

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
DISTRICT COUNCIL 48, AFSCME, AFL-CIO :
Involving Certain Employees of : Case XXVII
CITY OF WAUWATOSA (PUBLIC LIBRARY) : No. 15565 ME-786
: Decision No. 11547

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of the Petitioner.
Mr. Harold Gehrke, City Attorney, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTIONS

District Council 48, AFSCME, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70, among certain employees of the City of Wauwatosa (Public Library); and a hearing on such petition having been conducted at Wauwatosa, Wisconsin, on May 24, June 7 and June 19, 1972, Zel S. Rice II, Commissioner, being present; and the Commission having considered the evidence and arguments of the parties and being satisfied that a question has arisen concerning representation for certain employees of the above named Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in the following voting groups:

Voting Group No. 1

All regular full-time and regular part-time employees of the City of Wauwatosa (Public Library), conditionally excluding professional employees, and specifically excluding supervisory, managerial, executive, and confidential employees, who were employed on January 15, 1973, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by District Council 48, AFSCME, AFL-CIO, for the purposes of collective bargaining with the above named Municipal Employer on questions of wages, hours and conditions of employment.

Voting Group No. 2

All professional employees in the employ of the City of Wauwatosa (Public Library) excluding supervisory, managerial, executive, con-

fidential, and all other employees of the City of Wauwatosa (Public Library) who were employed January 15, 1973, except such employees as may prior to the election quit their employment or be discharged for cause, for the purposes of determining:

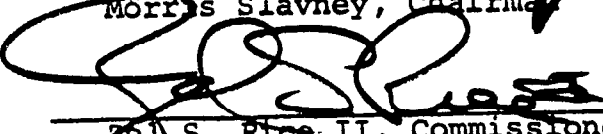
- 1) Whether a majority of such professional employees desire to be included in one single bargaining unit with employees set forth in Voting Group No. 1; and
- 2) Whether a majority of such professional employees desire to be represented by District Council 48, AFSCME, AFL-CIO.

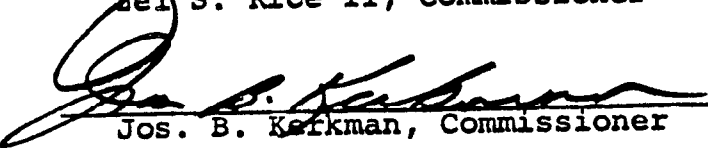
Given under our hands and seal at the City of Madison, Wisconsin, this 18th day of January, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Del S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
DIRECTION OF ELECTIONS

At the onset of the hearing, an issue arose as to the identity of the Municipal Employer. Representative for the Employer argues that the City of Wauwatosa is the Municipal Employer herein. The Petitioner contends that the City of Wauwatosa and the Library function jointly as the Municipal Employer in the instant proceeding.

Section 111.70(1)(a) of the Wisconsin Statutes defines "municipal employer" as,

". . . any city, county, village, town, metropolitan sewerage district, school district, or any other political subdivision of the state which engages the services of an employee and includes any person acting on behalf of a municipal employer within the scope of his authority, express or implied." (Emphasis added)

The Commission regards the City of Wauwatosa (Public Library) to be the Municipal Employer. Such designation acknowledges the role of the Library Board as an agent of the Municipal Employer, the City.

In its petition, District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner, initially sought an election among all full-time and all part-time employees of the Wauwatosa Library, excluding confidential and managerial employees. During the course of the hearing, the Petitioner amended its petition to request elections within the following voting groups, 1) among all full-time and part-time employees of the Wauwatosa Library excluding supervisory and professional employees; and, 2) among all professional employees of the Wauwatosa Library excluding all other employees to determine whether said professionals desire to be included in an overall collective bargaining unit or in a separate professional unit. The Municipal Employer's motion for dismissal of the petition, on the grounds that the proposed unit(s) consisting solely of Library employees but excluding all other City of Wauwatosa employees, was denied.

Section 111.70(4)(d)2(a) of the Municipal Employment Relations Act provides that:

"2.a. The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, division, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employees concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit." (Emphasis added)

The Commission is satisfied that a question of representation of the non-professional employees of the City of Wauwatosa (Public Library) exists and regards the proposed unit of all regular employees, conditionally excluding professional employees, and excluding supervisory, managerial, executive and confidential employees, to be appropriate. Furthermore, the Commission finds a question of representation of the librarians to be present and that they, as professional employees, shall have the opportunity to express their desires with regard to inclusion in the non-professional unit, and as to representation.

In order to effectuate the foregoing determinations, the Commission will employ the following procedure. The representation ballots cast by the professional librarians will be challenged by the Commission agent who conducts the balloting. The ballots shall be counted in the following order:

- 1) The ballots cast by the professional librarians as to their desire to be included in the non-professional unit will be tallied first.
- 2) If a majority of the eligible professional librarians do not vote in favor of inclusion in the non-professional unit, the challenged representation ballots cast by the professional librarians will be opened and counted separately, as will the ballots cast by the non-professional employees.
- 3) If the professional librarians vote in favor of being included in the non-professional unit, the Commission agent shall open the challenged ballots and deposit the ballots in the ballot box with the ballots of the non-professional employees in such a manner so as to protect the secrecy of the ballots, and thereupon count the combined ballots.

In the event the majority of the professional librarians vote for inclusion in the non-professional unit, the appropriate bargaining unit shall consist of all regular employees of the City of Wauwatosa (Public Library), including professional librarians, and excluding supervisory, managerial, executive, and confidential employees. Should the professional librarians reject inclusion in the non-professional unit, then the appropriate units shall consist of 1) all regular employees of the City of Wauwatosa (Public Library), excluding professional, supervisory, managerial, executive, and confidential employees, and 2) all regular professional librarians in the employ of the City of Wauwatosa (Public Library) excluding supervisory, managerial, executive, confidential and all other employees of said Municipal Employer.

During the course of the hearing, issues also arose as to the professional, supervisory, managerial or confidential status of certain positions.^{1/} The parties agreed that the Children's Services Librarian, Adult Services Librarian and the Reference Librarian are professional employees within the meaning of Section 111.70(i)(1). The Municipal Employer, in contrast to the Petitioner, contends that the following three positions are also professional, namely Children's Catalogue Librarian, Young Adult Librarian, and Head Cataloguer.

^{1/} The parties stipulated to the exclusion of the Head Librarian from the alleged appropriate unit on the basis of her supervisory status.

Although at variance with much of its presentation during the course of the hearing, the Municipal Employer's brief asserts that the following classifications are applicable to the aforementioned positions and thereby are ineligible for inclusion in the proposed collective bargaining unit(s):

Executive, managerial and supervisory:

- 1) Adult Services Librarian

Supervisory and managerial:

- 1) Children's Services Librarian
- 2) Reference Librarian
- 3) Children's Catalogue Librarian
- 4) Head Cataloguer
- 5) Library Assistant II
 - a) Technical Services
 - b) Circulation Department

Managerial:

- 1) Young Adult Librarian

Section 111.70(1)(b) of the Municipal Employment Relations Act exempts supervisors from the Act's coverage. "Supervisor" is defined as:

"... any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees, or 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."

Managerial and executive employees are regarded as those employees who formulate, determine and carry out management policies. Such employees are excluded from rank and file bargaining units because their relationship to management creates unique interests which could conceivably conflict with interests of other employees.

Confusion and contradiction regarding the Municipal Employer's position is further compounded by the Municipal Employer's indication during the hearing that the Children's Catalogue Librarian, Head Cataloguer and the Library Assistant II in the Circulation Department are neither supervisory nor managerial and, thus, are appropriately included in the proposed unit(s). It is unclear whether the Municipal Employer also intended to abandon its position affirming the professional status of said positions. In light of such inconsistencies, discussion will be directed to all the aforementioned issues.

Lastly, the Municipal Employer asserts that the Secretary to the Head Librarian is a confidential employee.

Adult Services Librarian

The parties stipulated that the Adult Services Librarian is a professional employee. The Municipal Employer further holds that the position embodies executive, managerial and supervisory responsibilities. Such job characteristics render the Adult Services Librarian exempt from any bargaining unit inclusion according to the Municipal Employer.

The duties of the Adult Services Librarian consist of:

"Duties: Under direction, with a wide opportunity for exercise of independent judgment, an employee of this class performs professional work of an advanced nature and serves as a coordinator of adult services. Typical duties are to: plan, develop, and carry out major programs of service, the broad outlines for which have been developed in staff conferences; train and supervise library personnel; prepare long-range plans for a special library project; plan and carry out community relations and publicity programs for interpreting the library's functions and objectives; write for publication, conduct studies, make speeches and carry out appropriate work with community leaders; compile and interpret statistical reports; perform related work as assigned." 2/

The Adult Services Librarian primarily supervises programs and activities rather than employees. The position's major responsibility is to coordinate library programs. The Adult Services Librarian fills in occasionally for the Head Librarian in the latter's absence. However, all library department heads are occasionally in charge of the library. The lengthy hours of operation six days a week require such staff members to be present on assigned week nights or weekends.

The Adult Services Librarian does not hire, fire, discipline, or promote employees, resolve their grievances or effectively recommend the same. Such authority is vested solely with the Head Librarian and/or the Library Board. Books purchased for the Adult Services Department and Reference Department are selected by a committee consisting of the Head Librarian, Adult Services Librarian and Reference Librarian. On occasion, the Adult Services Librarian assigns specific tasks to the part-time artist and typist.

We do not find the Adult Services Librarian to be an executive, managerial or supervisory employee within the meaning of Section 111.70. The professional nature of a college degreed librarian's work mandates various intellectual and technical skills. However, the professional competence required by a given library position does not imply the possession of executive, managerial or supervisory authority.

The testimony adduced during the course of the hearing focused upon the supervisory elements of the Adult Services Librarian's position. The Commission is not satisfied that the Adult Services Librarian exercises meaningful supervision over any employees. Our conclusion that the position is not executive or managerial is based upon a consideration of the position's role and discretion in formulating and implementing management policy. The duties of the Adult Services Librarian, as evidenced by its job description, acknowledge the limited policy initiation role of the incumbent. For example, the "exercise of independent judgment" is "under direction", the duty to "plan, develop, and carry out major programs" is structured by "the broad outlines for (sic) which have been developed in staff conferences." 3/

2/ Exhibit 3 - Job description for Adult Services Librarian.

3/ Ibid.

Children's Services Librarian

The parties are in agreement that the position of Children's Librarian is professional. Furthermore, the Municipal Employer contends that said position is supervisory and managerial.

The job description of the Children's Librarian includes the following:

"Duties: Under direction, with the opportunity to exercise independent judgment, to perform advanced professional work as head of Children's Services and related work as required. Typical examples of duties would be: selects all children's material and oversees their organization, arrangement, and promotion; trains and supervises assistants within the department; advises children, parents, and teachers in the use of materials; works with elementary school teachers and librarians in the area in order to improve the library service of the whole community." 4/

The Children's Services Librarian is in charge of the operation of the Children's department of the library. The prime responsibility of the Children's Services Librarian is to provide access to and interest in literature for children enrolled in grade school. There are seven other employees in the department, five of whom are high school or college students. They are assigned such duties as shelving books, manning the desk or working in circulation. The tasks they perform are largely routine. The Children's Services Librarian spends less than 50% of her time actually supervising employees. The position exerts direction over the part-time artist and typist to the same extent as the Adult Services Librarian does. The incumbent may adjust minor grievances of the employees. However, the Head Librarian handles any employee grievance of consequence.

The Commission is not satisfied that the Children's Services Librarian is either a supervisory or managerial employee. The incumbent does not effectively supervise employees as contemplated in Section 111.70. Judgment used in scheduling and assigning employees and adjusting minor grievances, appears to be relatively routine. The requirement and exercise of professional knowledge is not synonymous with managerial authority. The duties of the Children's Services Librarian, adduced from the testimony and evidence, demand specific expertise. The planning of children's library programs, as well as adult library programs, requires application of tangible professional skills. However, it is unclear that such expertise is effectively applied to the formation and implementation of managerial policy.

Reference Librarian

The Reference Librarian is a professional employee according to the stipulation of the parties. Furthermore, the Municipal Employer argues that the position is supervisory and managerial.

The Reference Librarian is classified as a Librarian II. Such classification requires possession of a master's degree in library science. The characteristic work of a Librarian II is:

4/ Exhibit 2 - Job description for Children's Services Librarian.

"Nature: Under general administrative directions, perform difficult and technical professional and related work as required. May be a department head. Examples: (Staff Position)

1. Catalogues materials.
2. Develops subject areas in book collection.
3. Suggests new books for purchases.
4. Supervises and trains library personnel.
5. Works with special groups in an advisory capacity.
6. Answers reference questions requiring research.
7. Advises and directs adult readers.
8. Prepares reports.
9. Helps maintain book collection by weeding shelves." 5/

The Reference Librarian is responsible for, (1) reference inquiries made by the public, (2) the maintenance of the reference card catalogue and reference book collection, and (3) the compilation of various bibliographies. In addition to the Reference Librarian, the department employs four full-time and two part-time employees. The Reference Librarian may assign pamphlet ordering duties to such staff. The processing of pamphlet orders must be approved by the Reference Librarian. All purchase orders over \$10 to \$15 must be approved by the Head Librarian.

The incumbent spends 25% of her working time supervising employees. The remainder of her time is spent performing clerical and professional duties. Based on the foregoing, we do not find the Reference Librarian to be a supervisory or managerial employee.

Library Assistant II - Circulation Department
Library Assistant II - Technical Services

The Municipal Employer asserts that the Library Assistant II's in the Circulation Department and in Technical Services are supervisory and managerial employees. The positions do not require a college degree. The duties of a Library Assistant II are as follows:

"Duties: This is pre-professional library work with varied clerical duties. Typical duties would be to: work behind the circulation desk charging and receiving books, collecting fines, and typing notices; answer routine reference questions asked by readers either over the telephone or in the library by use of standard reference books and documents; assist patrons in the use of less complex reference tools; advise and assist patrons in the selection of books, periodicals, and pamphlets; shelve and collate books; keep varied but simple statistical records; register new readers; file catalogue cards; prepare exhibits and displays; may be in charge of a small service branch; and perform related work as assigned." 6/

The Library Assistant in the Circulation Department oversees the performance of primarily clerical duties by nine employees.

5/ Exhibit 6, Librarian II job description.

6/ Exhibit 7, Library Assistant II job description.

Almost all of the department's employees work on a part-time basis. Their duties include book shelving, distribution and return of magazines and various circulation duties. The incumbent spends approximately 55% of her time supervising and scheduling employees.

The Library Assistant in Technical Services is responsible for the physical preparation of new library acquisitions for shelving and circulation. Books are labeled with appropriate reference numbers as designated by the cataloguer, and pockets and check out cards are affixed to the back covers.

It is unclear whether the Municipal Employer holds that the Library Assistant II's in the Circulation Department and Technical Services are professional employees. In order to avoid further discord, we hereby find said positions not to be professional within the meaning of Section 111.70. Furthermore, the Commission does not regard said Library Assistants to be supervisory or managerial employees.

Children's Cataloguer
Adult Cataloguer

The Children's Cataloguer and Adult Cataloguer are Librarian II's. 7/ The Municipal Employer, in contrast to the Petitioner, contends that the positions are professional, supervisory and managerial.

We find the Children's Cataloguer and the Adult Cataloguer to be professional employees within the meaning of Section 111.70(1)(1). Both positions require a master's degree in library science and relevant knowledge of cataloguing techniques and procedure. Professional judgment is exercised individually or in consultation with other librarians with regard to cataloguing methods.

Neither testimony nor evidence was adduced during the course of the hearing to substantiate the Municipal Employer's contention that said positions are supervisory or managerial. Thus, we do not find the Children's Cataloguer or Adult Cataloguer to be supervisory or managerial employees.

Young Adult Librarian

The Municipal Employer argues that the Young Adult Librarian is professional and managerial. The position is classified as a Librarian I. The qualifications for Young Adult Librarian include graduation from a "recognized" college or university and either one year of training in an accredited library school or five years experience in library work plus credits earned toward a master's degree. 8/ The duties of the position are:

"Duties: This is professional library work in one or more fields of librarianship. Typical duties would be to: recommend books for purchase, promote the use of library facilities in the community; answer reference inquiries, assemble book lists and bibliographies; assist patrons with information and research problems; catalogue and classify books; revise catalog card files; supervise

7/ See job description for Reference Librarian.

8/ Exhibit 5, Librarian I job description.

pamphlet and clipping files; supervise and train library assistants; select, weed, and evaluate book collection; advise readers in choice of book." 9/

Based on the record as a whole, we find the Young Adult Librarian to be a professional employee. However, the Commission holds that said position is not managerial.

Secretary to Head Librarian

The Municipal Employer claims that the Secretary to the Head Librarian is a confidential employee. The position is designated as a Clerk II. The duties of the position are as follows:

"Duties: An employe of this class is responsible for the performance of varied and complex clerical operations with a minimum of supervision. Typical duties are to: wait counter giving information and answering complaints of callers; maintain varied departmental operating records, accounts, and financial statements; issue licenses, permits, and certificates; compute charges and fees; maintain payable records by distributing time to various categories; post payroll information and related personnel and cost records; prepare and mail special bills; verify accuracy of invoices and billing against controls; prepare materials and reports for analysis of revenues; keep files of letters, forms, documents, and other records; process requisitions, order and receive items for stock; in connection with other duties, operate the typewriter . . . or other office equipment as assigned; do related work as required." 10/

The Secretary to the Head Librarian takes, prepares and distributes the minutes of public Library Board meetings. She handles personnel correspondence and has access to the personnel files of the Library employees.

In light of the Head Librarian Secretary's access to payroll, personnel, sick leave and vacation benefits records and her working relationship to the Head Librarian, who has been stipulated to be a supervisor, we find said position to be confidential and thereby excluded from the proposed collective bargaining unit(s).

The Municipal Employer is requested to submit, within ten days hereof, to the Commission and to the Union, the names of the eligible employees, who were employed by the Municipal Employer on January 18, 1973 in both voting groups.

Dated at Madison, Wisconsin, this 18th day of January, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Ted S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

9/ Ibid.

10/ Exhibit 8, Clerk II job description.