELY
Attorney General