

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of	:	
	:	
TEAMSTERS UNION LOCAL 579	:	Case 30
affiliated with the INTERNATIONAL	:	No. 37670 ME-2636
BROTHERHOOD OF TEAMSTERS,	:	Decision No. 24354
CHAUFFEURS, WAREHOUSEMEN AND	:	
HELPERS OF AMERICA and WISCONSIN	:	
COUNCIL 40, AFSCME, AFL-CIO	:	
	:	
Involving Certain Employes of	:	
	:	
CITY OF WHITEWATER	:	
	:	

Appearances:

Goldberg, Previant, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 788 North Jefferson Street, Milwaukee, Wisconsin 53202, by Ms. Marianne Goldstein Robbins, Attorney at Law, appearing on behalf of the Teamsters' Union No. 579.

Mr. Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1722 St. Lawrence Avenue, Beloit, Wisconsin 53511, appearing on behalf of Wisconsin Council 40.

Lindner & Marsack, S.C., Attorneys at Law, 700 North Water Street, Milwaukee, Wisconsin 53202, by Mr. James R. Scott, appearing on behalf of the City of Whitewater.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTIONS

Teamsters' Local Union 579, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Wisconsin Council 40, AFSCME, AFL-CIO, having on October 7, 1986 and November 4, 1986, respectively, filed petitions requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the provisions of the Municipal Employment Relations Act, among certain employes in the employ of the City of Whitewater; and a hearing in the matter having been conducted on December 15, 1986, at Whitewater, Wisconsin, before Examiner Deborah A. Ford; and the parties having filed briefs by January 7, 1987; and a transcript of the proceedings having been received on February 16, 1987; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That Teamsters' Local Union No. 579, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as Local 579, is a labor organization with its principal offices at 2214 Center Avenue, Janesville, Wisconsin 53545.
2. That Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as Council 40, is a labor organization, and has its principal offices at 1722 St. Lawrence Avenue, Beloit, Wisconsin 53511.
3. That the City of Whitewater, hereinafter referred to as the City, is a municipal employer which has its principal offices at 312 W. Whitewater Street, Whitewater, Wisconsin.
4. That in its petition initiating the instant proceeding, Local 579 sought an election to determine whether the employes in the following alleged appropriate unit desire to be represented by it for the purpose of collective bargaining;

All full-time and regular part-time office clerical employes employed by the City at its City of Whitewater Public Library, 402 West Main Street and City Hall at 312 West Whitewater Street, and at 131 West Center Street, Whitewater, Wisconsin.

5. That in its petition for election, Council 40 sought an election to determine whether the employees in the following alleged appropriate unit desire to be represented by it for purposes of collective bargaining:

All office and clerical employees, including Engineer Aide, Building Maintenance, Chemist and Laboratory Assistant, but excluding professional, supervisory and managerial employees, and employees who are members of other bargaining units.

6. That at hearing both Local 579 and Council 40 amended their petitions to give unrepresented professional employees an opportunity to vote for inclusion in the proposed unit.

7. That the City contends that the following unit would be appropriate for collective bargaining:

All full-time and regular part-time office clericals, and library employees including the engineering aide, employed by the City of Whitewater, and excluding managerial, professional and supervisory employees.

8. That the City, contrary to Local 579 and Council 40, contends that the position of assistant library director should be excluded from the Petitioners' proposed unit on the grounds that it is professional and supervisory, and that the position of City Treasurer should be excluded on the grounds that it is managerial.

9. That at hearing the parties stipulated to the following facts: that the building maintenance position no longer exists and should be excluded from the proposed unit; that the chemist position, currently occupied by Chester Denik, should be excluded on the ground that it is supervisory in that Denik effectively recommends hiring and makes disciplinary decisions; that the position of secretary to the City Manager, currently occupied by Andrey Route, should be excluded on the grounds that it is confidential in that she is directly involved in the preparation of bargaining proposals and documents associated with hiring and firing decisions; and that the position of administrative assistant to the Chief of Police, currently occupied by Susan Burkhardt, should be excluded on the grounds that she is confidential and supervisory because she effectively recommends hiring and disciplinary decisions and is involved in the processing of grievances.

10. That the parties also stipulated at hearing to the accretion of two chemical assistants, referred to in the Local 579 petition as laboratory aides, to the Department of Public Works unit currently represented by Council 40.

11. That the position of City Treasurer is currently occupied by Theresa Graham; that Graham has held that position for three and one half years; that Graham's qualifications for the job of City Treasurer are the result of approximately six months of technical training as well as on the job training; that, as City Treasurer, Graham is responsible for the collection and deposit of all incoming City revenues, and for keeping track of all the City's checking and investment accounts; that Graham is also responsible for making sure that bills are paid when they become due; that one of Graham's primary responsibilities involves the investment of the City's surplus monies in various financial institutions; that at the time of hearing the City Treasurer was responsible for overseeing accounts totaling in excess of four million dollars and which had earned approximately \$25,000 in interest income during a one month period; that Graham's immediate supervisor is the City Clerk/Comptroller; that when monies become available for reinvesting Graham consults with the City Clerk/Comptroller to find out if the monies are needed for other purposes or to find out how long she can reinvest the funds; that although Graham provides input, it is the City Clerk/Comptroller who authorizes the creation of accounts different from or in addition to those currently in existence; that before Graham pays any bills she gets the approval of the City Clerk/Comptroller or the City Council; that when monies become available for reinvesting it is Graham's responsibility to research what options are available to the City for reinvesting; that factors considered by Graham when looking for such vehicles include the location of the financial institution, the interest rate being offered, the degree of liquidity and level of risk, and the amount the institution will insure; that once she has determined

what options are available, Graham then takes the information and her recommendation as to what option should be pursued to the City Clerk/Comptroller; that to date the Clerk/Comptroller has never overruled a recommendation made by Graham in this area; that Graham and the Clerk/Comptroller consult on a daily basis in order to keep track of expenditures from the various accounts; that Graham does not attend department head meetings; that Graham earns an annual salary of approximately \$20,000; and that Graham does not have sufficient independent control or authority over the allocation of City financial resources to be deemed a managerial employe.

12. That the position of assistant library director is currently occupied by Rosemary Leaver; that Leaver possesses a master's degree in library science; that Leaver is one of eight employes employed by the Whitewater Public Library which includes one technical assistant, five library assistants and the director; that Leaver's immediate supervisor is the library director who in turn reports to the City Manager; that at hearing the parties stipulated that Leaver is a professional employe within the meaning of MERA; that as assistant library director Leaver is responsible for providing reference services to the public and for the purchase and evaluation of materials for reference services and of materials for the children and youth collections; that Leaver is also responsible for the coordination and implementation of the inter-library loan services, programming, and other duties as assigned by the library director; that Leaver does not have the authority to hire, fire or discharge employes; that Leaver has not had occasion to make recommendations in this regard, effective or otherwise; that although Leaver participated in the interviewing of the summer intern for the summer of 1985, she was not asked to participate in the interviewing process for summer interns for the summer of 1986; that Leaver does not approve vacation, sick leave or time off requests; that while Leaver does assign employes to work with her on occasions when she is behind in her work, any resulting supervision relates to the activity assigned rather than to the employe assigned to assist in the work; that when the library director is away from the library, she provides Leaver with a list of duties that are to be done in her absence and Leaver is responsible for making sure they are carried out; that it is the library director who makes up the work schedules for employes; that Leaver has attended department head meetings in the absence of the library director, but that on at least one occasion, the library technical asistant attended this meeting when Leaver was absent; that Leaver generally works from 8:30 a.m. to 5:30 p.m. except for Mondays when she is assigned to work from 11:30 a.m. to 8:30 p.m.; that other library employes are assigned to staff the library during the other evenings that it is open; that generally speaking library employes are fairly familiar with their job duties on a daily basis and require little supervision; that Leaver is paid substantially higher wages than other library employes but receives the same benefits; and that Leaver does not possess or exercise supervisory duties and responsibilities in sufficient combination and degree to warrant a finding that she is a supervisory employe.

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

CONCLUSIONS OF LAW

1. That a voting group consisting of all regular full-time and regular part-time non-professional employes employed by the City of Whitewater, excluding supervisory, managerial and confidential employes and those employes who are members of other bargaining units would constitute an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a.

2. That a voting group consisting of all regular full-time and regular part-time professional employes employed by the City of Whitewater excluding supervisory, managerial and confidential employes and those professional employes who are members of other bargaining units would constitute an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a. Stats.

3. That the voting groups described in Conclusions of Law 1 and 2 would constitute a single appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a. Stats. if combined pursuant to conditions set forth in the Direction of Elections.

4. That a question of representation within the meaning of Sec. 111.70(4)(d)(3), Stats., presently exists among the employes of the City of Whitewater in the two voting groups described above.

5. That the individual occupying the position of City Treasurer is not a managerial employe, and therefore, is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats. included in the voting group described in Conclusion of Law 1.

6. That the occupant of the position of Assistant Library Director is a professional employe but is not a supervisory employe and, therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., included in the voting group described in Conclusion of Law 2.

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

DIRECTION OF ELECTIONS

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Directive in the following voting groups for the following purposes:

Voting Group No. 1

all regular full-time and regular part-time non-professional employes employed by the City of Whitewater excluding managerial, confidential and supervisory employes and employes who are members of other bargaining units, who were employed by the City of Whitewater on March 27, 1987, except such employes as may prior to election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employes voting desire to be represented by either Teamsters, Local Union 579, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or Wisconsin Council 40, AFSCME, AFL-CIO, or by neither of said organizations for the purpose of collective bargaining with the City of Whitewater on wages, hours and conditions of employment.

Voting Group No. 2

all regular full-time and regular part-time professional employes employed by the City of Whitewater excluding managerial, confidential and supervisory employes and employes who are members of other bargaining units, who were employed by the City of Whitewater on March 27, 1987, except such employes as may prior to election quit their employment or be discharged for cause, for the purpose of determining (1) whether a majority of the employes in said voting group desire to be included in the bargaining unit described in Voting Group No. 1 and (2), whether a majority of said employes voting desire to be represented by either Teamsters, Local Union 579, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or Wisconsin Council 40, AFSCME, AFL-CIO, or by neither of said organizations for the purpose of collective bargaining with the City of Whitewater on wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 27th day of March, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner
Danae Davis Gordon
Danae Davis Gordon, Commissioner

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

BACKGROUND

The petitioning Unions seek to represent employes for the purposes of collective bargaining in a residual unit of certain professional and non-professional employes of the City of Whitewater.

POSITIONS OF THE PARTIES:

City

The City contends, contrary to the Local 579 and Council 40, that the City Treasurer should be excluded from the bargaining unit on the ground that she is a managerial employe. In support of this contention the City points to her responsibility for the management of the City's checking and investment accounts, and for the investment of significant sums of City money and her authority to commit and move such sums between various financial institutions. The City also argues that this authority, together with the fact that City Treasurers are created by statute, make the City Treasurer position a key figure in City government and thus clearly managerial.

With respect to the assistant library director, the City argues that she should be excluded from a non-professional unit on the grounds of supervisory and professional status. According to the City, the assistant director can direct and assign the work of other employes, exercises independent judgement as a professional employe and receives a substantially greater salary than other library employes. In addition, the City argues that failure to find that the assistant director is a supervisor would leave the library without supervision for substantial periods of time.

LOCAL 579 AND COUNCIL 40

The Petitioners contend that the City Treasurer is not a managerial employe since she does not attend department head meetings or participate in any other way in the formulation or implementation of management policy. Moreover she is not involved in the development of the budget, nor can she allocate funds from the budget. Rather, argues the Petitioners, she simply deposits and maintains funds in previously determined accounts based on the needs of the City. On those occasions when funds do become available for reinvesting, her options are limited to those institutions previously approved by the City Council and subject to insured limits, the final decision over which rests with the City Clerk/Comptroller. Thus while she can determine available options actual distribution of funds is restricted by the City Council and subject to the approval of the City Clerk/Comptroller. Under these circumstances, the Petitioners argue her job is more ministerial than managerial.

With respect to the Assistant Library Director, the Petitioners argue that she lacks virtually all of the indicia of supervisory status. That those duties which she performs apart from her role as youth services and reference librarian require less than 5% of her time and are often times performed by other members of the library staff. While admitting that she does assign work to other staff on occasion, the Petitioners assert that this involves the supervision of an activity rather than employes. Petitioners attribute her greater salary to her professional rather than supervisory responsibilities.

DISCUSSION

City Treasurer

In determining whether an individual is a managerial employe, the Commission has consistently looked to see whether the employe participates to a significant degree in the formulation, determination and implementation of management policy, and whether the employe has the effective authority to commit the employer's resources. Effective authority to commit the employer's resources has been

interpreted to mean the ability or authority to establish an original budget or to allocate funds for differing purposes from such a budget, where that authority is more than ministerial in nature. 1/ Examination of the record reveals that Graham does not establish an original budget nor can she allocate funds for differing purposes from the budget. While it is clear that Graham has a role in the implementation of management fiscal policy, her responsibilities are essentially advisory and ministerial. Graham pays only those bills for which the City Clerk/Comptroller has approved payment. With respect to the investment of excess funds, Graham's duties consist of researching the available options and making recommendations based on the clearly defined criteria of available interest rates, insured limits, the need for liquidity and geographical location. Under these circumstances it does not appear that Graham either sufficiently participates in the development of management policy or has sufficient authority to commit the City's resources so as to warrant a finding of managerial status.

With respect to the City's argument for exclusion premised upon the statutory basis of Graham's position, we do not find that statutory reference to the position precludes inclusion in a bargaining unit. Our determinations as to municipal employe status are based upon the duties and responsibilities of the position. We have found that the position of City Treasurer is appropriately included in the non-professional voting group.

Assistant Library Director

The City also seeks to have the Assistant Library Director excluded from the proposed bargaining unit on the grounds that she is a professional and a supervisor. In determining whether a position is supervisory, the Commission has consistently considered the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skills or for his/her supervision of employes;
6. Whether the supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employes;
7. The amount of independent judgement exercised in the supervision of employes.

The Commission has also held that not all of the above factors need to be present, but if a sufficient number of those factors appear in any given case, we will find an employe to be a supervisor. 2/

Examination of the record reveals that the Assistant Library Director is primarily responsible for providing reference services and directing youth programming for the library. Leaver does not have the authority to hire, fire or discipline employes nor does she effectively recommend same. Although she was allowed to sit in on the interview of a summer intern, she was not allowed to participate in the interviewing of summer interns the following year. Leaver does not draw up work schedules, grant time off for vacation and sick leave or approve time sheets. Even though Leaver is assigned a summer intern to work with her during the summer, any requests by the intern for time off must be made to the Director. Although

1/ Kewaunee County, Dec. No. 11096-C (WERC, 2/86); Jackson County, Dec. No. 17828-B (WERC, 10/86).

2/ Laona School District, Dec. No. 22825, (WERC, 8/85).

the City argues that Leaver has the authority to assign and direct the work of other library employes, examination of the record reveals this to be more in the nature of requests for assistance and supervision of an activity rather than personnel. In the event of the Director's absence, Leaver's responsibilities during her absence are usually outlined in a memo for her by the Director, thus reducing the need for Leaver to make any decisions of her own with respect to such duties. Leaver estimated that she spends no more than five percent (5%) of her time on responsibilities related to those of the Director and that the other ninety-five percent is spent performing non-supervisory duties. Although the City contends that the failure to find Leaver a supervisor would leave the library without proper supervision during the Director's frequent absences, it appears that such absences are generally of only a few hours duration and that library employes require minimal supervision while performing their daily tasks. Moreover, during those evenings and weekends when neither the Director or assistant director is on duty, responsibility for running the library is given to the other library staff personnel who are scheduled to work. As to the disparity in pay between Leaver and other library employes, it would appear the disparity is a reflection of her professional responsibilities rather than her supervisory duties. Based on the foregoing, we do not find Leaver to be a supervisor within the meaning of Sec. 111.70(1)(o)1., Stats.

As to the City's contention that Leaver should be excluded from a bargaining unit based upon her professional status, Sec. 111.70(4)(d)2.a. Stats., explicitly authorizes as appropriate the co-mingling of professional and non-professional employes in a single unit as sought by the petitioning Unions herein. Thus the City's argument is rejected.

When a union in an election proceeding desires to include professional employes in a single unit with non-professional employes, Sec. 111.70(4)(d) of the Municipal Employment Relations Act requires that the professional employes be given an opportunity to vote to determine whether they desire to be included with the non-professional employes in a single unit. In order to be included in a unit with non-professional employes, a majority of the eligible professional employes must vote for such inclusion. Therefore, in this proceeding, the professional employes (Voting Group No. 2) will be given two ballots (1) to determine whether they desire to be included in a single unit with non-professional employes (Voting Group No. 1) and, (2) whether they desire to be represented by either Union. The professional employes who appear to vote will be instructed to place their representation ballots in a furnished blank white envelope and to seal such envelope and deposit same in the ballot box. The unit determination ballot will be a separate colored ballot and the professional employes will be instructed to deposit their unit determination ballots in the ballot box.

The unit determination ballots cast by the professional employes will be initially counted, and should a majority of the eligible professional employes vote in favor of being included in a unit with non-professional employes, the sealed envelopes, containing the ballots of the professionals with respect to representation will be opened and their ballots will be co-mingled with the representation ballots cast by the non-professional employes, and thereafter the tally will include the representation ballots cast by all employes.

Should a majority of the professional employes eligible not vote in favor of being combined in a unit with non-professional employes, then the professional employes shall constitute a separate unit, and their representation ballots will not be co-mingled with the representation ballots cast by the non-professional employes.

Dated at Madison, Wisconsin this 27th day of March, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner