

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

THE CITY OF BROOKFIELD LIBRARY
EMPLOYEES, LOCAL 20,
AFSCME, AFL-CIO,

Complainant,

vs.

CITY OF BROOKFIELD,

Respondent.

Case XXXV
No. 28884 MP-1273
Decision No. 19367-A

Appearances

Mr. Richard W. Abelson, Representative, South Shore District 2, Wisconsin Council 40, WCCME, AFSCME, AFL-CIO, 2216 Allen Lane, Waukesha, WI 53186, appearing on behalf of Complainant.

Godfrey, Trump & Hayes, Attorneys at Law, by Tom E. Hayes, Esq., 250 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-named Complainant having filed a complaint with the Wisconsin Employment Relations Commission on November 27, 1981, alleging that the above-named Respondent had committed certain prohibited practices within the meaning of Sections 111.70(3)(a)1, 111.70(3)(a)2, 111.70(3)(a)3 and 111.70(3)(a)4 of the Municipal Employment Relations Act; and the Commission having appointed David E. Shaw, /a member of its staff, to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held before the Examiner in Brookfield, Wisconsin on March 3, 1982; and the Respondent having filed a post-hearing brief on April 19, 1982; and the Examiner, having considered all of the evidence and the arguments of the parties, makes and issues the following Findings of Fact, Conclusions of Law and Order. 1/

FINDINGS OF FACT

1. That since June 16, 1981, the City of Brookfield Library Employees, Local 20, AFSCME, AFL-CIO, hereinafter the Complainant, has been the certified exclusive collective bargaining representative of all professional and non-professional employees of the City of Brookfield Public Library excluding supervisory, managerial, confidential, part-time employees working 20 hours or less

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings (Continued on Page Two)

per week, seasonal, temporary/casual employees and volunteers, 2/ and is a labor organization having its principal offices located at 2216 Allen Lane, Waukesha, Wisconsin.

2. That the City of Brookfield, hereinafter the Respondent, is a municipal employer which among its functions maintains and operates a public library located at 1900 Calhoun Road, Brookfield, Wisconsin; that at all times material herein Mr. William Mitchell has held the elected position of Mayor of the City of Brookfield and has functioned as an agent of the Respondent; that at all times material herein Mr. Byron Dewey held the position of Chairman of the Brookfield Civil Service Commission and functioned as an agent of the Respondent; and that Ms. Sonia Bielmeier has at all times material herein been employed by the Respondent as the Director of Library Services and has functioned as an agent of the Respondent.

3. That the operation of the Brookfield Public Library is overseen by the Library Board of Trustees; that it is the Brookfield Common Council that determines the amount of money that will be made available for the operation of the Library, including establishing, by ordinance, the number of positions authorized in the Library and the compensation for those positions; that heretofore positions in the Library have been considered "civil service" positions; and that the Brookfield Civil Service Commission possessed the final authority for approving changes in the status or pay of employees in the Respondent's "civil service" pursuant to the City's Civil Service Ordinance 4.10, which provides as follows:

4.10 EMPLOYEE STATUS. (1) Written notice of each appointment in the Civil Service shall be submitted by the appointing authority to the Commission within 5 days.

(2) No department head shall change the status of any employee in the "Civil Service" as to promotion, demotion, increase or decrease in rate of pay (except for increases or decreases fixed by the Council pursuant to law), resignation, discharge, leave of absence or any other act until he notifies the Commission in writing of such change and the reasons therefor, and receives a certification from the Commission that said action is proper.

4. That as of January 1981 there were the equivalent of 14.2 full-time positions in the Brookfield Public Library, consisting of nine (9) full-time positions, two (2) part-time positions of 30 or more hours per week and ten (10) part-time positions of 20 or less hours per week, as authorized by Brookfield City Ordinance 928; that Ordinance 928 provided in relevant part:

1/ (Continued)

or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

2/ The Union was certified as the exclusive collective bargaining representative of the above-noted bargaining unit on June 16, 1981. City of Brookfield (Library), Case XXXIII, No. 27703, ME-1986, Decision No. 18673.

ORDINANCE NO. 928

AN ORDINANCE ESTABLISHING SALARIES OF
CERTAIN ADMINISTRATIVE DEPARTMENTS AND
PERSONNEL OF THE CITY OF BROOKFIELD FOR
THE YEAR 1981

The Common Council of the City of Brookfield do ordain as follows:

SECTION I. The salaries of certain administrative departments and personnel, and officers of the City of Brookfield for the year 1981 are hereby established and fixed, commencing January 1st of said year, unless specifically stated otherwise, and until changed pursuant to law, as follows:

1. <u>ELECTED OFFICIALS</u>	<u>NO.</u>	<u>COMPENSATION</u>
<u>& SECRETARIAL THERETO</u>		<u>- MONTHLY</u>

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2. <u>GENERAL & POLICE</u>		
<u>& FIRE ADMINISTRATIVE</u>		

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K. Library

1. Director	1	2,066.00
2. Children's Services Coordinator	1	1,663.00
3. Adult Services Coordinator	1	1,333.00
4. Chief of Circulation	1	1,007.00
5. Technical Services Libr.	1	1,226.00
6. Technical Services Ass't.	1	980.00
7. Librarian's Assistant	1	935.00
8. Technical Assistant II	1	840.00
9. Technical Assistant I	1	751.00
10. Part-time Para-Professional (Max. 30 hr. wk.)	1	5.15 per hour 8,034.00/Yr. Max.
11. Part-time (Max. 32 hr. wk.)	1	4.45 per hour 7,405.00/Yr. Max.
12. Part-time (Max. 20 hr. wk.)	3	4.45 per hour 4,628.00/Yr. Max.
13. Pages (Max. 15 hr. wk.)	7	3.35 per hour 20,332.00/Yr. Max.

. . .

5. That on May 2, 1979 Mayor Mitchell sent a memo to City Department Heads asking that they consider how their departments might improve efficiency through electronic data processing; that in the fall of 1979 Bielmeier began to research the use of an automated system in the Library for the purpose of making a preliminary report to the Library Board and the Mayor; that on January 8, 1980 Bielmeier submitted her preliminary report to the Library Board and the Mayor at

a Library Board meeting, and at the following Library Board meeting the Board's President, Harold Benitz, appointed a Study Committee of the Board to continue the research; that study of the use of an automated system in the Library continued and on October 21, 1980 Bielmeier gave an oral presentation to the Brookfield Common Council on the use of an automated library system and its possible application in the Brookfield Public Library; that in December of 1980 the Brookfield Common Council approved the change to an automated system in the Library and included funding for each change in the City's 1981 budget; that in February of 1981 Bielmeier redrafted job descriptions for the positions in the Library in an attempt to reflect the anticipated changes in duties that would be occasioned by the conversion to an automated system; that the actual work on the physical changeover to automation began in May of 1981 with "bar coding", i.e., changing over to the use of a series of vertical lines of varying widths to identify the materials that are checked out; that February 1, 1982 the computer went "on line" in the Brookfield Public Library relative to the Circulation Services, i.e, keeping track of circulation statistics; and that with the computer becoming operational as to Circulation Services approximately one third (1/3) of the conversion to the automated system in the Library was completed.

6. That Patricia Collins began her employment with the Brookfield Public Library on November 7, 1978 as a Library Aide I (Technical Assistant I), and held that position for approximately six months when she was promoted to the position of Library Technical Assistant II; that when Collins was promoted to Library Technical Assistant II she received a raise in pay; that in January of 1981 Collins indicated to the Director, Bielmeier, that she would be interested in the Chief of Circulation position if the incumbent, Vi Kelpin, in fact retired as Kelpin had announced she would; that on February 19, 1981 Bielmeier sent the following letter to the Chairman of the Brookfield Civil Service Commission:

February 19, 1981

Dear Mr. Dewey:

Vi Kelpin, Chief of Circulation, (salary \$12,084) will retire April 10, 1981. Vi has done an outstanding job for the City during her 18 years of employment with us.

In order to fill this most responsible and important position, I recommend that Pat Collins, Library Technician II, be promoted to Chief of Circulation. Pat joined the Staff November 7, 1978 and has grown with added responsibilities while demonstrating high performance levels.

Pat Collins is well qualified for the position. She has the necessary library experience as well as course work and experience with automated equipment. Pat is deeply involved in automating the library circulation system.

Your support and your recommendation will be most appreciated.

If you have any questions please do not hesitate to contact me.

Sincerely,

Sonia Bielmeier, Director Library Services

Copies: Mayor Wimmiam Mitchell (sic)
Harold Benitz, President Library Board

that prior to sending the above letter Bielmeier informed Collins in February of 1981 that she (Collins) would move into the position of Chief of Circulation being vacated by Kelpin and would receive an increase in pay; that sometime in the latter part of February or the first part of March of 1981 Kelpin started training Collins in the duties of Chief of Circulation; that Mayor Mitchell and the Civil Service Commission did not respond to Bielmeier's February 19, 1981 recommendation that Collins be promoted to Chief of Circulation upon Kelpin's retirement, thereby effectively rejecting the recommendation; and that Bielmeier was aware in

the first part of March of 1981 of the rejection of her recommendation regarding Collins' promotion.

7. That Jo Ann Ihn began her employment with the Brookfield Public Library on June 1, 1979 as a Library Aide I (Library Technical Assistant I); that in approximately September of 1980 Bielmeier called Ihn into her office and informed her that Debbie Laatsch, the incumbent Technical Services Assistant, was expecting a baby and had given notice that she would be leaving; that at that same time Bielmeier asked Ihn whether she would be interested in the position and Ihn responded in the affirmative; that Laatsch subsequently suffered a miscarriage and rescinded her notice that she was leaving; that Laatsch again became pregnant and gave notice that she was leaving on May 15, 1981; that on March 20, 1981 Bielmeier sent the following letter to the Mayor and the Chairman of the Civil Service Commission recommending Ihn's promotion to Library Technical Assistant II:

3-20-81

Mayor William Mitchell, City of Brookfield
Mr. Byron Bewey, Chairman Civil Service Commission

Gentlemen:

With your approval we would recommend that Jo Ann Ihn, Library Technical Assistant I be promoted to Library Technical Assistant II. Please refer to correspondence (sic) dated March 20, 1981 and February 19, 1981 (Mrs. Ihn's application is attached).

Jo Ann Ihn began work with the Library June 1, 1979. Since that time she has shown initiative, innovativeness, and a dedication to the job that has far exceeded all of our expectations. Jo Ann is extremely well qualified for the Library Technical Assistant II position in that she has the appropriate education and experience in working with young people.

Mrs. Ihn has achieved a mastery in library technical work including book acquisition, collection and catalog maintenance, special collections development and readers advisory assistance. She has a special aptitude (sic) for the operation of semi automated equipment and has the technical expertise required for card catalog development and production. Clearly she will be an asset in any future role she may be qualified for in library service.

Your early approval will be sincerely appreciated.

Sincerely,

Sonia Bielmeier, Director Library Services

that on March 20, 1981 Bielmeier also sent the following letter to Mayor Mitchell and the Chairman of Respondent's Civil Services Commission:

3-20-81

Mayor William Mitchell, City of Brookfield
Mr. Byron Bewey, Chairman Civil Service Commission

Re: Library Technical Assistant II position. Meeting with Mayor Mitchell, Harold Benitz, Phillip Crump, Ruth Lewis, Margaret Rossetto, and Sonia Bielmeier March 11, 1981.

Dear Mayor Mitchell:

After considerable exploration and discussion of the alternatives remaining after your refusal to give the Board permission to fill the Library Technical II position, the Board in special session March 19, 1981 recommended the following course of action.

1. Promote Pat Collins, Library Technical Assistant II to Chief of Circulation. Please refer to correspondence dated 2-19-81.
2. Promote Jo Ann Ihn from Library Technical Assistant I to Library Technical Assistant II. Please see attach-letter (sic) and job description.
3. The results of these two promotions would leave the Library Technical I position open. This would allow us, as you had agreed, to use part-time help who would be paid from 1981 funds remaining in this position.

We were able to contact library trained former C.E.T.A. employees. Two employees indicated an interest in working for us through the end of August. As we would have to put in little or no re-training time, this appears to be the best solution considering library automation, summer youth programming, and general library operations.

We would certainly appreciate your immediate response as training time is becoming short as far as positions in the first two categories are concerned.

We would like to meet with you again at the end of summer for a reassessment of the part-time personnel situation and future library operation as the outlook appears then.

Sincerely,

Sonia Bielmleier, Director Library Services

that at sometime prior to March 20, 1982 Bielmleier and Ihn had discussed Bielmleier's recommendation that Ihn be promoted to Library Technical Assistant II as a step in getting Ihn eventually promoted to the position of Technical Services Assistant; that Ihn received copies of both of Bielmleier's letters of March 20, 1981 at the time they were sent; that due to her conversations with Bielmleier and having received copies of Bielmleier's letters to the Mayor and the Chairman of the Civil Service Commission, Ihn was aware that she would not be promoted to Technical Services Assistant; that Respondent's Civil Service Commission did not respond to Bielmleier's March 20, 1981 recommendations that Ihn be promoted to Library Technical Assistant II, thereby effectively rejecting those recommendations; and that in April of 1981 Ihn began being trained in Laatsch's duties.

8. That on March 26, 1981 the Complainant Union filed an election petition with the Wisconsin Employment Relations Commission requesting that a representation election be held among all regular full-time and regular part-time professional and non-professional employees of the Brookfield Public Library. 3/

9. That Kelpin ceased actually working as Chief of Circulation at the Brookfield Public Library on approximately April 10, 1981, but remained on the payroll until May 10, 1981 by using up accumulated vacation time; that on or about May 10, 1981 Collins began performing some of the duties of Chief of Circulation previously performed by Kelpin; that among the duties of the Chief of Circulation position that Collins performed since May of 1981 were taking care of and updating the Business Table, inter-library loan deliveries, overdue routines (notification and related procedures), preparing the Circulation Desk for the day (counting the money and getting the bank ready and getting supplies), maintain volunteers' files, maintain staff time records, maintain book inventory records, and prepare books for the bindery and complete necessary paperwork upon their return; that two other Library employees also prepare the Circulation Desk for the day on mornings

3/ Although the election petition is dated March 24, 1981, such a petition is not considered "filed" until it is recieved by the Commission.

that Collins is not at the Library; that with the exception of one employee, all of the Library staff work at the Circulation Desk at various times; that among the other duties formerly performed by Kelpin, Collins does not: Participate in the puppet shows for the Children's Program to the same extent that Kelpin participated, examine reports and claims, maintain book order files, evaluate condition of books and determine whether they should be withdrawn and the kinds of repairs to be made, and maintain time records for volunteers; that Collins has continued to perform some of her duties as a Library Technical Assistant II; and that since May of 1981 has performed some of the duties of a Library Technical Assistant II and some of the duties of Chief of Circulation, as well as, at times working on the conversion to the automated system.

10. That Collins was not promoted to Chief of Circulation and did not receive an increase in pay upon the modification in her assignments in May of 1981; that at or prior to the time that her assignments were changed, Collins was informed by Bielmeier that she (Collins) would not be promoted to Chief of Circulation due to the Mayor's decision to discontinue the position; that Collins had aided Bielmeier in the study of the application of an automated system in the Brookfield Public Library and was aware, prior to the filing of the Union's election petition, that the Library would be converting to our automated system; and that Collins was aware that the conversion to an automated system would likely have a significant impact on the duties to be performed in the Library, and that a final determination as to the assignments of specific positions would not be possible until the conversion to the automated system was completed.

11. That Debbie Laatsch ceased working in her position as Technical Services Assistant at the Brookfield Public Library on or about May 15, 1981; that on or about May 15, 1981 Jo Ann Ihn began performing duties formerly performed by Laatsch, including some duties which Ihn had also performed in her Library Aide I position; that in performing duties formerly performed by Laatsch, Ihn spends approximately two-thirds (2/3) of her time typing catalog cards on an IBM Magnetic Tape Selectric Typewriter (MTST) from information given to her by the Technical Services Librarian and approximately one-third (1/3) of her time working at the Circulation Desk; that, except for typing catalog cards on the MTST, the duties performed by Ihn are shared by other Library employees who also perform those duties; and that prior to assuming duties formerly performed by Laatsch, Ihn had spent approximately two-thirds (2/3) of her time working at the Circulation Desk.

12. That Ihn was not promoted to either Library Technical Assistant II or Technical Services Assistant and did not receive an increase in pay upon her assumption, in May of 1981, of the duties formerly performed by Laatsch; and that by the end of May of 1981 Ihn was aware that she would not be promoted or receive a pay raise.

13. That with the exception of pages and general part-time Library employees, the job classifications in the Brookfield Public Library have been one-person classifications; that a practice has existed in the Library, of which the employees are aware, of granting employees increases in pay when they are promoted to a higher rated position; that such increases have varied and have not always matched the pay rate received by the former incumbent in a higher rated position; that the position of Chief of Circulation was a higher rated position than Library Technical Assistant II; and that the positions of Library Technical Assistant II and Technical Services Assistant are both higher rated positions than Library Aide I (Library Technical Assistant I).

14. That beginning sometime in May of 1981 and continuing at least up to the date of the hearing in this matter the operation of the Brookfield Public Library has been in a state of transition due to the physical conversion to an automated data processing system; that during said transition the operation of the Library and the assignments of the Library staff have been altered in order to allow the staff to work on the conversion project; that at one point during the transition the Library was closed to the public for two weeks and all regular assignments ceased while the entire staff worked on the conversion project; that on February 1, 1982 the computer went "on line" and became operational relative to Circulation Services, thereby completing approximately one-third (1/3) of the conversion to automation; that at the time of the hearing the conversion to automation regarding bibliographic control, the catalog, automated cataloging, statistical reports and management reports remained to be completed; and that the conversion to an automated library system will likely result in changes in the tasks to be performed in the Library and the manner in which the tasks will be performed.

15. That on June 3, 1981 a representation election was conducted among the professional and non-professional employees of the Brookfield Public Library; that as a result of said election, Complainant was elected as the representative of those employees; and that on June 16, 1981 the Complainant was certified by the Wisconsin Employment Relations Commission to be the exclusive collective bargaining representative of those employees.

16. That on June 29, 1981 the Complainant served notice on the Respondent to open negotiations on a first contract 4/; that on July 10, 1981 the Complainant's representative, Richard Abelson, sent the following letter to Mayor Mitchell:

July 10, 1981

The Honorable William Mitchell, Mayor
City of Brookfield
2000 North Calhoun Road
Brookfield, WI 53005 RE: City of Brookfield Library

Dear Sir:

It has come to the Union's attention that a change in the staffing pattern has occurred (sic) in the City of Brookfield Library since the petition for the election was filed by the Union.

The changes were as follows:

- Ms. Debra Laatsch left employment. Ms. Laatsch was classified as a Technical Services Assistant at a salary of \$980 per month. Since she left employment her duties and responsibilities have been assumed by Ms. Joanne Ihn. Ms. Ihn is classified as a Library Technical Assistant I at a salary of \$751 per month.
- Ms. Vi Kelpin left employment. Ms. Kelpin was classified as Chief of Circulation at a salary of \$1007 per month. Since she left employment her duties and responsibilities have been assumed by Ms. Pat Collins. Ms. Collins is classified as a Library Technical Assistant II at a salary of \$840 per month.

The Union considers such unilateral changes in the staffing and salary pattern of the Library having a significant impact upon the wages of bargaining unit employees to be a violation of Section 111.70(3), Wisconsin Statutes, and a prohibitive practice under such statute.

The Union demands that the City of Brookfield Library immediately reclassify Ms. Collins and Ms. Ihn to the appropriate classification commensurate with their assigned duties and responsibilities and compensate them at the appropriate rate of pay back to the date upon which they assumed those duties. For Ms. Collins that date is May 10, 1981, and for Ms. Ihn the date is May 15, 1981.

Please contact the undersigned at your earliest convenience relative to the City's actions to correct this serious problem. However, the Union will expect a response no later than (sic) August 1, 1981. In the event that we are unable to resolve this matter the Union will not hesitate to take appropriate legal action.

Very truly yours,

Richard W. Abelson

cc: Ms. Joanne Ihn
Ms. Pat Collins

4/ The Examiner takes administrative notice of the Petition for Mediation-Arbitration (and the information contained therein) filed by the Complainant with the Commission.

17. That on July 28, 1981 Mayor Mitchell sent the following letter in response to Abelson's July 10, 1981 letter:

July 28, 1981

Mr. Richard W. Abelson
Wis. Council 40- AFSCME, AFL-CIO
2216 Allen Lane
Waukesha, Wisconsin 53186

Dear Mr. Abelson:

Re: City of Brookfield Library

I am in receipt of your letter of July 10, 1981 and wish to advise that the City of Brookfield funded and approved in December 1980, a fundamental change in the operation of the library from our former labor intensive operation to our Automated Library Service. This change has been in various stages of progression since that time, and will continue throughout most of the year.

This change is, and will obviously result in, entirely new work routines and elimination of many old routines.

Our Finance Committee and our Council have stated that insofar as is possible, we will try to retain all present personnel even though the work will change. In order to accomodate the present employees to the new system, it was recommended that we not fill vacancies until the new system was in place and full employee requirements were assessed.

Consistent with that decision in December of 1980, we have not replaced the two employees that left since that time. It appears that both of those positions, as such, may well disappear and be superceded by other work and skill requirements. During this process of change, all employees have been most cooperative.

To my knowledge and belief, the city has engaged in no prohibited practices of any kind. Employees of the Library, of whom we are very proud, were hired and continue to work under ordinances, rules and regulations lawfully adopted. They operate, for example under our Civil Service Code, which among other things, provides that when an opening is to be filled, that the Commission advertise and screen the applicants by whatever manner they deem appropriate, and certify three, one of whom will be appointed by the appointing authority.

I am advised that all of our Library employees are accomplishing tasks and performing well under the direction of our Library Director.

Sincerely,

William A. Mitchell, Jr.
MAYOR
CITY OF BROOKFIELD

WAM:is T. Nelson, Pres. Library Bd.
cc: Tom Hayes, Personnel Relations
Sonia Bielmeier, Library Director

18. That on August 24, 1981 the Complainant Union and the Respondent City met and exchanged initial proposals for a first contract between Complainant and Respondent covering the wages, hours and conditions of employment of the employees in the bargaining unit at the Brookfield Public Library, including Collins and Ihn; and that on January 18, 1982 the Complainant filed a Petition for Mediation-Arbitration with the Wisconsin Employment Relations Commission. 5/

5/ As noted previously, the Examiner has taken administrative notice of Complainant's Petition for Mediation-Arbitration.

19. That the decisions of the Mayor and the Brookfield Civil Service Commission not to fill the positions of Chief of Circulation and Technical Services Assistant, upon the retirement of the incumbents in those positions, were made prior to the Complainant filing its petition for a representation election on March 26, 1981; and that said decisions were not motivated by any anti-union consideration.

20. That there is no evidence in the record that Mayor Mitchell or the Brookfield Civil Service Commission had any knowledge as to which Library employees supported or did not support the complainant, or that said agents of the Respondent took any such information into consideration in their decisions not to approve the recommendations of Bielmeier and the Brookfield Library Board to promote Collins and Ihn; and that said decisions of Mayor Mitchell and the Brookfield Civil Service Commission were not motivated by any anti-union considerations.

21. That there is no evidence in the record that Library Director Bielmeier had any knowledge as to which Library employees supported or did not support the Complainant or that Bielmeier took any such information into consideration in altering the assignments of Collins and Ihn in May of 1981; and that the changes in the assignments of Collins and Ihn by Bielmeier in May of 1981 were not motivated by any anti-union considerations.

22. That the changes in the assignments of Collins and Ihn in May of 1981 involved the assignments of duties fairly within the scope of responsibilities applicable to the type of work performed by those two employees.

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

CONCLUSIONS OF LAW

1. That Respondent, by unilaterally altering the work assignments of Patricia Collins and Jo Ann Ihn in May of 1981 and not promoting those two employees to the positions of Chief of Circulation and Technical Services Assistant, respectively, did not interfere with, restrain or coerce those municipal employees in the exercise of their rights guaranteed in Section 111.70(2) of the Municipal Employment Relations Act, and therefore, Respondent did not violate Section 111.70(3)(a)1 of the Municipal Employment Relations Act.

2. That Respondent, by unilaterally altering the work assignments of Patricia Collins and Jo Ann Ihn in May of 1981 and not promoting those two employees to the positions of Chief of Circulation and Technical Services Assistant, respectively, did not interfere with the formation or administration of any labor or employee organization, and therefore, Respondent did not violate Section 111.70(3)(a)2 of the Municipal Employment Relations Act.

3. That Respondent, by unilaterally altering the work assignments of Patricia Collins and Jo Ann Ihn in May of 1981, and not promoting those two employees to the positions of Chief of Circulation and Technical Services Assistant, respectively, did not discourage membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment, and therefore, did not violate Section 111.70(3)(a)3 of the Municipal Employment Relations Act.

4. That Respondent, by unilaterally altering the work assignments of Patricia Collins and Jo Ann Ihn in May of 1981, and by not promoting those two employees to the positions of Chief of Circulation and Technical Services Assistant, respectively, upon the Complainant's demand that Collins and Ihn be so promoted, did not refuse to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit, and therefore, did not violate Section 111.70(3)(a)4 of the Municipal Employment Relations Act.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

IT IS ORDERED that the Complaint filed herein be, and same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 10th day of November, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
David E. Shaw, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Complainant filed the instant complaint with the Commission on November 27, 1981, alleging that the Respondent had, just prior to the representation election, unilaterally altered the work assignments of employees Patricia Collins and Jo Ann Ihn in May of 1981 by assigning those employees to perform the duties of the Chief of Circulation and Technical Services Assistant positions, respectively, without promoting Collins and Ihn to the respective positions.

The complaint further alleges that the Respondent also committed prohibited practices by not promoting Collins and Ihn to the higher rated positions upon the Complainant's demand in July of 1981 that Respondent reclassify those employees to those positions.

The Respondent makes a number of arguments in response to Complainant's allegations. First, Respondent contends that there is no evidence in the record that Collins and Ihn were prominent in the Complainant's organizational effort or that Respondent was aware of their activity and was attempting to interfere or discourage the employees in such efforts. Further, the record does not establish that the complained of conduct constituted an act containing a threat of reprisal or a promise of benefit.

Secondly, the Respondent contends that the changes in the assignments of Collins and Ihn were the result of the process of converting to an automated library system in the Brookfield Public Library. Since the origin of the conversion to an automated system in the Library predated the Complainant and its organizing activities by more than a year, the Respondent's conduct in altering assignments cannot be considered to be directed against the Complainant or intended to adversely affect its organizational activities.

Respondent also argues that it had the duty to maintain the status quo during the Complainant's organizational campaign. In not making the promotions and granting the pay increases demanded by the Complainant, the Respondent was fulfilling its obligation to maintain the status quo in the Library.

Next, Respondent argues that an employer's duty to maintain the status quo during a union's organizational activity only pertains to mandatory subjects of bargaining. To find otherwise would be to bestow upon a union greater bargaining rights than it would possess upon becoming the certified bargaining representative. The changes in the assignments of Collins and Ihn involved the assignment of duties that were the same as those they had been performing or were of the same type that they had previously performed. Since the change in their assignments involved duties fairly within the scope of the work performed by library employees, the decision to alter the assignments of Collins and Ihn was not a mandatory subject of bargaining. Hence, the Respondent had the right to unilaterally alter those assignments during the period of Complainant's organizational activity.

Finally, the Respondent contends that the system of job classifications and the qualifications for job classifications are employer prerogatives. The Respondent retains the right to determine what the job classifications will be, the qualifications, and whether a promotion is to be made.

The operation of the Library is undergoing a change and the Respondent has been attempting to determine the duties, classifications and job content that will exist upon the completion of the change in operation. By doing so, the Respondent has not interfered with, coerced, threatened or promised rewards to its Library employees.

The Respondent also notes that the Complainant has not alleged that the Respondent is unwilling to bargain the impact of the changes, and the Respondent has not refused.

INTERFERENCE

The Complainant has alleged that the Respondent violated Section 111.70(3)(a)1 of the Municipal Employment Relations Act, hereinafter MERA, by altering the work assignments of employees Collins and Ihn during the pendency of the representation election and not promoting those employees to the appropriate positions and pay rates.

Section 111.70(3)(a)1 provides that it is a prohibited practice for a municipal employer:

To interfere with, restrain or coerce municipal employees in the exercise of their rights guaranteed in sub. (2).

In order for the Complainant to prevail on its complaint of interference with employee rights it must demonstrate, by a clear and satisfactory preponderance of the evidence, that Respondent's complained of conduct contained either some threat of reprisal or promise of benefit which would tend to interfere with its employees in the exercise of their rights guaranteed by Section 111.70(2) of MERA. 6/ It is not necessary to show that Respondent intended its conduct to have the effect of interfering with those rights. 7/

In deciding whether the Respondent's actions in this instance amounted to "interference" it is necessary to determine what actions were taken, as well as the circumstances surrounding those actions.

The Complainant alleges that in May of 1981, during the pendency of the representation election, the Respondent assigned Patricia Collins and Jo Ann Ihn to perform the duties of higher rated positions without promoting Collins and Ihn to those higher rated positions and paying them the former incumbents' salaries.

Although the timing of Respondent's actions is probative as to the issue, it is not necessarily determinative. In this case the record firmly establishes that the origin of the Respondent's conversion to an automated system in the Brookfield Public Library was significantly prior to the Complainant filing its election petition on March 26, 1981. The Respondent began its study of the application of an automated system in the Library more than a year prior to the filing of the election petition, and the final decision to convert was made by the Common Council in December of 1980. The record also indicates that Collins aided Library Director Bielmeier in making the study of automated systems, and that Collins was aware of the likely attendant impact on jobs and assignments in the Library if the Library converted to an automated system. Collins also testified that she was aware that job descriptions were being redrafted and that final determinations in that regard would not be possible until the conversion was completed.

The physical conversion to the automated system began in May of 1981, about the same time that the incumbents in the Chief of Circulation and Technical Services Assistant positions severed their employment and Collins' and Ihn's assignments were altered. The physical conversion began with the "bar coding" and at that time the assignments of the entire Library staff were altered in order to allow them to work on the conversion project and at the same time continue to keep the Library operating for the public. Moreover, a number of the "new" duties that Collins and Ihn were performing in May of 1981 were the same duties they had performed as Library Technical Assistant II and Library Aide I, respectively. Also, a number of their new duties were shared with other employees.

The circumstances surrounding the altering of Collins' and Ihn's assignments differed somewhat from the other employees, in that Bielmeier had previously recommended to the Respondent's Civil Service Commission that they be promoted to the positions of Chief of Circulation and Library Technical Services Assistant, respectively. Those recommendations, however, were rejected by the Mayor and the Civil Service Commission prior to Complainant filing its election petition. Further, Collins was informed by Bielmeier that she would not be promoted to the Chief of Circulation due to the decision to discontinue that position. Ihn was

6/ Western Wisconsin V.T.A.E. District (17714-B) 6/81, Drummond Jt. School District No. 1 (15909-A) 3/78, Ashwaubenon School District (14774-A) 10/77.

7/ City of Evansville (9440-C) 3/71.

also aware, prior to Complainant's arrival on the scene, that she would not be promoted to the Technical Services Assistant position. Having discussed the matter with Bielmeier and having received copies of Bielmeier's letters of March 20, 1981, Ihn was aware that she was only being recommended for promotion to Library Technical Assistant II, the position that would have been vacated by Collins had she been promoted to Chief of Circulation. It was also evident from Bielmeier's March 20, 1981 letter regarding Collins and Ihn that the Mayor and the Civil Service Commission were refusing to fill any vacancies at that time.

Given the context in which Respondent's actions occurred, the lack of any anti-union animus with which those actions could be connected by the employees, the fact that the work assignments of the other Library employees were also altered in May of 1981, that Collins and Ihn were aware, prior to the Complaint's arrival, that assignments would be altered and that there were problems with obtaining approval of their recommended promotions, it has been concluded that Respondent's complained of actions did not contain an express or implied threat of reprisal or promise of benefit that tended to interfere with the guaranteed rights of the employees to gain or support a union.

DOMINATION

The Complainant alleges that Respondent's complained of actions violated Section 111.70(3)(a)2 of MERA by interfering with the formation of a labor organization.

Section 111.70(3)(a)2 provides in relevant part that it is a prohibited practice for a municipal employer:

To initiate, create, dominate or interfere with the formation or administration of any labor or employee organization or contribute financial support to it, . . .

The above statutory proscription contemplates a municipal employer's active involvement in creating or supporting a labor organization. 8/ There is nothing in the record to indicate that the Respondent made any effort to create or assist a union so as to be able to dominate such organization. Similarly, there is nothing in the record that would support a finding that the Respondent's actions interfered with the internal administration of any union. Therefore, it has been concluded that the Respondent did not violate Section 111.70(3)(a)2 of MERA.

DISCRIMINATION

The Complainant also alleges that the Respondent's complained of actions violated Section 111.70(3)(a)3 of MERA. That section provides that it is a prohibited practice for a municipal employer:

To encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment; but the prohibition shall not apply to a fair-share agreement.

In order to prevail on its complaint the Complainant must demonstrate, by a clear and satisfactory preponderance of the evidence, that Collins and Ihn were engaged in protected concerted activity, that Bielmeier, the Mayor and/or the Civil Service Commission members were aware of such activity, that the Respondent and/or its agents were hostile toward such activity, and that the altering of Collins' and Ihn's assignments without promoting them was motivated at least in part by anti-union considerations. 9/

There is no evidence in the record that establishes that either Collins or Ihn participated in the Complainant's organizational activities or any other

8/ Western Wisconsin V.T.A.E. District, supra, Unified School District No. 1 of Racine County, Wis. (15915-B) 12/77, Menomonie Jt. School District No. 1 (14811-C) 3/78.

9/ Milwaukee Board of School Directors (17176-A) 4/81, Milwaukee Board of School Directors (17651-A) 2/81, Village of Union Grove (15541-A) 2/78.

protected concerted activity during the pertinent period of time. Similarly, there is no evidence that the Respondent's agents had any knowledge of such activity and that they were hostile toward such activity.

Evidence as to the timing of the alteration of the assignments of Collins and Ihn, i.e., just prior to the conducting of the representation election, is probative as to whether the altering of the assignments was unlawfully motivated, however, such evidence is not conclusive. In this case the record establishes that the discussions regarding the recommended promotions of Collins and Ihn, along with the rejection of those recommendations, took place for the most part prior to the Complainant's filing its election petition. The alteration of Collins' and Ihn's assignments in May of 1981 coincided with the leaving of the two incumbents in the Chief of Circulation and Technical Services Assistant positions and also with the start of the physical conversion to the automated library system. The record also indicates that at about the same time that Collins' and Ihn's assignments were altered, the work assignments of the other library employees were also altered due to the start of the conversion to the automated system.

The Respondent has been able to present credible evidence that its decisions to alter the duties of Collins and Ihn without promoting them to a higher classification had a legitimate basis, i.e. it would be difficult to determine the classifications that would be needed to operate the Library, and the duties of those classifications, until after the conversion to an automated system in the Library is completed. Collins admitted that she was aware of that problem and that final determinations on assignments could not be done until the conversion is completed.

Therefore, the Complainant has failed to meet its burden of proving by a clear and satisfactory preponderance of the evidence that the Respondent's actions violated Section 111.70(3)(a)3 of MERA.

FAILURE TO BARGAIN COLLECTIVELY

The instant complaint also alleges that the Respondent violated Section 111.70(3)(a)4 of MERA by unilaterally altering the wages and working conditions of its employees, pending an election among those employees, and by refusing to bargain with the Complainant, upon demand, regarding reinstatement of the wages and working conditions.

Section 111.70(3)(a)4 provides in relevant part that it is unlawful for a municipal employer:

To refuse to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit. . . . An employer shall not be deemed to have refused to bargain until an election has been held and the results thereof certified to the employer by the commission.

Discussion on these issues are best divided along two lines: (1) The Respondent's obligations during the pendency of a representation question, and (2) the Respondent's obligations after the Complainant was certified as the exclusive bargaining representative of the Library employees.

During the pendency of a question of representation a municipal employer is required to maintain the status quo. The status quo, however, is to be viewed dynamically and does not always require that there be absolutely no change in the wages, hours and conditions of employment once a question of representation has arisen. 10/ If, as in this case, the changes are due to the continuation of an ongoing change in the employer's operation that had begun prior to the arrival of the Union, the employer's change in the status quo does not, by itself, necessarily violate the MERA. 11/ Although, as noted previously, an employer is not free to alter the wages, hours and conditions of employment of its employees during the pendency of a representation question, if such action is motivated

10/ New Richmond Jt. School District No. 1 (15172-B) 5/78.

11/ Menomonie Jt. School District No. 1 (14811-C) 3/78.

even in part by anti-union animus or if the action is taken in such a manner as would tend to interfere with the exercise of its employees rights provided for in Section 111.70(2) of MERA. 12/ It has already been concluded that there has been no showing of anti-union animus or that Respondent's actions were likely to interfere with the protected rights of its employees.

Also, since in May of 1981, when the complained of changes were implemented, the Complainant was neither recognized nor certified as the exclusive bargaining representative for Respondent's Library employees, the Respondent was not obligated to bargain with the Complainant at that time regarding the wages, hours and conditions of employment of those employees. 13/

Once the Complainant was certified as the exclusive bargaining representative of Respondent's Library employees the Respondent had the duty to bargain with Complainant regarding the wages, hours and conditions of employment of those employees. However, that duty to bargain only extends to matters which "primarily relate" to wages, hours and conditions of employment or the impact of policy changes on wages, hours and conditions of employment. 14/

The Commission has consistently held that "if a particular duty is fairly within the scope of responsibilities applicable to the kind of work performed by the employees involved, the decision to assign such work to such employees is a permissive subject of bargaining. Only when the duties involved are not fairly within that scope does the matter of whether the employees may be assigned such work become a mandatory subject of bargaining." (Footnotes omitted.) 15/ It has been determined in this case that the new duties that Collins and Ihn were assigned in May of 1981 were fairly within the scope of responsibilities applicable to the library work they had been performing. Therefore, the Respondent was not obligated to bargain with the Complainant regarding the decision to alter the assignments of Collins and Ihn.

The Commission has also held that an employer does have the duty to bargain collectively with respect to the impact of "any substantial change in the duties of a bargaining unit position". 16/ It is difficult to determine whether the changes in the duties of Collins and Ihn were "substantial," however, such a determination is not necessary.

The record indicates that the parties have engaged in bargaining with respect to the wages, hours and conditions of employment covering all of the employees in the bargaining unit, including Collins and Ihn. On July 10, 1981 the Complainant's representative, Abelson, sent the Respondent's Mayor a letter which, among other things, demanded

. . .that the City of Brookfield Library immediately reclassify Ms. Collins and Ms. Ihn to the appropriate classification commensurate with their assigned duties and responsibilities and compensate them at the appropriate rate of pay back to the date upon which they assumed those duties.

Abelson gave the Respondent until August 1, 1981 to respond.

On July 28, 1981 the Mayor sent Abelson a letter wherein he indicated that the Brookfield Public Library was in the midst of changing to an automated system and that until the new system was in place and employee requirements could be assessed it would not be filling vacancies in the Library. In other words, the

12/ City of Sparta (12778-A) 12/74.

13/ New Richmond Jt. School District No. 1, supra; Menomonie Jt. School District No. 1, supra.

14/ Beloit Education Association v. WERC, 73 Wis. 2d 43, 54 (1976).

15/ City of Milwaukee Sewerage Commission (17025) 5/79. See also City of Milwaukee Sewerage Commission (17302) 9/79; City of Wauwatosa (15917) 11/77.

16/ City of Milwaukee Sewerage Commission (17025); City of Sheboygan, (11877-A,B) 8/76.

Complainant made a demand and the Respondent responded to that demand. The Respondent did not refuse to discuss the matter with the Complainant. Rather, the Respondent offered its reasons for not acceding to the Complainant's demands. In this regard, it is noted that Section 111.70(1)(d) of MERA expressly provides that:

. . .

The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession.

. . .

The mere refusal to consent to a party's demands does not, in itself, necessarily amount to a refusal to bargain in violation of MERA.

Moreover, on August 24, 1981 the Respondent and the Complainant exchanged their initial proposals on a first contract covering the wages, hours and conditions of employment of the employees in the bargaining unit. Therefore, it is assumed that the Complainant has had ample opportunity in bargaining to press its demands regarding the impact of the changes in the duties of Collins and Ihn.

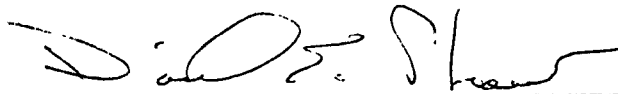
On the basis of the above, it has been concluded that the Respondent has not refused to bargain collectively with the Complainant, and therefore, has not violated Section 111.70(3)(a)4 of MERA.

For the foregoing reasons the instant complaint has been dismissed in its entirety.

Dated at Madison, Wisconsin this 10th day of November, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



David E. Shaw, Examiner