

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN COUNCIL OF COUNTY
& MUNICIPAL EMPLOYEES,
AFSCME, AFL-CIO
Involving Certain Employees of
CITY OF MADISON (PUBLIC
LIBRARY)

Case LXXXVI
No. 29220 ME-2084
Decision No. 19906

Appearances:

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, on behalf of the Petitioner.

Mr. Timothy Jeffery, Director of Labor Relations, City of Madison, City-County Building, Madison, Wisconsin 53709, on behalf of the City.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having, on January 29, 1982, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain professional employees of the City of Madison (Public Library) to determine whether said employees desired to be represented by said organization for the purpose of bargaining pursuant to the provisions of the Municipal Employment Relations Act; and hearing in the matter having been conducted in Madison, Wisconsin on April 7, and 14, 1981 before Jane B. Buffett, a member of the Commission's staff; and a transcript having been prepared and briefs having been filed by July 2, 1982; and the Commission having considered the evidence, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 5 Odana Court, Madison, Wisconsin 53719.

2. That the City of Madison, hereinafter referred to as the City, is a municipal employer with offices at the City-County Building, Madison, Wisconsin 53709; and that among its governmental functions the City operates a Library having its main offices at 201 West Mifflin Street, with seven branch libraries located at sites in the City, and a Bookmobile operating throughout the City.

3. That in the instant proceeding the Union requests the Wisconsin Employment Relations Commission to conduct an election among all professional employees in the employ of the Library, excluding managerial, supervisory, confidential and all other employees, to determine whether said professional employees desire to be represented for the purposes of collective bargaining by the Union; that while the City concedes that the bargaining unit requested by the Union could constitute an appropriate collective bargaining unit within the meaning of the Municipal Employment Relations Act (MERA), it requests the Commission to grant the professional employees the opportunity to vote whether they desire to combine into a single collective bargaining unit with non-professional Library employees, who are presently represented by Local 60 of the Union; that the Union became the bargaining representative of such non-professional employees in September, 1981, and that at

the time of the hearing herein the Union and the City were parties to a mediation-arbitration proceeding involving an alleged impasse in bargaining with respect to the wages, hours and conditions of employment of said non-professional employees.

4. That the Library maintains the following positions in the following departments of the Main Library and in its various branches, both hereinafter referred to as Units, with the professional positions denoted (p):

Main Library

Director (p)
Assistant Director (p)

Administrative and Technical Services

Library Office

Business Manager
Administrative Secretary I
Administrative Clerk I
Stock Clerk

Maintenance

Building Maintenance Supervisor
Maintenance Mechanic I
Custodial Worker III
Custodial Worker II (2 positions)
Custodial Worker I
Branch Librarian Custodian

Technical Processes

Supervising Librarian (p)
Librarian II (p)
Librarian I (p) (2 positions)
Library Assistant II - Part-time
Library Assistant I
Library Assistant I - Part-time
(2 positions)
Clerk (3 positions)
Clerk - Part-time (2 positions)
Bookmender II
Bookmender I (2 positions)

Circulation

Supervising Librarian (p)
Library Assistant II
Library Assistant I (8 positions)
Clerk (5 positions)

Main Library Readers' Service

Literature and Social Sciences

Supervising Librarian (p)
Librarian III (p)
Librarian II (p) (6 positions)
Librarian I (p)
Library Assistant I (2 positions)
Clerk

Business and Science

Supervising Librarian (p)
Librarian III (p)
Librarian II (p)
Librarian I (p)
Library Assistant I (2 positions)
Clerk-Typist - Part-time

Art and Music

Supervising Librarian (p)
Librarian III (p)
Librarian II - Part-time (p)
(2 positions)
Librarian I (p)
Library Assistant - Part-time
(3 positions)
Clerk - Part-time (2 positions)

Children's Room

Librarian III (p)
Librarian I (p)
Library Assistant I - Part-time
(3 positions)

City-County Building Services

Municipal Reference Service

Librarian III (p)
Librarian I - Part-time (p)
Library Assistant I - Part-time

Municipal Video Service

Program Production Assistant II
Program Production Assistant I
Administrative Clerk I

Branches and Bookmobile

Team A

Hawthorne Branch

Librarian III (p)
Library Assistant I
Library Assistant I - Part-time

Pinney Branch

Librarian III (p)
Library Assistant I (2 positions)
Library Assistant I - Part-time
Clerk

Lakeview Branch

Librarian III (p)
Library Assistant I - Part-time
(2 positions)

Bookmobile

Library Assistant I - Part-time
(2 positions)
Clerk-Driver II

Team B

Meadowridge Branch

Librarian III (p)
Library Assistant I - Part-time
(2 positions)

Monroe Street Branch

Librarian III (p)
Library Assistant I - Part-time
(2 positions)

Sequoia Branch

Supervising Librarian (p)
Librarian I (p)
Library Assistant I (3 positions)
Library Assistant I - Part-time

South Madison Branch

Librarian III (p)
Library Assistant I - Part-time
(2 positions)

5. That, in addition to the above positions, the Library also employs Pages, who are students and whose employment is generally limited to no more than 15 hours per week; and that the total number of hours worked by the Pages during the calendar year 1981, in the various "departments" of the Library, as well as the number of Page positions utilized therein, are as follows:

<u>Unit or Branch</u>	<u>Total Number of Hours</u>	<u>Approximate Number of Positions</u>
Library Office	624	1
Technical Services	8,856	11.4
Circulation	13,455	17.2
Literature & Social Sciences	5,668	7.3
Business & Science	2,693	3.4
Art and Music	2,704	3.5
Children's Room	2,800	3.6
Hawthorne	1,854	2.4
Pinney	3,858	4.9
Lakeview	2,168	2.7
Bookmobile	1,440	1.8
Meadowridge	2,004	2.6
Monroe Street	1,442	1.8
Sequoia	5,719	7.3
South Madison	1,552	2.0

6. That during the course of the hearing the parties stipulated that the individuals occupying the positions of Director, Assistant Director, Supervising Librarian, and Librarian III, II and I are professional positions; that the Director and Assistant Director are properly excluded from the professional unit on the basis of executive, managerial, supervisory and confidential responsibilities and duties; that those individuals occupying the position of Supervising Librarian, except at the Sequoya Branch, are also excluded because of their supervisory duties; and that the City, contrary to the Union, claims that the Supervising Librarian at the Sequoya Branch, as well as those occupying the Librarian III positions at all branches, with the exception of Sequoya, and in the Units where there is no Supervising Librarian, namely the Children's Room, and Municipal Reference Service, perform such supervisory duties and responsibilities so as to require their exclusion from the bargaining unit involved herein.

7. That at six of the seven branch libraries the Librarian III position is the sole professional employee at said Unit; that in addition to the Unit Heads in issue, professional librarians are employed in the Children's Room, the Municipal Reference Service, and the Sequoya Branch.

8. That the Unit Heads in issue are in charge of the Unit in which they are employed; that, in addition to performing professional librarian duties, including assisting library patrons, they are responsible for the scheduling and directing of Unit employees, and authorizing sick leave and vacations, subject to the approval of the Assistant Director, in accordance with Library policies; that said Unit Heads spend approximately one and one-half days at the Main Library in activities involving book selection and committee activity involving the operation of the library system; that where a vacancy is to be filled in a Unit, by other than Library employees, the Head of the employing Unit prepares questions for the employment interview, in which the Unit Head participates with the Director or Assistant Director, and that following the interview the participating Unit Head is asked to make a recommendation as to hiring the interviewed applicant; and that when an employee seeks a transfer to another position, the Unit Head is requested to make recommendations to the Director or Assistant Director with respect thereto.

9. That the Unit Head interviews and hires students who are employed as Pages at the Unit involved; that the Unit Head executes written evaluations relating to the performance of employees in their Unit while the latter are in their probationary period, with such evaluations being prepared after two and one-half and after five months of employment; and that following their probationary period employees are not formally evaluated.

10. That while the Library has had only rare occasions involving employee discipline, Unit Heads are expected to inform the Assistant Director or the Director of any personnel problem which might result in discipline, and that Unit Heads are expected to and do supervise the employees working in their Unit.

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

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time professional employees in the employ of the City of Madison Public Library, excluding managerial, supervisory, confidential, and all other employees constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d) 2.a. of the Municipal Employment Relations Act.

2. That, since the City of Madison and Local 60, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO are parties to a pending mediation-arbitration proceeding with respect to an alleged impasse in bargaining with respect to wages, hours and conditions of employment of non-professional employees in the employ of the City of Madison Public Library, the Wisconsin Employment Relations Commission will not at this time provide the professional employees of said Library, in the unit described above, the opportunity to determine by secret ballot pursuant to Sec. 111.70(4)(d)2.a. of the Municipal Employment Relations Act, whether said professional employees desire to be included in a single collective bargaining unit with said non-professional employees.

3. That the individuals occupying the following positions, at the work locations noted, exercise and perform supervisory responsibilities in sufficient combination and degree so as to constitute them supervisors within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act, and that, therefore, said individuals are excluded from the collective bargaining unit set forth in Conclusion of Law 1.

Main Library

Director
Assistant Director

Technical Processes

Supervising Librarian

Art and Music

Supervising Librarian

Business and Science

Supervising Librarian

Circulation

Supervising Librarian

Literature & Social Sciences

Supervising Librarian

Children's Room

Librarian III

Municipal References Service

Librarian III

Branches

Librarian III - Hawthorne

Librarian III - Pinney

Librarian III - Lakeview

Librarian III - Monroe Street

Librarian III - South Madison

Supervising Librarian - Sequoya

Librarian III - Meadowridge

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

DIRECTION OF ELECTION

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days of the date of this Direction in the unit consisting of all regular full-time and regular part-time professional employees in the employ of the City of Madison Public Library excluding managerial, supervisory and confidential employees, who were employed on September 21, 1982, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO for the purpose of collective bargaining with the City of Madison on wages, hours and conditions of employment.

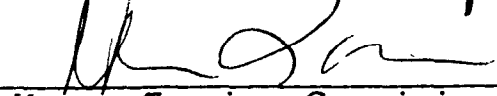
Given under our hands and seal at the City of
Madison, Wisconsin this 21st day of September,
1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissione


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

The Union filed the instant petition for an election among the professional employees of the Library. The City asserts that the Unit Head positions listed should be excluded from the bargaining unit as supervisors and managers, since they possess the authority to hire, evaluate, discipline and set work schedules for employees employed in their respective Units, and, to develop in-service training and orientation for all their subordinates. Further, the Unit Heads described themselves as supervisors in questionnaires completed by them during 1980-81. Additionally, the City asserts that the Unit Heads are managerial by virtue of their participation in the Administrative Committee and through their ability to allocate the City's resources.

The Union denies that the Unit Heads are supervisors, asserting that they spend most of their time in non-supervisory functions with only de minimus supervisory responsibilities. It further denies that they are managers, arguing that participation in the Administrative Committee does not involve policy formulation because that Committee serves merely as an opportunity for the Director to issue policies and to improve the staff's sense of community. It points out that all but one of those Unit Heads are at the same pay level (Librarian III) as other employees who the City acknowledges to be neither supervisory, nor managerial. It asserts that City Ordinance and position descriptions vest all supervisory and managerial authority for the Library employees in the Director and Assistant Director.

The City also requests that the members of the proposed unit be given an opportunity to vote on whether they wish to be included in a pre-existing bargaining unit of non-professional library employees. The Union opposes such a vote on the grounds that a unit of both professionals and non-professionals would dilute the interests of both units and would contribute to an already chaotic labor relations system.

DISCUSSION:

The criteria for determining whether employees are supervisors within the meaning of Section 111.70(1)(o) of MERA include the authority to hire, fire, promote, transfer, discipline and assign other employees, or to effectively recommend such actions. In the instant case when a Unit Head has a vacancy for an hourly library page, a list of qualified applicants is received from the Administrative Office. The Unit Head then interviews the applicants and effectively recommends the hiring of one of the applicants. Final approval of the hire depends upon a review of the hiring procedure by the Assistant Director for the sole purpose of ascertaining compliance with the Library's affirmative action program. The Unit Heads also conduct interviews of Library employees seeking transfers to vacant positions and effectively recommends the action to be taken in those situations. Further, interviews of applicants for non-supervisory positions, other than Pages, are conducted by the Assistant Director and the appropriate Unit Head, whose recommendations have been accepted by the Assistant Director in all but one instance. Although Unit Heads have had little, or no, ability to recommend employee promotions and reclassifications, primarily because of the Library's budget constraints and limited employee turnover, clearly they have a significant involvement in the hiring processes.

The Library only evaluates probationary employees. Said evaluations are performed independently by Unit Heads after a probationary employee has been employed for two-and-a-half months and for five months. Likewise, the Library rarely has occasion to discipline its employees. However, Unit Heads are expected to inform the Director, or Assistant Director, of any disciplinary problem which occurs and are authorized to immediately send home employees who report for work in an inappropriate condition, which action then would be reported to the Assistant Director or Director. Therefore, the apparent lack of authority by Unit Heads to discipline employees is not dispositive here.

Each Unit Head prepares and, when necessary, adjusts, work schedules for the other employees in the Unit, although such preparation is done within the hours established by the Director and in accommodations of the employees' desires when

possible. Unit Heads also prepare recommended vacation schedules for their staff which are submitted to the Director for approval. Employees are expected to report unanticipated absences to their Unit Head. Orientation of new employees is performed by Unit Heads. Unit Heads spend approximately one and one-half days a week in Committee meetings held at sites other than their Units. The remaining hours during the work week are spent at their Units. If Unit Heads were determined not to be supervisory employees, Library employees at sites other than the Main Library would have no day to day supervision.

In summary, the record establishes that Unit Heads, although they may spend a majority of their time in performing professional librarian duties, have sufficient responsibilities and authority to be deemed supervisory employees within the meaning of MERA.

The Commission has denied the request of the City to grant the employees in the professional unit the opportunity to determine whether they desire to be included in a single bargaining unit with the non-professional employees of the Library, who are presently involved in pending mediation-arbitration proceedings. The latter situation alone is sufficient to deny the City's request in that regard.

Dated at Madison, Wisconsin this 21st day of September, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

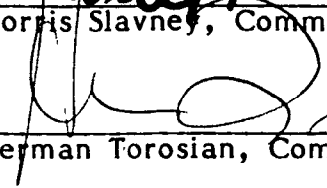
By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner