

No. 13325

IN THE SUPREME COURT OF THE STATE OF MONTANA

1976

FILED  
1976  
BOARD OF PERSONNEL APPEALS

LOCAL 2390 OF AMERICAN FEDERATION OF STATE  
COUNTY, MUNICIPAL EMPLOYEES, A.F.L. - C.I.O.  
and Mrs. Ruth Ware,

ULP-13-1975

Plaintiffs and Respondents,

-vs-

CITY OF BILLINGS, MONTANA, a quasi-municipal  
corporation,

Defendant and Cross Complainant and  
Respondent

ROBERT M. COOKINGHAM, and BRUCE L. ENNIS, DUANE  
SMITH, ROXANE LEE, WALT LESNIAK, NANCY LeCAPTAIN,  
as members of the BOARD OF TRUSTEES OF THE BILLINGS  
CITY LIBRARY,

Defendants and Cross Defendants and  
Appellants.

Appeal from: District Court of the Thirteenth Judicial District,  
Honorable W. W. Lessley, Judge presiding.

Counsel of Record:

For Appellants:

Crowley, Haughey, Hanson, Gallagher & Toole,  
Billings, Montana  
Robert Edd Lee argued, Billings, Montana

For Respondents:

Rosemary Boschert argued, Billings, Montana  
Jones, Olsen and Christensen, Billings, Montana  
Frank C. Richter argued, Billings, Montana

Submitted: September 10, 1976

Decided OCT 22 1976

Filed:

  
Clerk

Mr. Chief Justice James T. Harrison delivered the Opinion of the Court.

This is an appeal from the district court of Yellowstone County. The Union and Mrs. Ware instituted the action against the City of Billings. The district court ordered that the trustees of the Billings Public Library be made parties. The City cross-claimed against the trustees, who then counter-claimed against the City. The case was submitted to the district court on the following stipulated facts:

Respondent, Ruth Ware, was terminated from her job at the Billings City Library on September 10, 1974, by the library director with the approval of the appellants, the board of trustees of the Billings City Library. On September 26, 1974, the Billings City personnel director directed the appellants to reinstate Ruth Ware, however the appellants refused to comply with his directive. At this time a valid collective bargaining agreement existed between the respondent Union and the City of Billings, hereinafter referred to as the City. The termination of Ruth Ware conflicted with the terms of this agreement. The union had been established as the exclusive bargaining agent for the city employees in an election January 20, 1972, in which Ruth Ware participated. On April 8, 1974, the Board of Personnel Appeals made an appropriate unit determination of city employees, which included the library personnel. At the time of her termination, Ruth Ware was a dues paying member of the union. The appellants alleged that the agreement between the City and the union was not binding upon the appellants, because they had neither negotiated it nor ratified it. However, the district court held contrary to this position, and entered two judgments, one in favor of the union and Ruth Ware against the City and the appellants, the other in favor of the City on a cross-complaint, against the appellants. Appellants appeal both judgments.

The only issue determinative of this appeal is whether Ruth Ware's "public employer", within the meaning of the Collective Bargaining For Public Employees Act, sections 59-1601 et seq., R.C.M. 1947, was the City or the appellants. In the latter situation, the agreement would not be binding on the appellants, since a separate and autonomous employer cannot be bound to a contract he has neither negotiated or ratified. *Fabijanac v. Sperry Gyroscope Division*, 370 F.Supp. 62 (1974). On the other hand, should her "public employer" be the City, the appellants are bound by the agreement.

The appellants contend that they are the "public employer" of Ruth Ware by way of section 44-223, R.C.M. 1947, which states:

" \* \* \* With recommendation of the chief librarian the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation and prescribe their duties."

This is the first time we have been asked to define "public employer" within the meaning of the Collective Bargaining For Public Employees Act. The Act grants the right of collective bargaining to public employers and public employees in much the same manner as the Labor Management Relations Act, 1947, 29 USCA §141 et seq., does to employers and employees in the private sector. For this reason, we adopt the doctrine established by the United States Supreme Court to define such terms, as set forth in *National Labor Rel. Bd. v. Hearst Publications*, 322 U.S. 111, 64 S.Ct. 851, 88 L Ed 1170, 1183:

" \* \* \* In this light, the broad language of the Act's definitions, which in terms reject conventional limitations on such conceptions as 'employee,' 'employer,' and 'labor dispute,' leaves no doubt that its applicability is to be determined broadly, in doubtful situations, by underlying economic facts rather than technically and exclusively by previously established legal classifications."

To properly define "public employer" we must appreciate

the economic realities as well as the aims of the legislature sought by the Collective Bargaining For Public Employees Act and the Library Systems Act, sections 44-212, et seq., R.C.M. 1947, and reconcile any differences if possible.

We cannot limit our examination of the legislative intent of the Library Systems Act to the section cited by the appellants, but we must consider the entire Act. When so analyzed the library and its board of trustees is not a wholly independent and autonomous entity separate and apart from the local governing body. The local governing body and its electors decide whether to create a library (section 44-219, R.C.M. 1947); the mayor appoints the members of the board of trustees (section 44-221, R.C.M. 1947); the local governing body establishes the levy, with certain limitations, for a special tax on the property owners to create a library fund (section 44-220, R.C.M. 1947); the governing body decides whether to issue bonds for the erection and building of library buildings and the purchase of land therefor (section 44-220, R.C.M. 1947); the board of trustees must submit an annual financial statement to the local governing body and also an annual budget indicating what support and maintenance will be required from public funds (section 44-222, R.C.M. 1947); the treasurer of the city handles the library fund in accord with the orders and warrants of the board of trustees (section 44-220, R.C.M. 1947); and the local governing body may create a library depreciation reserve fund from moneys allocated to the library during the year but not expended by the end of that year, and invest such moneys (sections 44-230, 44-231, R.C.M. 1947). Considering the entire scheme of the Library Systems Act, the board of trustees of the Billings City Library is granted independent powers to manage and operate the library, but they are still an adjunct of the local government, the City of Billings.

We concur:

*John Conroy Harrison*  
-----  
Justice

*Peter G. Meloy*  
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Hon. Peter G. Meloy, District  
Judge, sitting in place of Mr.  
Justice Frank I. Haswell.

Mr. Justice Wesley Castles did not participate in this Opinion.

I hereby certify that this sheet and all attached sheets identified by impression of my Official Seal, are each and all true and correct copies of originals filed in my

Office in Case No. 65807  
Witness my hand and official seal this 14 day of April 1976

Clerk of District Court  
**HARDIN E. TODD**

By Beverly Kraft  
Deputy Clerk

1 IN THE DISTRICT COURT OF THE THIRTEENTH  
2 JUDICIAL DISTRICT OF THE STATE OF MONTANA  
3 IN AND FOR THE COUNTY OF YELLOWSTONE

4  
5 LOCAL 2390 OF AMERICAN FEDERATION OF )  
6 STATE, COUNTY, MUNICIPAL EMPLOYEES, )  
7 A.F.L. - C.I.O. and MRS. RUTH WARE, )

8 Plaintiffs, )

9 vs. )

10 CITY OF BILLINGS, MONTANA, a quasi- )  
11 municipal corporation, ROBERT M. )  
12 COOKINGHAM, and BRUCE L. ENNIS, )  
13 DUANE SMITH, ROXANE LEE, WALT )  
14 LESNIAK, NANCY LeCAPTAIN, as members )  
15 of the BOARD OF TRUSTEES OF THE )  
16 BILLINGS CITY LIBRARY, )

17 Defendants. )

CAUSE NO. 65807

JUDGMENT AND DECREE

ULP-13-1975

18 This cause having been tried by the Court without a jury  
19 upon stipulation of facts and memorandums submitted by all  
20 respective council and the Court having heretofore filed Findings  
21 of Fact, and Conclusions of Law on January 28, 1976.

22 WHEREFORE, IT IS HEREBY ORDERED ADJUDGED and DECREED that  
23 the Findings of Fact and Conclusions of Law on behalf of the  
24 defendant, CITY OF BILLINGS, MONTANA, a quasimunicipal corporation,  
25 ROBERT M. COOKINGHAM, and BRUCE L. ENNIS, DUANE SMITH, ROXANE  
26 LEE, WALT LISNIAK, NANCY LeCAPTAIN, as members of the BOARD OF  
27 TRUSTEES OF THE BILLINGS CITY LIBRARY, on file herein; Cause No.  
28 65807, dated the 28th day of January, 1976, is hereby incorporated  
29 herein and made a part of this Judgment and Decree.

30 IT IS HEREBY ORDERED, ADJUDGED and DECREED, that the Agree-  
31 ment entered into and signed on the 23rd day of July, 1974, by  
32 and between the City of Billings, Montana, and the American  
Federation of State, County and Municipal Employees, A.F.L. - C.I.O.,  
was and is a valid contract between the parties; and the City of

1 Billings was and is empowered to sign the contracts of employment  
2 with all city employees under Title 59, Chapter 16, R.C.M. 1947,  
3 As Amended.

4 IT IS HEREBY ORDERED, ADJUDGED and DECREED, that the authority  
5 given to the Board of Trustees in Section 44-223, R.C.M. 1947,  
6 As Amended, does not take away the City's authority to negotiate  
7 salaries and terms of employment with City employees.

8 IT IS HEREBY ORDERED, ADJUDGED and DECREED, that any  
9 concurrent authority the Board of Trustees may have had to  
10 negotiate salaries and terms of employment was waived when the  
11 Board of Trustees failed to negotiate with the Bargaining Unit  
12 chosen by the library employees.

13 IT IS HEREBY ORDERED, ADJUDGED and DECREED, that failing to  
14 negotiate the terms of employment with the representative chosen  
15 by the library employees, the Board was obligated and bound to  
16 follow the provisions of the contract entered into by the City  
17 of Billings with said representative.

18 IT IS HEREBY ORDERED, ADJUDGED and DECREED, that the Board  
19 is also estopped from claiming that the said contract was invalid  
20 when they accepted the benefits of the contract. The Board of  
21 Trustees paid the library employees under the terms of the  
22 Agreement and participated in the arbitration between the parties.

23 IT IS HEREBY ORDERED, ADJUDGED and DECREED, that Mrs. Ware  
24 is entitled to reinstatement under the terms of the contract, as  
25 she was not the last person hired.

26 IT IS HEREBY ORDERED, ADJUDGED and DECREED, that the Board  
27 of Trustees are bound to accept the decision of the arbitrator  
28 and the order by the Personnel Director of the City of Billings,  
29 ordering reinstatement of Mrs. Ware.

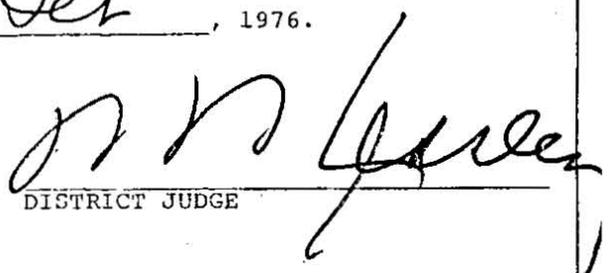
30 IT IS HEREBY ORDERED, ADJUDGED and DECREED, that the City  
31 of Billings, Montana, fully performed under the terms of the  
32 contract, therefore, liability must fully rest upon the Board of

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Trustees of the Billings City Library.

The Clerk of Court of the above-entitled Court is hereby ordered to enter forthwith this Judgment and Decree for the defendant, the City of Billings, Montana, and against the defendant, the Board of Trustees of the Billings City Library.

DATED this 13 day of Feb, 1976.

  
DISTRICT JUDGE

I hereby certify that this sheet and all attached sheets identified by impression of my Official Seal, are each and all true and correct copies of originals filed in my Office in Case No. 65807

Witness my hand and official seal this 14th day of April 1976

Clerk of District Court

HARDIN E TODD

By Beverly Kraft Deputy Clerk

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IN THE DISTRICT COURT OF THE THIRTEENTH  
JUDICIAL DISTRICT OF THE STATE OF MONTANA  
IN AND FOR THE COUNTY OF YELLOWSTONE

LOCAL 2390 OF AMERICAN FEDERATION OF )  
STATE, COUNTY, MUNICIPAL EMPLOYEES, )  
A.F.L. - C.I.O. and MRS. RUTH WARE, )  
 )  
 ) Plaintiffs, )  
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 ) -vs- )  
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 ) CITY OF BILLINGS, MONTANA, a quasi- )  
 ) municipal corporation, ROBERT M. )  
 ) COOKINGHAM, and BURCE L. ENNIS, DUANE )  
 ) SMITH, ROXANE LEE, WALT LESNIAK, NANCY )  
 ) LeCAPTAIN, as members of the BOARD )  
 ) OF TRUSTEES OF THE BILLINGS CITY )  
 ) LIBRARY, )  
 )  
 ) Defendants. )

No. 65807

PLAINTIFFS'  
JUDGMENT  
ULP-13-1975

The above entitled matter having been submitted to the Court on an agreed Statement of Facts, and each party having filed their briefs in support of their position and the Court having fully considered the matter and made Findings of Fact and Conclusions of Law dated January 28, 1976;

The Court determined that the City of Billings has express and implied power to enter into a union agreement with its employees; that city and public employees have a right to choose their exclusive bargaining agent; that the Union Agreement between the City of Billings and Local 2390 is a valid and enforceable contract; that library employees are city employees and covered by that Union Agreement; that the Library Director and the Library Board terminated plaintiff, Ruth Ware, from her employment all contrary to the Union Agreement.

Now, therefore, on motion of Rosemary C. Boschert, attorney

1 for the plaintiffs, pursuant to said Findings of Fact and  
2 Conclusions of Law, as made and the law applicable hereto:

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

4 1. The Court specifically determines that the Library  
5 Board of Trustees, the Library Director and the City of Billings  
6 are ordered forthwith to reinstate Mrs. Ruth Ware to her former  
7 position, classification and employment in The Billings City  
8 Library;  
9

10 2. That plaintiff, Ruth Ware, be and is hereby awarded  
11 back wages in the amount of \$10,302.00 to the present time,  
12 plus any additional wages due her at such time as she is actually  
13 reinstated;  
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15 3. That plaintiff, Ruth Ware, be and hereby is reinstated  
16 without loss of any benefits due her as a Billings City employee  
17 including, but not limited to, tenure, longevity, health and  
18 accident insurance coverage;

19 4. That plaintiffs recover their costs in the amount  
20 of \$274.58.  
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22 DATED this 10 day of February, 1976.

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25 S. W. W. Lessley  
26 JUDGE  
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BEFORE THE BOARD OF PERSONNEL APPEALS

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MARIE SUTTON, CLERK I, BILLINGS CITY )  
LIBRARY AND MARY ANN FEMLING, CLERK I, )  
BILLINGS CITY LIBRARY, )  
Complainants, )  
-vs- )  
ROBERT M. COOKINGHAM, DIRECTOR OF )  
BILLINGS CITY LIBRARY, TRUSTEES DUANE )  
E. SMITH, WILBUR A. ARMSTRONG, ROXANE )  
J. LEE, NANCY LECAPTAIN, AND ROBERT R. )  
DIEDE, )  
Defendants. )

ULP-13-1975

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER.

\*\*\*\*\*

Two Unfair Labor Practice petitions were filed with this Board, one by Marie Sutton and the other by Mary Ann Femling. Both allege that the Defendants, acting in their capacities as director and trustees of the Billings City Library engaged in an Unfair Labor Practice by refusing to participate in the grievance procedure, Article XVIII of the Agreement between the City of Billings and Local 2390 of the American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the Union.

On September 17, 1975, a Motion to Dismiss or Motion to Stay was presented by Stephen Foster, Attorney for Defendants. Because the question of whether or not the defendants were a party to the contract as alleged was being decided by the District Court in Local 2390 American Federation of State, County, Municipal Employees, AFL-CIO v City of Billings and this Board considered that determination beyond its authority, this Board granted the stay order.

On February 13, 1976, the District Court of the Thirteenth Judicial District issued a judgment and decree finding that the City of Billings was empowered to sign the labor contract between itself and the American Federation of State, County, and Municipal Employees, AFL-CIO which included all city employees including the library employees.

The Defendants have appealed the judgment to the Montana Supreme Court. This Board, however, felt compelled to act upon the determination of the district court that the contract was applicable.

1 A hearing was held on April 21, 1976. The matter was submitted on  
2 stipulation entered into by counsel for both parties.

3 A motion to dismiss was presented at that time by Stephen Foster, attorney  
4 for defendants, on the ground that the City of Billings was not a named party.  
5 That motion is denied. The City of Billings has always been served notice by  
6 this Board and has had ample opportunity to present any matter to the Board.  
7 There has been no showing by the Defendants that they have been prejudiced by  
8 not having the City of Billings a named party in this action. Any Order by this  
9 Board will be directed to the Defendants.

10 Having disposed of that motion, the following are my findings of facts  
11 based on the stipulation and the district court judgment affecting the cause.

12 FINDINGS OF FACTS

- 13 1. Marie Sutton and Mary Ann Femling were both employed by the Billings City  
14 Library as Clerk I.
- 15 2. Both Marie Sutton and Mary Ann Femling received a letter signed by Robert  
16 Cookingham, Library Director, dated August 1, 1975, stating they were terminated  
17 as of August 15, 1975.
- 18 3. Both Ms. Sutton and Ms. Femling filed timely grievances with the Union Shop  
19 Steward, Jack Gear. The grievance was summarily rejected by the Library Director,  
20 Robert Cookingham, because of the Library Board's position that it was not a  
21 party to the 1975 Agreement between the Union and the City.
- 22 4. The grievance was then forwarded to the Chairman of the Union Grievance  
23 Committee, Local 2390, Mr. L. D. Foster. Mr. Foster presented the grievance in a  
24 timely manner to the then City Personnel Director, George Sharkey, all pursuant  
25 to the grievance procedure of the existing contractual agreement between the  
26 City of Billings and their city employees.
- 27 5. The decision of the Personnel Director found that both Marie Sutton and  
28 Mary Ann Femling had been discharged out of order of seniority, all contrary to  
29 the provisions of the 1975 Agreement.
- 30 6. The Library Director and the then Board of Trustees of the City of Billings  
31 Library refused to reinstate Ms. Sutton and Ms. Femling.
- 32 7. The Findings of Facts and Conclusion of Law in Cause No. 65807 of the District

1 Court of the Thirteenth Judicial District, Local 2390, AFSCME, AFL-CIO and Ruth  
2 Ware v City of Billings and Robert M. Cookingham, Bruce L. Ennis, Duane Smith,  
3 Roxane Lee, Walt Lesniak, Nancy LeCaptain, as members of the Board of Trustees of  
4 the Billings City Library, found that the Agreement between the City of Billings  
5 and Local 2390 is a valid and enforceable contract and the library employees are  
6 city employees and are covered by that Union Agreement.

7 8. Since the filing date of the Unfair Labor Practice Petitions the Billings  
8 City Library has, through an agreement between the City of Billings and the County  
9 Yellowstone, formed a Joint City-County Public Library and a new board of trustees  
10 now exists.

11 CONCLUSIONS OF LAW

12 1. The Defendants, having a binding Agreement between itself and the Union, and  
13 that agreement having a grievance clause, the Defendants have committed an unfair  
14 labor practice by violating 59-1605(1)(e), failing to bargain in good faith.

15 ORDER

16 1. IT IS HEREBY ORDERED that the Joint City-County Library Board of Trustees  
17 discontinue its refusal to recognize the Union and the contract which exists  
18 between the Union the Library Board of Trustees.

19 2. That the Joint City-County Library Board of Trustees shall reinstate Marie  
20 Sutton and Mary Ann Femling to their former positions.

21 3. That Marie Sutton and Mary Ann Femling shall be awarded all back wages  
22 resulting from this Unfair Labor Practice.

23 4. That Marie Sutton and Mary Ann Femling be reinstated without loss of any  
24 benefits due them as a Library Employee including, but not limited to, tenure,  
25 longevity, health and accident insurance coverage.

26 CAVEAT

27 This Board's function in Collective Bargaining under 59-1601 is to promote  
28 public business by eliminating strife and unrest. Since the filing of this Unfair  
29 Labor Practice the Billings City Library has changed structure and become the  
30 Joint City-County Library. What affect this has, if any, on the current agree-  
31 ment, we cannot say at this time. We do, however, strongly recommend that a  
32 that a more responsible attitude be taken by the current Library Board of Trustee

1 in determining what negotiation and contractual procedure must be taken to insure  
2 good employer-employee relationship BEFORE the Library Board of Trustees is  
3 confronted with a similar problem as this one and employees are harmed by a lack  
4 of foresight in the resulting labor-management relation. Nothing can be gained  
5 by long, drawn-out judicial hearings which line-up union members against  
6 management.

7 Dated this 30th day of April, 1976.

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9 Jerry L. Painter  
Hearing Examiner

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CERTIFICATE OF MAILING

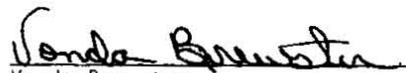
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I, Vonda Brewster, hereby certify and state that I did, on the 30th day of April, 1976, mail a true and correct copy of the Board of Personnel Appeals' Findings of Fact, Conclusions of Law and Order to the following people:

Rosemary C. Boschert  
219 Hedden Empire Building  
Billings, MT 59101

Frank C. Richter  
Office of the City Attorney  
720 North 30th Street  
Billings, MT 59101

Stephen H. Foster  
500 Electric Building  
Billings, MT 59101

  
Vonda Brewster

BEFORE THE BOARD OF PERSONNEL APPEALS

STATE OF MONTANA

MARIE SUTTON, CLERK I,  
BILLINGS CITY LIBRARY AND  
MARY ANN FEMLING, CLERK I,  
BILLINGS CITY LIBRARY,

Complainants,

vs.

ROBERT M. COOKINGHAM, DIRECTOR  
OF BILLINGS CITY LIBRARY, and  
the CITY OF BILLINGS LIBRARY  
TRUSTEES: DUANE E. SMITH,  
WILBUR A. ARMSTRONG, ROXANE J.  
LEE, NANCY LeCAPTAIN, and  
ROBERT H. DIEDE,

Defendants.

BOARD OF PERSONNEL APPEALS

WITHDRAWAL OF EXCEPTIONS TO  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND RECOMMENDED ORDER

The defendants herein hereby withdraw their May 17, 1976,  
exceptions to the Hearing Examiner's Findings of Fact, Conclusions  
of Law and Recommended Order.

DATED this 1st day of December, 1976.

CROWLEY, HAUGHEY, HANSON,  
GALLAGHER & TOOLE,

*Steve Foster*  
By *Stephen H. Foster*  
Stephen H. Foster  
500 Electric Building  
Billings, Montana 59101  
Attorneys for Defendants

CERTIFICATE OF SERVICE  
This is to certify that a true and correct copy of the  
above captioned document was duly  
served by the undersigned on the  
cord at Billings on the 1st  
day of December, 1976

Crowley & Haughey, Hanson,  
Gallagher & Toole  
By *Stephen H. Foster*  
P. O. Box 2020 - Billings, Montana 59103