

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case L  
No. 19722 ME-1251  
Decision No. 15150

Mr. Frederick W. Fischer, City Attorney, appearing on behalf of the Petitioning Municipal Employer.

Mr. Guido Cecchini, Business Representative, appearing on behalf of the Union.

City of Eau Claire (Public Library), hereinafter Employer, having filed a petition with the Wisconsin Employment Relations Commission, hereinafter the Commission, on October 23, 1975 requesting the Commission clarify a certified collective bargaining unit with respect to the supervisory status of certain professional librarian positions in a unit consisting of "all professional employees employed by the Eau Claire Public Library, excluding supervisors, confidential employees and all other employees of the Municipal Employer"; and hearing on the matter having been held on December 2, 1975 at Eau Claire, Wisconsin before Sherwood Malamud, Hearing Officer; and the parties having submitted briefs through May 4, 1976; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, and being satisfied that the positions of Adult Services Coordinator, Head of the Children's Department, Head of Reference and Information Services, and Head of the Cataloging and Processing Departments are supervisory positions within the meaning of Sec. 111.70(1)(c)1 of the Municipal Employment Relations Act, makes and issues the following

That the positions of Adult Services Coordinator, Head of Children's Department, Head of Reference and Information Services, and Head of Cataloging and Processing Departments be, and the same hereby are, excluded from any unit of employees in the employ of City of Eau Claire (Public Library).

Given under our hands and seal at the  
City of Madison, Wisconsin this 30th  
day of December, 1976.

By Morris Slavney  
Morris Slavney, Chairman

Herman Torosian, Commissioner

Charles D. Hoornstra  
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER CLARIFYING BARGAINING UNIT

In February, 1972, based upon a stipulation executed by the Union and the Employer, the Commission directed elections in two separate units of the Employer, one unit consisted of the professional librarians and the other consisted of all other employees employed in the library. Prior to the conduct of said elections the Employer filed a motion requesting the Commission to reconsider its Direction pertaining to the professional librarians, contending that three of the four professional librarians were supervisors within the meaning of Sec. 111.70(1)(o)1 of the Municipal Employment Relations Act. The Commission denied said motion on the basis that the parties had stipulated that all four professional librarians were eligible to vote in the professional unit. Following elections conducted in both units, the Union was certified as the exclusive collective bargaining representative of the employees in each unit. 1/

The instant proceeding was initiated by a petition filed by the Employer, requesting a determination as to whether the four professional librarian positions are supervisory employees within the meaning of MERA. The Employer now contends that the professional unit has been merged with the non-professional unit, and that such merger is prohibited without an election conducted by the Commission, as required in MERA. The Employer also argues that under Sec. 111.70(3)(a)2 of MERA the inclusion of supervisors in an "employee" bargaining unit would constitute a prohibited practice. In essence, the Employer's contention may be stated as follows: that the professional and non-professional units have been merged into a single unit, and consequently, the professional employees, who are supervisors, are in the same unit with the employees they supervise.

The Commission notes that it previously has certified two separate units in March 1972. The Commission is cognizant of the fact that an employer and union, which represents employees in two or more units, may enter into a single collective bargaining agreement covering the employees in the two or more units represented by the union. In their 1975 collective bargaining agreement the Union and Employer set forth the following in the "recognition" provision:

"The employer hereby recognizes the Union as the exclusive bargaining agent for all library employees excluding professionals, supervisory, confidential, and temporary employees (Unit No. 1) and all professional employees and all other employees (Unit No. 2), for the purpose of bargaining collectively in good faith on all matters pertaining to wages, hours and working conditions."

Thus, it is apparent that the units were not merged, but that the parties entered into a single bargaining agreement covering employees in the two separately certified bargaining units.

The Employer operates a free public library of general circulation. It employs thirty six regular full-time and part-time employees, including the four professional librarians. The Director of the Library and the Administrative Assistant are the only individuals who are excluded from both units. The "library" services of the Employer are maintained in four departments, Adult Services, Children's Department, Reference and Information Services, and Catalog and Processing Department.

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1/ Dec. No. 10789-A, 3/72.

Roland Gorsegner is the Adult Services Coordinator. In a written statement submitted at the hearing Gorsegner described his duties as follows:

". . . coordinates all activities of the Adult Department including Circulation, Interlibrary Loan, Audio-Visual Services, and coordinates with the Reference Librarian the activities of the Reference and Information Services;

"shares responsibility with Reference Librarian for Extension programming;

"plans short and long-range programs, initiates new programs, supervises training and delegates responsibility for proper operation of same;

"researches and recommends purchase of equipment for library;

"participates in material selection process: selects all audio-visual materials, periodicals, and book materials in areas of competence;

"supervises maintenance of Adult materials collection according to sound library practice;

"provides readers advisory service and prepares general and specialized bibliographies;

"prepares and/or assist with workshops for cooperative system meetings;

"interviews, hires, and recommends hiring and/or dismissing employees in the Adult Department." (Emphasis added).

The Interlibrary Law Library Associate, three Library Assistants, six part-time pages and one part-time desk clerk are employed in the Adult Services Department. Gorsegner is classified as a Librarian III and earns \$12,100/year.

Gorsegner is the sole professional employe in the Adult Services Department. Furthermore, when the Library Director is on leave, Gorsegner temporarily acts on the Director's behalf.

The Head Reference Librarian, Joyce Mitchell, is responsible for all activities in the information reference area. She selects services received in the reference area and she is assisted by one library assistant and one page who she directs in the filing and use of reference materials. She works with Gorsegner on extension programs, such as the library's program for the blind. She, too, participates with the Director in the hiring of the library assistant and page assigned to her.

The Head of the Children's Department, Helen Mabrey, is the sole professional employe employed in her department. Mabrey maintains the children's room collection of books and materials, selects new books for the collection, plans programs and displays. One full-time library assistant, a half-time library assistant and three pages are employed in the Children's department. Mabrey assigns work to this staff, trains new staff, and participates with the Director in the hiring of pages.

Michael Klossner is the head of the Cataloging department. In his statement, which he submitted at the hearing, he described what he considered his supervisory responsibilities to be:

"I supervise all of the work of five full-time library assistants:

Kathleen Begalke--Cataloging  
Muriel Gunderson--Cataloging  
Patricia Hawkins--Cataloging  
Jean Nemitz-----Processing  
Norma Osberg-----Cataloging

These people work a total of 195 hours a week. This includes all work done in the library involving cataloging, processing and mending of all library materials--books, magazines, records and cassettes, filmstrips, microfilm, etc., for both Adult and Children's Departments, and ordering and invoicing most of these materials.

"I have also supervised Kathy Powell full-time (40 hours per week) for several months and will in the foreseeable future. I also supervise pages moving books up and down between the departments. I revise the work of one typist completely and of the other in part. I assign my people to unscheduled work at the public desks as required, sometimes as much as 40 hours a week, in small portions, at short notice.

"I approve unusual absences from work and maintain discipline on those absences, dress code, use of the phones, etc. I normally train one typist in all her work and the other in large areas of her work personally when new personnel come in to those jobs. I make recommendations on hiring and firing all of these people.

"I normally work at the reference desk four hours per week, plus eight additional hours a month. I often work there at other, unscheduled times. While at the desk I am responsible for the whole building and the work of the library assistants and pages working there--desk work, closing the building, etc.

"My major non-supervisory professional duties are the cataloging and classification of adult materials and participation in the selection of these materials."

Recently, during the absence of the Director and without his approval, Klossner hired a library assistant. Soon after the Director's return, Klossner recommended the dismissal of a probationary employee who he had just hired because of her unsatisfactory work. The Director concurred with this recommendation and the employee was dismissed. Klossner's primary professional responsibilities are the cataloging of between 5-8,000 books per year and the selection of books for the library's collection.

There was considerable testimony and written argument presented by the parties concerning the nature of the supervision performed by the four above mentioned professional employees. The Employer maintained that all four professionals could effectively recommend the hiring and firing and the evaluation of subordinates. The Union claimed that duties performed by the incumbents constituted an integral part of their professional duties.

In determining issues of supervisory status, the Commission considers the following factors:

- "1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
- "2. The authority to direct and assign the work force.

- "3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes.
- "4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employes.
- "5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes.
- "6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes.
- "7. The amount of independent judgment and discretion exercised in the supervision of employes." 2/

In applying the above criteria to supervisory issues, the Commission has stated that:

"It is not necessary that all of those factors be present in order to find an employe to be a supervisor, but rather it is necessary that those factors should appear in sufficient combination to clearly establish that the employe is a supervisor." 3/

The underlying issue in this case requires a determination of the extent to which the duties performed by the four librarians are attributable to their professional training and the extent to which they are attributable to their supervisory responsibilities. The record clearly establishes that the four librarians each supervise the activity in their respective departments. The Adult Services Coordinator is in charge of the circulation desk, adult programming, etc; the Head of Cataloging is responsible for the cataloging of books. Similarly, the Head Children's and Head Reference Librarians are responsible for the library activity in their respective areas. In exercising their professional knowledge and in performing their duties, the four librarians instruct and direct pages, assistants and associates on the methods of shelving and processing books. Clearly this direction of non-professional employes is an integral part of the librarian's professional responsibilities.

However, the librarians participate in the interviewing and selection of non-professional employes employed in their respective departments. Although the ultimate decision in the hiring and firing process is made by the Library Director, the professional librarians' oral recommendations are considered and given great weight and often followed by the Director. As discussed earlier, one of the librarians, Michael Klossner, exercised such authority by hiring a library assistant during the absence of the Director and later recommended that said assistant be terminated. Pursuant to said recommendation the assistant was, in fact, terminated. Also, Gorseigner, the Adult Services Coordinator, discharged a page after consulting briefly with the Library Director. Similarly, in discipline cases, the Director relies on the recommendations of the department heads. The four professional librarians meet monthly with the Director, and in such meetings personnel matters may be discussed.

On the basis of the record, the Commission concludes that the professional librarians, as department heads, do in fact effectively recommend the hiring, firing, and disciplining of employes, and schedule and assign duties to employes. Therefore we conclude that the professional librarians, in their capacities of department heads,

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2/ Racine County, (8330) 12/67.

3/ Village of Chenequa, (13653) 5/75.

are supervisors within the meaning of MERA and we also recognize that such determination eliminates the professional librarian unit.

Dated at Madison, Wisconsin this 30<sup>th</sup> day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Charles D. Hoornstra  
Charles D. Hoornstra, Commissioner