

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF SUPERIOR  
(PUBLIC LIBRARY)

Case 78  
No. 34631 ME-2432  
Decision No. 23318-A

Wisconsin Federation of Teachers, 1703 Logan Avenue, Superior, Wisconsin, by  
Mr. William Kalin, Staff Representative.  
AFSCME, Wisconsin Council 40, Route 1, Box 2, Brule, Wisconsin, by  
Mr. James Ellingson, District Representative.  
Mr. Steven Schweppe, City Attorney, 1407 Hammond Avenue, Superior,  
Wisconsin, appearing on behalf of the City of Superior.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
DIRECTION OF ELECTION

Wisconsin Federation of Teachers and AFSCME, Wisconsin Council 40 having separately filed petitions described below in Finding of Fact 5 requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees in the Superior Public library, described below in Finding of Fact 7; and hearing having been conducted in Superior, Wisconsin on May 9, 1985, by Examiner Daniel L. Bernstone, a member of the Commission's staff; and the transcript having been prepared and the parties having completed their briefing schedule by November 5, 1985; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

## FINDINGS OF FACT

1. That the Wisconsin Federation of Teachers, hereinafter the WFT, is a labor organization and has offices at 1703 Logan Avenue, Superior, Wisconsin.
2. That the American Federation of State, County, and Municipal Employees, Wisconsin Council 40, hereinafter AFSCME, is a labor organization having offices at Route 1, Box 2, Brule, Wisconsin.
3. That the City of Superior, hereinafter the City, is a municipal employer having its principal offices located at 1407 Hammond Avenue, Superior, Wisconsin.
4. That AFSCME, Local 235 is the voluntarily recognized exclusive collective bargaining representative of the City's employees in the City Hall and related departments except for the following department heads and/or other titled positions: City Attorney, Finance Director, Assistant Finance Director, Public Works Director, Assistant Public Works Director, Park and Recreation Directors, City Clerk, City Planner, Library Director, City Assessor, Building Inspector, Museum Director, Port Director, Confidential Secretary to the Mayor (2), Data Processing Manager, Rehabilitation Specialist (Federal - 1), Community Development Director, Community Development Specialists, Assistant Community Development Specialist, and Traffic Engineer.

5. That the WFT filed a petition for election with the Commission on February 15, 1985, wherein it sought an election in a claimed appropriate unit of all regular full-time and part-time employees in the Superior Public Libraries, excluding supervisory, managerial, and confidential employees; that AFSCME filed two petitions for an election with the Commission on March 19, 1985, seeking to include in the unit described in Finding of Fact 4 above, the claimed appropriate voting group of (1) all regularly scheduled employees of the Superior City Library excluding confidential, administrative, supervisory and professional employees or in the alternative, (2) all regularly scheduled professional employees of the City of Superior including librarians, but excluding confidential, administrative and supervisory employees; and that, under separate cover, the Commission dismissed the latter AFSCME petition.

6. That at the hearing held in the instant matter the parties stipulated to the exclusion of the following six positions held by the following names individuals from whatever unit or voting group is deemed appropriate herein:

<u>NAME</u>	<u>POSITION</u>
1. Paul H. Gaboriault	Library Director
2. Stella Van Massenhove	Secretary II/Bookkeeper
3. Wanita D. Anderson	Head, Technical Services
4. Barry L. Singer	Head, Adult Services
5. David H. Lull	Head, Reference and Loan Services
6. Susan M. Johnsted	Acting Head, Children's Services

7. That at the hearing held in the instant matter the parties further stipulated to the inclusion of the following named employees' positions in any unit or voting group found appropriate by the Commission herein and further stipulated that all said individuals are non-professional employees:

<u>NAME</u>	<u>POSITION</u>
1. Miina Helske	Asst. Reference Librarian
2. Emily Powers	Circulation Librarian
3. Theodora Meronek	Branch Librarian
4. Richard A. Kamm	Stations Librarian
5. Mary Jo Hood	Asst. Children's Librarian
6. Susan Larson	Periodicals Librarian
7. Barbara Fe Lind	Book Processor
8. Crystal O'Sullivan	Book Binder
9. Ruth Halvorson	Library Assistant
10. Robin Barrett	Acting Asst. Cataloger
11. Laura Davis	Interlibrary Loan Asst.
12. Judy Trautt	Asst. Stations Librarian
13. Lora M. Erickson	Library Assistant
14. Sandra Henning	Library Clerk
15. Ruth Ross	Library Clerk

16.	Sally DeKing	Library Clerk/Custodian
17.	Jo Ann Larson	Library Clerk
18.	Michael Flynn	Custodian II
19.	Pamela Barthen	Custodian
20.	Robert Stenroos	Security Man
21.	Karla Ann Halvorson	Page
22.	Joie Henning	Page
23.	Steven Doherty	Page
24.	Tracy Cheney	Page
25.	Joe Kubala	Page
26.	Kay Safford	Page

and that, along with those listed in Finding of Fact 6 above, the above-named individuals constitute all the remaining employees who work in the Superior Public Library.

8. That the WFT contends, contrary to AFSCME and the City, that the employees noted in Finding of Fact 7 above are employees of the Library Board, and not of the City of Superior, and that the Commission should direct an election in which said employees would have the choice of no representation, representation by AFSCME or representation by the WFT; that the City and AFSCME contend the Commission should order an "accretion election" among the employees specified in Finding of Fact 7 above in which said employees may vote for either representation by AFSCME Local 235, or no representation.

9. That the City of Superior Library Board was established in accordance with the provisions of Chapter 43, Stats.; that the Library budget is initially prepared by the Director of the Library and is then reviewed by the Library Board; that upon approval of the initial budget by the Library Board, the budget is then submitted to the Finance Department of the City; that thereafter, the budget is subjected to several reviews by the Mayor, the Finance Department and ultimately by the City Common Council; that the Library budget is ultimately approved by the City Common Council and the final Library budget approved by the Common Council is sometimes materially different from the original Library budget submitted by the Library Director; that the final Library budget approved by the City Common Council will contain numerous line items to which specific amounts of money will be earmarked, and if the Library Director sees that a specific line item is about to be overdrawn, he must either ask permission of the City's Common Council to move money from one line item to another or ask for additional funds over and beyond the amount of money voted for that line item for that year; that the Library Board is supposed to meet in a minimum of nine regular meetings each year, however, generally they meet regularly on the second Thursday of the month; that wage increases and reclassifications of library employees are initially recommended by the Library Director and approved by the Library Board, but are effectuated only after approval of the City's Labor, Wage and Classification Committee and approval by the City Common Council of the recommendation of that committee; that the Labor, Wage and Classification Committee is appointed by the Mayor of Superior from people who are elected to the offices of alderman and alderwomen and it is one of several standing committees of the City Council; that promotions of library employees must be approved by the Labor, Wage and Classification Committee and then by the City Common Council; that a resolution of the Library Board of March 14, 1985, authorized the City of Superior to be named the municipal employer of the Superior Public Library staff for all matters involving union negotiations, contract grievances or any other related union matter; that increases in fringe benefits for library employees must be approved by the City Common Council; that the addition of positions in the Superior Public

Library must be voted on and approved by the Labor, Wage and Classification Committee and the City Common Council; and that increases in the number of hours worked by library employees must also be approved by the City Common Council.

10. That the Finance Department is the central administrative department of the City of Superior, and that Timothy Nelson is the Finance Director for the City of Superior and has held that position since November 1, 1975; that he is responsible for the financial aspects of the Superior Public Library and is involved in the City's budget making process which involves the inclusion of the Library in the City budget; that Paul Gaboriault, the Library Director, prepares a budget and submits it to the Library Board, after which that budget is sent to the Finance Director, who reviews that budget with the Mayor of the City of Superior and both then compare that budget with the Library budgets of prior years; that a decision is then made as to whether to make changes in the Library budget submitted or to leave it to the Common Council to make a decision on any particular program or change in the Library budget for that year; that the Common Council has the authority to make increases or decreases in that Library budget; that the Mayor and/or the Common Council have the ability to change any aspect of the Library budget; that all financial matters for the Superior Public Library are processed by the City's Finance Office, which pays all the bills for all departments of the City, and which is responsible for all the payment authorizations; that the Superior Public Library has always been treated as a department of the City of Superior by the City's Finance Office; that the City of Superior levies the tax for the operation of the Superior Public Library and the funding for the library comes from the levies on the taxpayers made by the City's Common Council; that all payroll checks for employees of the Public Library as well as all City employees are required to be signed by the City Clerk and the Finance Director of the City of Superior; that the payroll checks for library employees are the same types of checks that are received by City of Superior employees; that for purposes of Workmen's Compensation insurance and unemployment insurance, all City employees, and library employees, are covered under one policy as City employees; that for purposes of the Wisconsin Retirement Fund, the City of Superior is the only employer for all the people working in the City, including library employees; that if a particular program is instituted in the Superior Public Library and the line item in the Library budget is not sufficient to cover the necessary expenditures for that program, the Library Director would make a request to the City's Common Council for transfer, and a transfer may be made to the Library Director in other line items within the City's budget if the library cannot find funds within its own departmental line items; that if this occurs, funds would in effect be transferred from some other account that has no relationship whatsoever with the library.

11. That among the City of Superior employees who are currently represented by AFSCME Local 235 are secretaries, stenos, account clerk I's, building inspectors and engineer technicians, all of whom work at City Hall, account clerks who work in the City's motorpool or in the equipment depot, clerk-stenos or secretaries who work in the fire department clerks, data processors and custodial employees who work in the police department; and one employee who works at the City's garage; that some of the City's employees who are represented by AFSCME Local 235 work at locations throughout the City of Superior, which are located several miles from City Hall, e.g., the museum and fire hall; that these employees are supervised by the supervisors in the respective departments where they work; that if the hiring of any City employee requires any kind of budgetary action, that employee would not commence work before the City Common Council approved the hiring, but if no budgetary action was required because the position was a replacement, the Mayor of the City of Superior would approve the hiring for that department; that it has been the practice of the Labor, Wage and Classification Committee, with respect to wage increases for library employees, to treat them the same as employees in the City Hall bargaining unit which is represented by AFSCME Local 235; that the same wage increases negotiated by AFSCME Local 235 for the City Hall bargaining unit have been routinely granted to the library employees; that when AFSCME Local 235 negotiated two paid holidays for employees it represents, the library employees also received two paid holidays; and that increases in longevity obtained by AFSCME Local 235 for employees it represents were also given to all other city employees; that personnel files, including absenteeism records, employee vacation reports and

records of wage changes pertaining to library employees are maintained by the City in the Mayor's office, as is the case with such records for all City employees; that the City's Labor, Wage and Classification Committee and the City Common Council approve increases in health insurance for library employees; that increases in sick leave accumulation and pay out for library employees are also approved by the City Common Council; that the lack of common workplace and supervision of the library employees does not warrant creation of a separate bargaining unit of non-professional library employees especially since employees in the unit currently represented by AFSCME also lack common supervision and workplace; and that library employees share a sufficient community of interest with unit employees such that they should be included in the unit represented by AFSCME should a majority of said employees elect to be represented.

12. That in addition to the above described City employees represented by AFSCME Local 235, AFSCME Local 244 is the exclusive representative of a unit of blue collar-type City employees, the Superior Fire Fighter Association Local 74, IAFF, AFL-CIO represents firefighters in the Fire Department and the Wisconsin Professional Policemen's Association Superior Local 27 represents law enforcement personnel in the City's Police Department.

#### CONCLUSIONS OF LAW

1. That the City of Superior, and not the Superior Library Board, is the employer of the library employees set forth in Finding of Fact 7 above.

2. That in light of the agreement of AFSCME and the City to this effect, all regular full-time and regular part-time non-professional employees of the Superior Public Library named in Finding of Fact 7 above comprise an appropriate voting group for the purpose of determining whether the aforesaid employees wish to be represented for the purposes of collective bargaining, but that said voting group would not constitute an appropriate separate bargaining unit.

3. That a question of representation exists among the employees in the voting group described in Conclusion of Law 2; that inasmuch as the employees included in the voting group described in Conclusion of Law 2, share a community of interest with employees included in the bargaining unit of city employees currently represented by AFSCME Local 235, the anti-fragmentation mandate of Section 111.70(4)(d)2.a., Stats., makes it appropriate that employees in the voting group be merged with the employees in the existing unit represented by AFSCME Local 235 in the event that a majority of the employees in the voting group select said union to represent them for the purposes of collective bargaining; but that the Wisconsin Federation of Teachers shall not be placed on the ballot in the election directed herein.

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

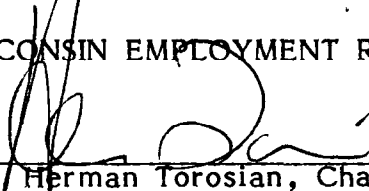
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this Direction in the voting group of all regular full-time and regular part-time non-professional employees of the Superior Public Library among all employees included therein who were employed on February 25, 1986, 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 said employees voting desire to be represented by AFSCME Local 235 for the purpose of

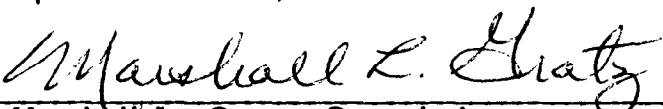
collective bargaining with the City of Superior on wages, hours and conditions of employment, or whether such employees desire not to be so represented by said labor organization.


Given under our hands and seal at the City of  
Madison, Wisconsin this 25th day of February, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

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

The WFT asserts in support of its petition that the employees in question are employees of the Library Board and not the City of Superior, and therefore consistent with City of Cudahy, Dec. No. 21887 (WERC, 8/84), the Commission should direct an election in a separate unit of library employees. Further, employees eligible to vote in said election should be given the choice of voting for representation by WFT, representation by AFSCME, or no representation.

AFSCME 1/ and the City both agree and contend that (1) the City of Superior, not the Library Board, is the employer of the employees in question; (2) said library employees share a community of interest with other City employees currently represented by AFSCME; and (3) an "accretion election" should be directed among said employees with the choice being representation by AFSCME Local 235 or no representation and should a majority of those voting elect to be represented by AFSCME, said employees should be merged in the unit currently represented by AFSCME.

On the issue of whether the City or the Library Board is the employees' employer, only an analysis of the impact of the City and of the Library Board upon the wages, hours and working conditions of library employees will be determinative of the issue. 2/ The mere statutorily prescribed existence of the Superior Library Board does not in and of itself warrant a finding that library employees constitute a separate bargaining unit which should exist separate and apart from a unit of City of Superior City Hall employees. The WFT relies heavily on City of Cudahy, supra, wherein the Commission held the Cudahy Library Board was the employer of library employees, not the City of Cudahy. However, the fact that the Library Board in Cudahy, unlike the Library Board herein, exercised "autonomous powers to hire, supervise and set forth employee compensation and working conditions" was determinative of the issue of which entity was the employer in that case.

In this case the record clearly establishes that the City of Superior, and not the Library Board, is the employer of the employees in the Superior Public Library. The Library Board has only a de minimus impact upon the wages, hours and working conditions of library employees. 3/ Only routine and minimal powers are actually exercised by the Superior Library Board over the library employees, as compared to the very real and substantial powers exercised by the City of Superior over the library employees. The City of Superior's Library budget falls within the City of Superior's budget. It is prepared initially by the Library Director who then presents it to the Library Board. However, once the Library budget is approved by the Library Board, it is sent to the City's Finance Department where it is reviewed and where changes may be made before it is presented to the City's Common Council, which has the ultimate authority for its' approval. The Library Board imposes no taxes and receives only monies which are budgeted by the City's Common Council. Although the Library Director has control over most expenditures within the line items of the library budget, any increases in those line items may come only after approval of them by the City's Common Council; and the library may not make line item transfers. Payroll checks for library employees are prepared by the City. Similarly, health insurance, life insurance, unemployment compensation, workmen's compensation and Wisconsin Retirement Fund matters pertaining to library employees are all handled by the City's Finance Department, which handles such

- 
- 1/ In light of developments at the hearing, it appears that there is no need for further processing of AFSCME's petition regarding professional library employees at this time. Therefore, we have dismissed said petition under separate cover.
- 2/ See, City of Cudahy, supra; and City of Wauwatosa, Dec. No. 21145 (WERC, 11/83). See generally, City of Waukesha (Street and Parks Departments), Dec. No. 21034 (WERC, 10/83), (Commission stated while separation of personnel function, by itself, may not be determinative, it is one important factor in the analysis. Other factors include independent sources and control of revenues and budget.)
- 3/ City of Wauwatosa, supra.

matters for all City employees. Changes in the wages and classifications of library employees must all be approved by the City's Labor, Wage and Classification Committee, and ultimately by the City Common Council. Salary increases and promotions of library employees must go through the City's Labor, Wage and Classification Committee and then be approved by the City Common Council. Increases in health insurance for library employees must be approved by the City's Labor, Wage and Classification Committee and the City Common Council. Longevity increases, and increases in sick leave accumulation and pay out pertaining to library employees must be approved by the City's Labor, Wage and Classification Committee and the City Common Council.

In summary, the record establishes that, with the exception of the daily work supervision of library employees, in all of these areas, the control and authority of the Superior Library Board over library employees is de minimus. Final authority and actual control over library employees is vested in the City. Consequently, the Commission is satisfied that the City of Superior, and not the Library Board, is the employer of the library employees herein.

In determining the appropriateness of a collective bargaining unit, the Commission's decision is guided by Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act, which provides:

"The Commission shall determine the appropriate unit for the purposes of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal workforce. In making such determination, the Commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit."

Turning to the question of whether a separate bargaining unit of non-professional library employees would be appropriate in this case, we conclude creation of a separate unit would constitute undue fragmentation within the meaning of Sec. 111.70(4)(d)2.a., Stats. 4/ Hence, we cannot sanction a ballot choice (WFT) that would result in creation of such a separate unit.

We believe the library employees share a sufficient community of interest with other City non-professional employees in AFSCME's unit to warrant their being merged into the existing unit should a majority of eligible employees vote for representation. The unit represented by AFSCME includes employees in many different offices and departments. These employees lack common supervision. Thus, the fact that library employees work at a different location with different supervision cannot serve as a basis for creating a separate unit. In addition, the record reveals that many of the library employees in question are in clerical positions as are many of the employees in the unit represented by AFSCME. Thus far, library employees have been treated the same as unit employees as regards wage adjustments and fringe benefits. Moreover, library employees and unit employees receive paychecks from the City. For these reasons we find a separate bargaining unit of unrepresented, non-professional library employees would not be appropriate. Hence, we conclude that if these employees want to be represented for collective bargaining purposes, said employees appropriately should be included in the existing bargaining unit of City Hall and related employees which is represented by AFSCME Local 235.

Because the election directed herein is limited to the issue of whether the unrepresented library employees should be included in the existing bargaining unit represented by AFSCME Local 235, the name of the Wisconsin Federation of Teachers will not be placed on the ballot. Therefore, the anti-fragmentation mandate of Section 111.70(4)(d)2.a, Stats., will best be served by merging the library

---

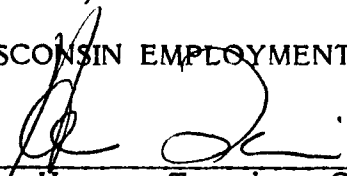
4/ Joint School District No. 2, City of Sun Prairie, et al., Dec. No. 20459, (WERC, 3/83).

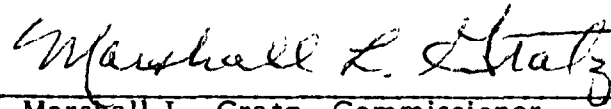
employees with the unit of City Hall employees represented by AFSCME Local 235, if a majority of the currently unrepresented, non-professional library employees voting vote in favor of representation by AFSCME Local 235.


Given under our hands and seal at the City of  
Madison, Wisconsin this 25th day of February, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner