

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
HALES CORNERS LIBRARY BOARD	:	
Involving a Unit Consisting at Least	:	Case V
in Part of Certain Employes of	:	No. 20872 ME-1373
VILLAGE OF HALES CORNERS	:	Decision No. 15229-A
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Appearances:

- Mr. Howard Graves, Chairman, and Mr. Frederick E. Reidenbach, Secretary, appearing on behalf of Petitioner.
- Mr. Erv Horak, Staff Representative, appearing on behalf of Local No. 2.
- Mr. David J. Schoetz, Village Attorney, and Mr. Alexander McConnell, Commissioner, appearing on behalf of the Village.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT

On December 22, 1977, the above-named Petitioner filed with the Commission a petition requesting an order excluding Petitioner's employes from the bargaining unit of Village employes for which Local No. 2 was certified as the representative on March 9, 1977. A hearing was held in the matter at Milwaukee, Wisconsin, on January 30, 1978, before Marshall L. Gratz, an examiner on the Commission's staff. No post-hearing briefs were filed. The Commission has reviewed the record ^{1/} and, being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. The Hales Corners Library Board, also referred to herein as Petitioner, is a library board organized under Chapter 43, Stats., to operate a public library in the Village of Hales Corners. Petitioner's mailing address is c/o F. E. Reidenbach, Secretary, 5335 South 107th Street, Hales Corners, Wisconsin 53130.
2. The Village of Hales Corners, also referred to herein as the Village, is a municipal employer with principal offices at 5635 South New Berlin Road, Hales Corners, Wisconsin 53130.
3. Local No. 2, affiliated with District Council 48, AFSCME, AFL-CIO, is a labor organization with offices located at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.

^{1/} Each of the parties appearing at the hearing executed a written waiver of the provisions of Sec. 227.09, Stats., and so no verbatim record of the hearing testimony and arguments was kept. The Commission, with the concurrence of all parties at the hearing, has taken official notice of the contents of its files in Village of Hales Corners Cases V and VI, including the transcript and exhibits therein.

4. On October 5, 1976, Local No. 2 petitioned for elections in two separate units of non-confidential non-supervisory "employees of the Village of Hales Corners," one consisting of "blue collar" work categories, and the other of "white collar" work categories. The petitions were consolidated for hearing by the Commission and notices of said hearing, along with copies of each petition, were served on Local No. 2, on Village Attorney David J. Schoetz, and on no other person. At the outset of that November 16, 1976 hearing, the Village and Local No. 2 stipulated to an election in a single unit and stipulated to the appropriateness of that unit, which consisted of "all regular full-time and regular part-time employees employed by the Village of Hales Corners, excluding supervisory, managerial, craft, law enforcement, professional and confidential employees." An eligibility list was stipulated except that the Village contended, contrary to Local No. 2, that non-professional white collar library personnel should be excluded and that school crossing guards should be included. Evidence was taken on both matters, and the parties each submitted a post-hearing brief. The Village, in its brief, stated that it had no objection to inclusion in the stipulated unit of "the clerk-typist employed at the Village Library under Title I of CETA." Thereafter, the Commission expressly ruled, in the Memorandum accompanying its Direction of Election in the matter, that said clerk-typist and all other regular full-time or regular part-time non-professional library employees were included in the unit and eligible to vote, but that one casual non-professional library employe was not eligible or included. ^{2/} Thereafter, a notice of election in the stipulated unit was posted in various work places including the Hales Corners Public Library, and an election was held in which all eligibles voted including at least the following three non-professional white collar library employes: Cathy Markwiese (Library Assistant), Mary Williams (Library Aide), and Irene Schmechel (Clerk-Typist--Project Mainstream, CETA). As a result of said election, Local No. 2 was certified by the Commission on March 9, 1977, as the collective bargaining representative of the employes in the stipulated unit. Thereafter, the Village and Local No. 2 entered into negotiations and reached tentative agreement on the terms of a collective bargaining agreement covering the wages, hours and conditions of employment of all of the employes included in the bargaining unit.

5. Chapter 43, and especially Sec. 43.58, Stats., vest in the Petitioner sufficient exclusive powers so as to enable the Petitioner to be a separate employing entity from the Village as regards the white collar personnel working in the library. The Petitioner's conduct of record does not constitute either a default of exercise of or a delegation of said powers by act or omission such as would negate the Petitioner's status as a separate employing entity from the Village, authorize the Village to exercise the labor relations function on behalf of the Petitioner with respect to Petitioner's employes, or indicate assent to the combination of Village and Library Board employes into a single multi-employer unit. Hence, neither the Village's stipulation to inclusion of a library employe in the stipulated unit nor its tentative agreement to a contract purporting to affect, inter alia, certain non-professional white collar library employes either binds the Library Board or constitutes an effective recognition of Local No. 2 as representative of said library employes.

6. The following individuals are employed in the following non-professional white collar classifications at the Hales Corners Public Library:

^{2/} Decision Nos. 15229 and 15230 (2/77).

Irene Schmechel, Clerk Typist (Project Mainstream, CETA)
Jan Couturier, Library Assistant
Cathy Markwiese, Library Assistant
Mary Williams, Library Aide
Mary Blahnik, Paraprofessional Librarian (CETA)
Deborah McConnell, Library Aide (CETA)

Said individuals are employes of the Petitioner and not of the Village.

Based on the foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

Inclusion of the classifications of Petitioner's employes-- including those noted in Finding 6, above--in the unit of Village employes for which Local No. 2 is currently certified is improper because it makes said unit inappropriate since the Petitioner and the Village are separate municipal employers within the meaning of Sec. 111.70(1)(a) of the Municipal Employment Relations Act.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

1. Employes in the employ of the Hales Corners Library Board shall be, and hereby are, excluded from the bargaining unit consisting of "all regular full-time and regular part-time employes of the Village of Hales Corners, excluding supervisory, managerial, craft, law enforcement, professional and confidential employes."

2. The employes in the employ of the Hales Corners Library Board referred to in (1) above include, but are not necessarily limited to, those holding the classifications noted in Finding 6, above.

Given under our hands and seal at the City of Madison, Wisconsin, this 13th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND
ORDER CLARIFYING BARGAINING UNIT

Local No. 2 opposes Petitioner's request for an order excluding Petitioner's employes from the unit of Village employes for which Local No. 2 is the certified representative on the grounds that Petitioner has, by acts and omissions, either defaulted in its exercise of Chapter 43 powers so as not to constitute a separate employing entity from the Village or delegated its labor relations function to the Village so as to authorize the Village's inclusion of the library employes in the certified unit. Petitioner denies any such default or delegation and contends that inclusion of its employes in the certified unit of Village employes without Petitioner's consent is improper. The Village cooperated in the development of the record but has taken no position in the matter.

While Local No. 2 concedes that a Chapter 43 library board could conduct itself in such a way as to retain separate employing entity status, it asserts that the Library Board herein has not done so. In support of its view that the Library Board is more akin to the Village Police Department (which would presumably not be a separate employing entity) than it is to a fiscally-dependent school board (which presumably would be a separate employing entity), Local No. 2 appears to rely on the following record evidence: the Village Board created the Library Board by ordinance; fees, fines and donations collected by the Library Board are transferred to the Village general fund without being segregated for or credited to the Library Board; the Village Board sets the maximum total annual Library Board expenditure, subtracts an estimate of Library Board total annual revenues and appropriates the balance from the general Village budget; the Village provides custodial services in the library (which is one mile away from the Village Hall) and unlimited payroll preparation and check-writing services without exacting any Library Board reimbursement therefor; all Library Board expenditures are paid for by checks drawn by the Village Treasurer; and the grantee of federal CETA funds supporting the salaries of certain of the library employes has rejected the Village's request that the Library Board be treated as a separate subgrantee of CETA funds such that the Village is the subgrantee of those funds.

The Library Board responds by noting that Chapter 43 grants (and the Library Board exercises) the powers, without consultation with the Village, to: allocate in its exclusive discretion the funds made available by the Village Board, e.g., among wages, capital disbursements, book and periodical purchases, repairs, association memberships, etc.; hire and fire library personnel; set compensation and working conditions of library employes; direct and control the performance of library employe work; and otherwise generally set most policy for and operate the library. The Library Board further asserts that the revenue and expenditure accounting methods have been chosen by the Library Board because of their inherent convenience relative to other possible approaches; that the Village Treasurer issues checks to meet Library Board expenses only upon receipt of a voucher signed by an authorized Library Board official; that the Village's custodial work is performed by Village employes because the Library Board is merely a tenant in a Village-owned structure; and that the CETA relationships are dictated more by the CETA grantee's perceptions of its own administrative convenience than by the nature of the relationship between the Village and the Library Board.

Although the accounting arrangements and non-reimbursement for services noted above give us pause, we are satisfied that, on balance, the Library Board, especially in view of its autonomous powers to hire, fire, and set compensation and working conditions of those employes it can afford to employ, is a separate employing entity from the Village. 3/ and 4/

In support of its contention that the Library Board must be deemed to have delegated its labor relations function to the Village, Local No. 2 appears to rely on the following record facts: the notice of hearing and petitions in original Cases V and VI were served on Village Attorney (David Schoetz); at the November 16, 1976 hearing, the issue of whether the Village employed the Library employes arose, evidence was taken, and the Village Commissioner conferred by phone during a recess with the "head of the Library Board" in an effort to garner information about who made application for the CETA funds received to support the salaries of certain library employes; 5/ the Village expressly stipulated in its brief to the inclusion of a library employe in the stipulated unit of Village employes, thus abandoning its contentions at the hearing that the Library Board is a separate employing entity; the WERC Direction of Election, served on the Village special counsel (Gary Okey), expressly held that certain library employes were included in the stipulated unit; a notice of election was posted in various municipal work places throughout the Village including in the library; several library employes were included on the eligibility list supplied by the Village without Village challenge and each such employe voted in the election; the Commission issued a Certification of the results of that election and served same on the Village's special counsel; the Village negotiated a tentative agreement on the terms of a collective bargaining agreement with Local No. 2, which agreement would cover the entire unit including the regular full-time and regular part-time library employes; and the Library Board did not make known its interest in any of the foregoing developments affecting said employes until writing a September 19, 1977 letter to the Commission (which was ultimately followed up by the instant December 22, 1977 petition for unit clarification). It is Local No. 2's contention that the Village Attorney could reasonably be expected also to be counsel to the Library Board when he was served with the initial petitions and notice, and that, under the foregoing circumstances, the Village's actions were clothed with apparent Library Board authority, and that, in any event, the Library Board's long delay in making known its position should now preclude it from asserting that it is a separate employing entity or that the instant unit is inappropriate.

The Library Board relies on Local No. 2's admission that there has been no express authorization or ratification of the Village's actions by the Library Board. It contends that the Village's actions were ultra vires insofar as they affected the unit status of library employes, and that since the Library Board itself was not formally served with the notice of the November 1976 hearing or with the Direction or Certification of results therein, the Library Board cannot properly be bound by same.

3/ See, Cooperative Educational Service Agency No. 6, Decision No. 9989 (11/70).

4/ While Local No. 2 has also relied on the anti-fragmentation provisions of Sec. 111.70(4)(d)2.a., Stats., it is our view that said provisions relate only to the number of units within "the municipal work force" of a single employing entity and do not affect the preliminary determination of whether a municipal employer is or is not a separate employing entity.

5/ Transcript of November 16, 1976 WERC hearing, at 28-29.

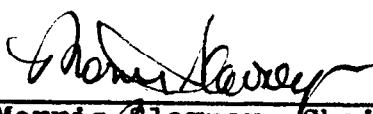
We agree with the Library Board's position in that regard. The October 1976 service on Village Attorney Schoetz does not constitute effective service on the Library Board both because Schoetz was not at that time or any other the "counsel of record" of the Library Board in the matter, 6/ and because the initial petitions did not, on their faces, refer to library employes. Moreover, even if the indirect contacts of Library Board officials with the election proceeding (i.e., the phone conversation about CETA arrangements, and perhaps the posting of an election notice in the library and the participation of library employes in the balloting) gave them reason to know of the existence of the proceeding, those contacts are not sufficient to constitute notice of the nature of that proceeding or to foreclose the Library Board from now challenging the results thereof.

For the foregoing reasons, we have concluded that the Library Board is a separate employing entity from the Village and that inclusion of Library Board employes in the Village unit is not proper since it was not authorized by the Library Board.

Accordingly, we have honored the Library Board's request for an order clarifying the unit by excluding Library Board employes therefrom. Since Local No. 2's margin of victory was eight votes (17 yes, 9 no), the exclusion of the library employes from the unit (there appear to have been three to five library employes on the eligibility list) does not affect the results of the election or the status of Local No. 2 as the representative of the clarified unit.

Dated at Madison, Wisconsin, this 13th day of April, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Marshall L. Gratz, Commissioner

6/ See, Commission Rule ERB 10.10(1) - (3), WIS. ADM. CODE (3/71).