

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

MILWAUKEE DISTRICT COUNCIL 48 AND :
ITS AFFILIATED LOCAL 426 :

For Clarification of a Bargaining Unit :
Consisting of Certain Employees of :

CITY OF MILWAUKEE (LIBRARY) :

Case CLXXVIII
No. 21373 ME-1418
Decision No. 16483

Appearances:

Podell & Ugent, Attorneys at Law, by Ms. Nola J. Hitchcock Cross,
appearing on behalf of the Petitioner.
James B. Brennan, City Attorney, by Mr. Nicholas M. Sigel, appearing
on behalf of the Municipal Employer.

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

Milwaukee District Council 48 and its affiliated Local 426, having, on February 9, 1977 filed a petition with the Wisconsin Employment Relations Commission; wherein it requested the Commission to clarify an existing collective bargaining unit consisting of certain employees of City of Milwaukee; and a hearing having been held in the matter at Milwaukee, Wisconsin, on April 11 and May 19, 1977, Dennis P. McGilligan, Examiner, being present; and the Commission having considered the evidence, arguments of the parties, briefs, and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That on April 30, 1964, following an election conducted by it, the Wisconsin Employment Relations Board certified Milwaukee District Council 48 and its appropriate Locals, hereinafter referred to as the Union, as the exclusive collective bargaining representative of all employees of the City of Milwaukee, hereinafter referred to as the Employer, employed in the collective bargaining unit consisting of all regular employees employed by the City of Milwaukee in the Public Library, excluding craft, confidential and supervisory employees and executives.

2. That the City of Milwaukee library organization consists of three bureaus, one of which is the Neighborhood Library and Extension Services Bureau, headed by Nolan Neds, Deputy City Librarian; that the Extension Services Division, supervised by Cecile Fox, a Management Librarian IV, is one of the two divisions within the Extension Services Bureau; that under the Extension Services Division is the Automotive Services Section wherein the disputed position of Automotive Operations Supervisor, now occupied by John Schillaci, as well as seven bookmobile driver positions are located.

3. That John Schillaci worked in the Bookmobile Operator and Foreman position from 1966 to January of 1976; that the Commission included the Bookmobile Operator and Foreman position in the bargaining unit in the original direction of election and said position remained in the bargaining unit; that the Automotive Operations Supervisor position was created in January of 1976, and John Schillaci, the incumbent in the old

position of Bookmobile Operator and Foreman, was promoted to the newly titled position shortly after it was created; that the old position of Bookmobile Operator and Foreman was abolished in 1977 after having been vacant for some time.

4. That John Schillaci makes up the schedules for Bookmobile Operators which contain their routes and starting times; that Schillaci also gives all work assignments to the Bookmobile Operators in his Section; that Schillaci coordinates stops for the routes with the librarian in-charge; that although Schillaci has the responsibility for scheduling the Bookmobile Operators, the drivers rotate automatically between three driving routes; that the drivers know when to report and what to do by the permanent rotating schedule so Schillaci only spends a few minutes giving the schedules to the drivers; that all non-scheduled bookmobile assignments come from someone else; that when a bookmobile driver is absent, Schillaci fills in for that driver by driving the bookmobile or van and making the assigned stops.

5. That in regard to the seven Bookmobile Operators, John Schillaci is responsible for approving their vacations as selected by the operators and coordinating them with the work load; that Schillaci monitors the sick leave taken by the bookmobile drivers; that Schillaci prepares monthly and annual reports on the operations of the Section.

6. That John Schillaci has never recommended or ordered the discharge or suspension of any employee; that Schillaci, while he was still occupying his bargaining unit position of Bookmobile Operator and Foreman, issued a verbal warning in 1973 and a written warning in 1974 to the same employee for careless and inattentive driving; that except in that instance Schillaci did not issue any other verbal or written warnings; that in 1972, Schillaci recommended extension of one employee's probation; that from May, 1972 to August, 1975 Schillaci represented the Employer at the initial step of the grievance procedure in approximately nine grievances concerning scheduling procedures, vacation time and the non-smoking rule; that approximately two years ago the Union reached an agreement with Personnel Manager Vlcansky that the first step for filing a grievance was with the management employee directly above Schillaci; that since that agreement, no Bookmobile Operator has filed a grievance with Schillaci; that the last time Schillaci had any input into the hiring process was in 1972 when he was present, along with Cecile Fox and Vlcansky, at an interview with a prospective employee.

7. That John Schillaci is primarily concerned with the safety of the Bookmobile operation; that Schillaci spends fifty percent of his time checking the van and bookmobile equipment, twenty percent of his time on maintenance and repair of the vehicles and the budgeting and purchasing of supplies to accomplish same, twenty percent of his time making out reports which go to Cecile Fox, and the remaining percent of his time making out the weekly schedules and checking the safety of the bookmobile stops.

8. That based on Findings of Fact Numbers 2, 3, 4, 5, 6 and 7 it is clear that Schillaci spends most of his time overseeing the Bookmobile equipment and the routes rather than supervising Bookmobile employees; that consequently Schillaci functions as a "working foreman" or "lead worker."

9. That the Employer hired Divinia Astraquillo on March 1, 1977 into a new position in the Business Information Services Department of the Science and Business Section of the City of Milwaukee Library; that Science and Business is a Section within the Administrative Services Division which is a Division of the Administrative Bureau; that the Employer determined that this position was supervisory or managerial and gave Astraquillo the title, Management Librarian IV, Business Information Services; that the function of the Business Information Services Department is to answer and research business and industry related questions from private companies and other library patrons in the City of Milwaukee.

10. That a City Service Commission memo dated December 20, 1965 describes the duties of the Librarian IV position and how it is distinguished from the Librarian V position:

"This (Librarian IV) work involved direction of a specialized subject matter where more intensive and specialized coverage or service is needed, . . . It is distinguished from the Librarian V Subject Matter Coordinators mainly by the limited type of specialization involved which includes subject matter units such as language, literature, history, chemistry, mathematics, and the like, in contrast to broad subject areas headed by the Librarian V, such as humanities and science."

that an administrative memo dated February 1, 1977 described Astraquillo's position within the library structure in pertinent part as follows:

"Miss Divinia Astraquillo has been appointed Management Librarian IV, Business Information Services Librarian, effective March 1, 1977. The Business Information Services operation has been reorganized and the Business Information Services is now a department of the Science & Business section, as Local History is to the Humanities Department."

that the Local History Department is headed, not by a Management Librarian IV, but by a regular Librarian IV, who is in the bargaining unit; the job description for this bargaining unit position states that the incumbent:

"Is responsible for the overall operation of the Local History unit of the Humanities section, a distinct and separable unit where intensive and specialized coverage and service is required. . . . Supervises the answering of reference questions in the area covered and performing research and reference work in more difficult and complex aspects of the subject."

that the Librarian IV, Local History Librarian works with one clerical employee and two Librarian III's.

11. That Divinia Astraquillo works with one full-time clerical employee and two Librarian I's who spend at least one-half of their time working at the public service desk, under physically and administratively separate supervision, rather than in the Business Information Services Department; that Astraquillo has been told that she has the authority to discipline the people she has assisting her and authority to evaluate those people and to effectively recommend their promotion; that Astraquillo has the responsibility to handle grievances at the oral stage for the Employer; that however Astraquillo has never handled a grievance to date; that Astraquillo has never evaluated any of the three employees she directs; that in addition Astraquillo has never disciplined any of them; that at present Astraquillo has yet to participate in the hiring process or the transfer of employees in her department.

12. That Divinia Astraquillo has the responsibility to see that requests for information to the Business Information Services Department are handled properly; that Astraquillo evaluates information requests, establishes priorities and coordinates research for the Department; that Astraquillo also acts as a representative of the Library at various functions involving both the business and industrial community of Milwaukee; that Astraquillo, in addition to researching requests for information, works on indices and abstracts within the office; that Astraquillo also fills in at the public service desk, the ready reference desk and the science and business desk, just as do the two Librarian I's in her Department.

13. That in carrying out her duties, Divinia Astraquillo attends the monthly Coordinators' meeting and conferences with other management employees, that bargaining unit employees may also attend some of these meetings; that Astraquillo has trained employees in her department; that Astraquillo makes recommendations for equipment as a budget request and for maintenance work to be done within her operation; that Astraquillo makes the final decision as to whether a maintenance expense will be incurred although several other persons participate to some extent in the decision; that Astraquillo does not have the authority to commit library funds for books or equipment nor has she entered into a contract on behalf of the Library; that sometime in the future Astraquillo will help set policy for the Library by writing the operation procedures for her Department and organizing it to accomplish its goals.

14. That the Technological Services Librarian position has existed for seven years and in that length of time has never been a bargaining unit position; that the position Divinia Astraquillo holds is the same position as the Technological Services Librarian except that it has been downgraded in pay due to the recent hiring of the incumbent.

15. That based on Findings of Fact Numbers 9, 10, 11, 12 and 13 Divinia Astraquillo, occupying the position of Management Librarian IV, Business Information Services, does not at present perform any supervisory or managerial duties at the level necessary to exclude her from the bargaining unit pursuant to Section 111.70 of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That John Schillaci, occupying the position of Automotive Operations Supervisor, is a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That Divinia Astraquillo, occupying the position of Management Librarian IV, Business Information Services, is a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

That the positions of Automotive Operations Supervisor, occupied by John Schillaci, and Management Librarian IV, Business Information Services, occupied by Divinia Astraquillo be, and the same hereby are, included in the collective bargaining unit presently represented by Milwaukee District Council 48 and its affiliated Local 426 and consisting of all regular employees employed by the City of Milwaukee in the Public Library, excluding craft, confidential and supervisory employees and executives.

Given under our hands and seal at the
City of Madison, Wisconsin, this 4th
day of August, 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,
CONCLUSIONS OF LAW AND ORDER CLARIFYING BARGAINING UNIT

The Union seeks to clarify an existing bargaining unit presently represented by it to include the positions of Automotive Operations Supervisor, occupied by John Schillaci, and Management Librarian IV, Business Information Services, occupied by Divinia Astraquillo. The Union basically maintains that the work performed by the Automotive Operations Supervisor and the Management Librarian IV, Business Information Services is not supervisory within the meaning of Section 111.70 (1) (o)1 of the Municipal Employment Relations Act.

The term supervisor is defined in the Wisconsin Statutes at 111.70 (1) (o)1 as follows:

" . . . any individual who has authority in the interest of the municipal employer, to hire, transfer, suspend, layoff, 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 merely of a routine or clerical nature, but requires the use of independent judgment."

In addition, the Commission has, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considered 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 employees supervised, and the number of other persons exercising greater, similar or less authority over the same employees.

4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.

5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

7. The amount of independent judgment and discretion exercised in the supervision of employees." 1/

1/ St. Croix County (Health Care Ctr.) (14518) 4/76.
Fond du Lac County (14669) 5/76.
City of Merrill (14707) 6/76.

Duties cited by the Employer in support of its position that the Automotive Operations Supervisor is supervisory and therefore should be excluded from the aforementioned bargaining unit include the fact that Schillaci approves vacations and monitors sick leave taken by employees of his section. The record indicates that Schillaci also sat in on an employee interview, the last time being in 1972. The Commission has held that "minor supervisory duties" such as participating in employment interviews 2/ and adjusting vacations 3/ will not in and of themselves elevate a position to supervisory status.

The Employer also argues that Schillaci is responsible for discipline. In 1973 and 1974 while he was still occupying his bargaining unit position of Bookmobile Operator and Foreman, Schillaci did issue a verbal and written warning to a driver who had been involved in an accident. However, other than these warnings, Schillaci has never exercised disciplinary action over employees. Finally, the Employer maintains that Schillaci handles first step grievances for management. The record indicates, however, that pursuant to an oral agreement between the Union and the Employer, Schillaci no longer (for at least the past two years) performs this function.

Based on the above the Commission finds that the statutory criteria are not present in sufficient combination and degree to warrant the conclusion that the position of Automotive Operations Supervisor occupied by John Schillaci is supervisory. To the contrary, Schillaci is concerned basically with the safety of the Bookmobile operation and spends most of his time overseeing the equipment and routes rather than the employees. This would indicate that Schillaci functions primarily as a "working foreman" or "lead worker."

The Employer also contends that Divinia Astraquillo is a supervisor. The record indicates that Astraquillo has been told that she has the authority to discipline and evaluate the employees in her department as well as the power to effectively recommend their promotion. It is asserted that she also has the authority to handle grievances by the three employees under her. However "potential supervisory authority and duties does not warrant the conclusion that the employee involved is a supervisor." 4/ Because Astraquillo's supervisory duties are at best potential, the Commission does not feel, at present, that Astraquillo performs supervisory duties at a sufficient level to exclude her from the bargaining unit.

Finally, the Employer argues that the Management Librarian IV, Business Information Services position is managerial.

There is no statutory definition of "managerial employee." However, the definition promulgated by the Commission, and approved by the Wisconsin Supreme Court is as follows:

"Managerial employees participate in the formulation, determination and implementation of management policy... In addition, managerial status may be related to a position's effective authority to commit the Employer's resources".
City of Milwaukee v. WERC 71 Wis. 2d 709, 239 N.W. 2d 63, at 67 (1976).

2/ Wood County (13760) 6/75.

3/ St. Croix County (Health Care Ctr.) supra.

4/ Wood County supra, at p. 2.; Oneida County (12247) 11/73.

Thus, in order to have managerial status an employe must have the ability to commit the employer's resources and/or the authority to formulate, determine and implement management policy.

Astraquillo has no authority to commit library funds or enter into contracts in behalf of the Library. She does have some authority with respect to authorizing minor repairs. However, this alone does not qualify her under the definition of managerial employe noted above. Astraquillo also attends various meetings with other management personnel. However, the Employer has made no showing that Astraquillo's presence at these meetings contributes significantly to the formulation, determination or implementation of library policy.

Finally, as in the case of possible future supervisory duties, evidence about her potential role in the formulation of management policy must be disregarded in making a present determination regarding Astraquillo's managerial status.

Based on all of the foregoing, the Commission has included the two positions in dispute in the aforementioned bargaining unit.

Dated at Madison, Wisconsin this 4th day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner