

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN COUNCIL OF COUNTY
AND MUNICIPAL EMPLOYEES,
DISTRICT 40, AFSCME, AFL-CIO
Involving Certain Employees of
CITY OF MANITOWOC
LIBRARY BOARD

Case 61
No. 36892 ME-2572
Decision No. 24442

Appearances:

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 370, Manitowoc, WI 54220, appearing on behalf of the Union.
Mr. Patrick L. Willis, City Attorney, City of Manitowoc, 817 Franklin Street, Manitowoc, Wisconsin 54220, appearing on behalf of the City of Manitowoc Library Board.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DIRECTION OF ELECTION

On April 28, 1986, Wisconsin Council 40, AFSCME, AFL-CIO, filed a petition requesting the Wisconsin Employment Relations Commission to direct an election to determine if all regular full-time and regular part-time employees of the Manitowoc Public Library, excluding the Library Director and the Administrative Assistant, desired to be represented for the purposes of collective bargaining; that on July 17, 1986, hearing on the petition was held in Manitowoc, Wisconsin before Coleen A. Burns, an examiner on the Commission's staff; that a stenographic record was made of the hearing; that the record was closed on September 9, 1986, upon receipt of the parties' written argument; 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, Conclusions of Law, and Direction of Election.

FINDINGS OF FACT

1. That the City of Manitowoc Library Board, hereinafter Library Board or Employer, is a municipal employer with offices located at 808 Hamilton Street, Manitowoc, Wisconsin 54220.

2. That Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization with offices located at P.O. Box 370, Manitowoc, Wisconsin 54220.

3. That on April 28, 1986, the Union filed with the Commission a petition for election in which the Union sought to represent both professional employees and nonprofessional employees in a single unit consisting of all regular full-time and regular part-time employees of the City of Manitowoc Library Board, excluding the Director and the Administrative Assistant;

4. That the City of Manitowoc Public Library is owned and operated by the City of Manitowoc pursuant to Chapter 43 of the Wisconsin Statutes; that Charles Perdue, hereinafter Library Director, is the Chief Executive of the City of Manitowoc Public Library; that final authority to determine the policy, commit the resources and supervise the employees of the City of Manitowoc Public Library resides with the City of Manitowoc Library Board; that the City of Manitowoc Public Library contracts with the Manitowoc-Calumet Public Library System to provide services; that all of the employees subject to the instant petition are employees of the City of Manitowoc Library Board.

5. That the Employer and the Union agree that the positions set forth below are appropriately excluded from either the professional or the nonprofessional voting group.

(UNDISPUTED EXCLUSIONS)

<u>Incumbent</u>	<u>Position</u>	<u>Basis for Exclusion</u>
Charles O. Perdue	Library Director	Managerial, Supervisory
Sherry Netzler	Administrative Assistant	Managerial, Confidential
Dale Gort	Support Services Coordinator	Managerial, Supervisory
Carol Gibson	System Services Coordinator	Managerial, Supervisory
Becky Kellenbenz	Audio Visual Page	Casual
Anne Barnhart	Circulation Page	Casual
Renee Doubek	Circulation Page	Casual
Lori Franz	Circulation Page	Casual
Tammy Krcma	Circulation Page	Casual
David McKee	Circulation Page	Casual
Ann Miller	Circulation Page	Casual
Penny Miron	Circulation Page	Casual
Kathy Newman	Circulation Page	Casual
Jolene Purchatzke	Circulation Page	Casual
Leah Sweeney	Circulation Page	Casual
Wendy Falvey	Tech. Services Page	Casual
Vicki Matte	Tech. Services Page	Casual
Paul Skarivoda	Mailbox Page	Casual
Tammy Van Dyke	Story Wagon Assistant	Casual
Andrea Fossum	Story Wagon Clerk	Casual
Karen Lundstrom	Story Wagon Clerk	Casual

6. That the Employer and the Union agree that the following positions are appropriately included in the nonprofessional voting group:

(UNDISPUTED NONPROFESSIONALS)

<u>Incumbent</u>	<u>Position</u>
Mike Kouba	Custodian/Guard
Stanley Lambkin	Custodian/Guard
Allen Shavlik	Custodian/Guard
Gail Robinson	Janitor
Cindy Stephani	PR Assistant

(Continued from Page 2)

(UNDISPUTED NONPROFESSIONALS)

<u>Incumbent</u>	<u>Position</u>
Louis Hoeft	Audio Visual Supervisor
Ginger Baryenbruch	Audio Visual Assistant
Kim Hahn	Youth Services Assistant
Jean Duenkel	Youth Services Assistant
Connie Kocian	Circulation Asst.
Marcella Leonard	Circulation Asst.
Phyllis McKee	Circulation Asst.
Joni Nething	Circulation Asst.
Ann Reimer	Circulation Asst.
Renee Schmitz	Circulation Asst.
Mary Schreiner	Circulation Asst.
Grace Boeder	Tech. Serv. Asst.
Marian Kanzelberger	Inter. Loan
Laura Schreiner	Inter. Loan
Merl Busse	Driver
Carolyn Anderson	Mailbox Asst.
Mary Roberts	Mailbox Asst.

7. That the Union and Employer agree that the positions set forth below are appropriately included in the professional voting group:

(UNDISPUTED PROFESSIONALS)

<u>Incumbent</u>	<u>Position</u>
Linda Bendix	Reference Librarian
Ann Kuffel	Reference Librarian
Liz Foster	Reference Assoc.
Sue Rohrer	Youth Services Assoc.
Shirley Steckmesser	Youth Services Assoc.
Betty Miller	Tech. Services Assoc.

8. That the Union and the Employer agree that the following positions are professional; and that the Employer, contrary to the Union, contends that the positions are appropriately excluded from the professional voting group on the basis that the employees occupying the positions are supervisory and/or managerial:

<u>Incumbent</u>	<u>Position</u>
Susan Hagen	Youth Services Department Head
Joyce Peterson	Technical Services Department Head
Brenda Corman	AV/Reader Services Department Head

9. That the Union contends that the following individuals are appropriately included in the professional voting group; and that the Employer argues that the following employees should be excluded from either voting group on the basis that the individuals occupying the positions are supervisory and/or managerial:

<u>Incumbent</u>	<u>Position</u>
Jan Ohlemacher	Public Relations Supervisor
Rosemary Singh	Reference Services Department Head
Open Position	Circulation Services Department Head
Alice Kelley	Direct User Services Department Head

10. That the number of employees in the individual library departments varies as follows:

<u>Department</u>	<u>Number of Employees</u>
Maintenance Services Department	5
Public Relations Department	2
A/V Reader Services Department	4
Reference Services Department	4
Youth Services Department	5
Circulation Services Department	18
Technical Services Department	5
Library Support Services Department	3
Direct User Services Department	7

11. That the Union and the Employer agree that Robert Gretz, hereinafter Head Custodian or Maintenance Mechanic Supervisor, is a nonprofessional employee; and that the Employer, contrary to the Union, contends that the Head Custodian is a supervisory employee.

12. That there are five employees in the Employer's Maintenance Services Department, i.e., Gretz, three Custodian/Guards and one Janitor; that Robert Gretz has held the position of Maintenance Mechanic Supervisor for seven years; that Gretz, a full-time employee, performs minor building maintenance, as well as custodial duties such as vacuuming and cleaning; that the Janitor, a part-time employee, works at times when Gretz is normally scheduled to work; that the Janitor normally performs a routine schedule of duties; that Gretz may assign additional duties to the Janitor as circumstances require; that Gretz has never recommended that any employee receive a raise; that when Gretz was no longer able to complete his work during his work hours, he asked the Library Director to increase the Janitor's work hours; that the Janitor's work hours were increased to twenty hours per week, the effect of which was to make the Janitor eligible for fringe benefits; that the Custodian/Guards are part-time employees who work evening hours; that the work hours of Gretz and the Custodian/Guards do not overlap; that the Custodian/Guards act as security guards until the Library closes and, for one hour thereafter, perform custodial work such as cleaning bathrooms and emptying wastebaskets; that Gretz does not assign work to the Custodian/Guards; that Gretz has limited authority to direct the work activity of Custodian/Guards, i.e., if

Gretz finds that a Custodian/Guard has not performed the custodial work to Gretz' satisfaction, Gretz will direct the Custodian/Guard to correct the unsatisfactory work; that no Custodian/Guard has ever failed to correct work when so directed by Gretz; that Gretz would refer any matter requiring disciplinary action to the Library Director; that of the four employees hired into the Maintenance Services Department during his tenure as Maintenance Mechanic Supervisor, Gretz participated in the hiring of only the most recent hire, i.e., Shavlik; that when a vacancy became available, Gretz recalled that Shavlik had indicated an interest in working for the Library; that Gretz recommended Shavlik to the Library Director; that Gretz and the Library Director jointly interviewed Shavlik until Gretz was called away; that the Library Director completed Shavlik's interview after Gretz left; that during a discussion following the interview, Gretz and the Library Director jointly agreed to hire Shavlik; that Gretz does not have authority to promote, transfer, discipline and/or discharge Maintenance Service Department employees, or to effectively recommend the same; that authority to promote, transfer, discipline and/or discharge Maintenance Service Department employees rests with the Library Director and/or Library Board; that Gretz does not have authority to hire Maintenance Service Department employees, or to effectively recommend the same; that Gretz functions as a lead worker, whose supervisory duties primarily involve the supervision of a work activity, rather than the supervision of an employee; and that Gretz is primarily engaged in the performance of maintenance/custodial duties.

13. That the System Services Division includes two departments, i.e., the Library Support Services Department and the Direct User Services Department; that the Division is under the direction and control of Carol Gibson, the System Services Division Coordinator; that the Library Support Services Department performs state mandated services in the areas of continuing education, automation and technical services consulting, delivery of materials, interlibrary loan, multi-library cooperation, open access, and reciprocal borrowing between libraries; that the Direct User Services Department administers the Mail Box Program, Story Wagon Program, and provides materials to users with special needs such as the handicapped and the elderly; that the System Services Division budget is funded primarily by state aids and, secondarily, by user service fees; that the amount of state aids available for expenditure is known at the time that the budget is developed; that Gibson, who also functions as head of the Library Support Services Department, prepares the Library Support Services Department budget; that Alice Kelley, Direct User Services Department Head, prepares the Direct User Services Department budget; that Gibson and Kelley jointly determine the manner in which available monies are to be apportioned to each Department; that the budget prepared by Kelley is subject to review by Gibson; that if Kelley and Gibson were to disagree concerning amounts to be appropriated to the Direct User Services Department, Gibson would have authority to overrule Kelley, but that this has never occurred; that Gibson prepares the Division budget by combining the two department budgets; that the Division budget is submitted to the Library Director and the Manitowoc-Calumet Library System Board; and that the Manitowoc-Calumet Library System Board has final authority to approve, modify and/or reject the System Services Division budget.

14. That the Public Relations Supervisor, Circulation Services Department Head, Technical Services Department Head, Reference Services Department Head, Youth Services Department Head, and the AV/Reader Services Department Head, hereinafter Department Heads, are responsible for preparing a budget for their respective Departments; that there is a standardized format of line items which falls within four general categories, i.e., capital outlay, personnel, supplies and library materials; that requests for expensive equipment and/or service expansion are generally discussed with the Library Director prior to inclusion in the Department budget; that, in previous years, the Department Heads submitted their budgets directly to the Library Director; that the Library Director combined the department budgets to form the Library budget; that the Circulation Services Department and the Technical Services Department are under the direction and control of Dale Gort, Support Services Coordinator; that Gort's position is newly created and Gort has not yet had the opportunity to serve as Coordinator during the budget preparation process; that Gort intends to review the budgets submitted by the two Departments under his control to ensure that there is no duplication of effort and, further, to ensure that the level of expenditures are realistic given past expenditures, current inflation, and goals and objectives; that Gort has authority to modify or reject the budgets prepared by the Department Heads in his division; that Gort will submit the Support Services Division budget to the

Library Director; that the Library Director has authority to accept, modify or reject the Department and Division budgets; that the Library Director submits the Library budget to the Library Board; that the Library Board has authority to accept, modify or reject the Library budget submitted by the Library Director; that Department Heads do not participate in the presentation of the budget to the Library Board, except as requested to explain technical terminology or processes; that in the most recent budget, all of the Department Head requests for capital outlay expenditures were rejected by the Library Board; that the rejection was recommended by the Library Director, who determined that there was insufficient money to fund both capital outlay and wage increases and, further, concluded that available money should be expended on wages; that in previous years, Department Head budget requests for equipment purchases such as typewriters and computer terminals have been approved by the Library Board; that the budget approved by the Library Board is presented to the Manitowoc City Council by the Library Director and/or members of the Library Board; that the City Council has authority to set the levy amount from which the Library budget is funded, but does not have authority to determine the manner in which Library monies are expended; that Department Heads have authority to expend money for purposes for which the money is appropriated in the budget; that the Library Director considers Department Heads to have authority to transfer monies from one account to another as needed; that Department Heads generally do not allocate funds for purposes other than that for which the money is appropriated, except as approved by the Library Director; that the Library Director and the Library Board value the opinions of the Department Heads and give serious consideration to their budget requests; and that the Library Director and the Library Board do not automatically approve Department Head budget requests, but rather, independently evaluate the budget requests and reject or modify requests deemed to be inappropriate.

15. That the Library Director, the two Coordinators, the Public Relations Supervisor, the Reference Services Department Head, Youth Services Department Head, Circulation Services Department Head, Technical Services Department Head, Direct User Department Head and the AV/Reader Services Department Head meet on a weekly basis to discuss policy affecting, inter alia, day to day operations, collection development, patron problems, general personnel matters such as preparation of job descriptions and the implementation of job evaluations; that these Department Heads are expected to develop Departmental goals and objectives, which goals and objectives are submitted to the Library Board and generally approved without modification; that Department Heads have a responsibility to ensure efficient Department operations by, inter alia, assigning work, directing employee work activity and maintaining work flow; that as long as these Department Heads remain within their budget, these Department Heads have authority to expand services; and that decisions to retain, add to, or delete material from the collection are made by librarians who are Department Heads, as well as by librarians who are not Department Heads.

16. That some Departments, such as Technical Services, have regularly scheduled work hours; that other Departments, such as the AV/Reader Services Department and the Youth Services Department, have fluctuating work schedules; that, with the exception of the Reference Services Department Head, Department Heads have authority to schedule employee work hours; that generally work schedules are developed in consultation with and the agreement of affected employees; that all Department Heads are required to sign vacation and sick leave requests; that Department Heads, excluding the Reference Services Department Head, have authority to deny employee vacation requests, but that such vacation requests are almost always approved by the Department Head; that Susan Hagan, Youth Services Department Head, has denied an employee time-off when there was insufficient staff available to meet the needs of the Department; that vacation requests approved by the Department Heads are sent to the Library Director for approval; that the Library Director has never denied a vacation request approved by a Department Head; that Joyce Peterson, Technical Services Department Head, has scheduled employees to work on Saturday, which is outside the employee's normal work schedule; that the Technical Services Department Head, A/V Reader Services Department Head and Youth Services Department Head have authority to approve overtime which is payable in compensatory time-off; that overtime requiring the payment of time and one-half must be approved by the Library Director; that Department Heads have authority to assign work tasks to Department employees and are responsible for maintaining the work flow; that Department Heads have authority to issue or to effectively recommend issuance of verbal and written warnings to employees; that while Department Heads would not suspend or discharge an employee without first

obtaining the approval of the Library Director, they can effectively recommend that an employee be suspended or discharged; that the Library Director has never received a recommendation that an employee be suspended; that when Dale Gort was Technical Services Department Head, he recommended the firing of an LSCA Grant employee who was repeatedly tardy; that the Library Director, accepted Gort's recommendation and fired the employee; that, historically, Department Heads have rarely needed to discipline employees; that the Library provides very few promotional opportunities; that although Department Heads may recommend employees for promotion, it is not commonly done; that the Library Director, who has authority to promote employees, has accepted some Department Head recommendations for promotion and has rejected others; that Department Heads do not have authority to permanently transfer employees to another department; that the Technical Services Department Head, A/V Reader Services Department Head, and the Youth Services Department have authority to temporarily assign employees to work in other Departments; that when vacancies are to be filled, Department Heads select applicants to be interviewed for employment, interview applicants, and make effective recommendations to the Director as to which applicant should be hired; that the Library Director generally does not participate in the interviews unless his presence is requested by the Department Head; that it is common for the Library Director to participate in the interview of applicants seeking a professional position; that it is uncommon for the Library Director to participate in the interview of applicants seeking nonprofessional positions; that the Library Director, prior to acting upon a Department Head recommendation, may question the Department Head concerning the qualifications of the employee recommended for employment; that the extent of questioning is generally dependent upon the level of responsibility of the position to be filled, i.e., the more responsible the position, the closer the scrutiny; that the Library Director has always accepted Department Head hiring recommendations; and that Department Heads do not determine employee compensation, nor do they have authority to assign employees to another classification.

17. That Rosemary Singh has been the Reference Services Department Head for many years; that Singh possesses a Master's Degree in Library Science, which degree is a requirement of the position; that Singh, as do the other employees in the Department, selects the reference materials to be used in the Library, provides reference information to Library patrons and instructs patrons in reference methods, sources, services and policies; that in addition to Singh, the Reference Services Department employs three professional employees, i.e., two Reference Librarians and one Reference Associate; that Singh is the only Reference Department employee to regularly attend the weekly meetings between the Library Director and the Department Heads; that Singh considers her attendance at the weekly meetings to be for the purpose of transmitting information between her Department and the Library Director; that when employees are hired into the Reference Department, applicants are jointly interviewed by Singh and the Library Director; that Singh has authority to select the applicants to be interviewed and has exercised this authority; that Singh makes a recommendation as to which applicant should be hired; that Singh recommended the employment of the most recent hire, Linda Bendix; that a few years ago, the Library Director sent Singh a memo stating that he wanted to review Reference Department work schedules; that since the memo, the Library Director has prepared the Reference Services Department work schedules; that Singh is responsible for presenting the Reference Services Department budget to the Library Director; that the Reference Services Department budget is prepared as a joint effort of all Department employees; that in the past year, the Reference Services Department made a budget request for one full-time position; that the Library Board determined that it could not afford the position and approved only a one-half time position; that the position was increased to a full-time position during the budget year, when, as a result of other changes in the library, the Library Director, upon recommendation of Singh, asked the Library Board to approve a full-time position; that the one time that Singh requested that an employee be promoted or reclassified, the request was denied; that Singh has never disciplined or discharged any employee; that Department employee vacations are scheduled by mutual consultation and agreement of the employees; that Singh considers the requirement that she sign vacation requests to be a mere formality and relies upon the Library Director to deny any requests which are inappropriate; that the salary range for the position of Reference Services Department Head is \$18,000 to \$27,000 annually; that the Reference Librarian annual salary ranges from \$16,000 - \$22,880; and that the Reference Associate annual salary range is from \$13,520 - \$19,670; that the Reference Services Department is the only Department which is comprised entirely of

professional employees; that Singh does have authority to effectively recommend hiring of an applicant; that Singh does have authority to effectively recommend employee discipline; and that Singh has authority to assign work tasks to Department employees and direct their work activity.

18. That Robert Gretz, the employee occupying the position of Head Custodian/Maintenance Mechanic Supervisor, does not possess and/or exercise supervisory duties and responsibilities in sufficient combination and degree to warrant a finding that he is a supervisory employee.

19. That the occupants of the positions of Public Relations Supervisor, A/V Reader Services Department Head, Reference Services Department Head, Youth Services Department Head, Circulation Services Department Head, Technical Services Department Head, and Direct User Services Department Head possess and/or exercise supervisory duties and responsibilities in sufficient combination and degree to warrant a finding that they are supervisory employees.

Upon 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 nonprofessional employees in the employ of the City of Manitowoc Library Board, excluding elected officials, supervisors, executive, managerial, casual, and confidential employees would constitute an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. That a voting group consisting of all regular full-time and regular part-time professional employees in the employ of the City of Manitowoc Library Board, excluding elected officials, supervisors, executive, managerial, casual and confidential employees 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 the conditions set forth in the Direction of Election.

4. That a question of representation within the meaning of Sec. 111.70(4)(d)(3), Stats., presently exists among the employees of the City of Manitowoc Library Board in the two voting groups described in Conclusions of Law 1 and 2.

5. That the individuals in the employ of the City of Manitowoc Library Board occupying the positions of Public Relations Supervisor, Reference Services Department Head, AV/Reader Services Department Head, Youth Services Department Head, Circulation Services Department Head, Technical Services Department Head and Direct User Services Department Head are "supervisors" within the meaning of Sec. 111.70(1)(o)(1), Stats., and thus are not "municipal employees" within the meaning of Sec. 111.70(1)(i), Stats., and, therefore, are not appropriately included in the professional voting group or the nonprofessional voting group.

6. That the individual occupying the position of Head Custodian/Maintenance Mechanic Supervisor is not a "supervisor" within the meaning of Sec. 111.70(1)(o)(1), Stats., and thus is a "municipal employee" within the meaning of Sec. 111.70(1)(j), Stats., and, therefore, is appropriately included in the nonprofessional voting group.

That 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

IT IS HEREBY DIRECTED 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 stated purposes:

VOTING GROUP NO. 1

All regular full-time and regular part-time nonprofessional employees in the employ of the City of Manitowoc Library Board, excluding elected officials, supervisors, executive, managerial, casual, and confidential employees who were employed on April 24, 1987, except such as may prior to the election quit their employment or be dismissed or be discharged for cause, for the purposes of determining whether a majority of such employees voting desire to be represented by Wisconsin Council 40, AFSCME, AFL-CIO for purposes of collective bargaining with the City of Manitowoc Library Board on questions of wages, hours, and conditions of employment or desire no representation.

VOTING GROUP NO. 2

All regular full-time and regular part-time professional employees in the employ of the City of Manitowoc Library Board, excluding elected officials, supervisors, executive, managerial, casual, and confidential employees who were employed on April 24, 1987, except such employees as may prior to the election quit their employment or be discharged for cause, for the purposes of determining: (1) whether a majority of the employees in said voting group desire to be included in the bargaining unit described as Voting Group 1; and (2) whether a majority of such employees voting desire to be represented by Wisconsin Council 40, AFSCME, AFL-CIO for purposes of collective bargaining with the City of Manitowoc Library Board on questions of wages, hours, and conditions of employment or desire no representation.

Given under our hands and seal at the City of
Madison, Wisconsin this 24th day of April, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner

CITY OF MANITOWOC LIBRARY BOARD

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

POSITION OF THE PARTIES

Employer

Department Heads are Supervisory

The Employer argues that all of the Department Heads, including Singh, have authority to hire, discipline, and effectively recommend the discharge of employees within their Department. Additionally, the Employer argues that all of the Department Heads are responsible for scheduling the work hours of their employees, approving vacation and sick leave requests, and directing the day-to-day work tasks of their employees and, thus, have authority to direct and assign the work force. The Employer maintains that, with the exception of the Youth Services Department Head, each Department Head is paid significantly more than other employees within their department. The Employer concludes, therefore, that Department Heads exercise the indicia of supervisory power in sufficient combination and degree as to warrant their exclusion as supervisory employees. The Employer contends that the fact that Singh is paid significantly more per hour than anyone else in the Department, contradicts Singh's assertion that she possesses no greater supervisory authority than any other employee in her department.

Department Heads are Managerial

According to the Employer, each of the Manitowoc Public Library Department Heads is responsible for submitting a separate budget. These budget requests are reviewed by the Library Director, but are submitted to the Library Board with few modifications. During the year, Department Heads have authority to make purchases not budgeted for by going to another line in their budget. The Employer contends, therefore, that the Departments Heads have effective authority to commit the Employer's resources and, thus, are managerial employees.

The Employer asserts that Department Heads are also expected to determine and develop the policy goals and objectives for their departments. After these goals and objectives have been developed, they are submitted to the Library Board and approved. The Employer contends, therefore, that Department Heads determine policy.

The Employer maintains that the record establishes that Rosemary Singh possesses more authority than she chooses to exercise. The Employer argues that Singh has authority to not only prepare a budget, but also to make discretionary decisions on budget items and to effectively make budget recommendations to the Library Board.

Union

The Union argues that a supervisory employee is one who has authority to hire, fire, and discipline without review by a higher authority. An employee who has effective authority to recommend hiring, firing, and disciplinary action to a higher authority may also be considered to be supervisory. The Union contends that where there is effective authority to recommend supervisory action, the recommendation is not investigated by the higher authority, but rather, is rubber stamped.

The Union further argues that a managerial employee is one who exercises discretion to formulate, determine, or implement management policy and/or has effective authority to commit the employer's resources. At the library, it is the Library Director who devotes a substantial majority of his time preparing the library budget. Further, it is the Library Director who appears before the Library Board and the City Council when library budgetary matters are discussed. The Union asserts that, as is evident by the job descriptions, Department Heads have "low level" authority and, at best, may be described as "ministerial."

The Union denies that "Department Heads" in Public Relations, AV/Reader Services, Reference Services, Youth Services, Circulation Services, Technical Services, and Direct User Services are either supervisory or managerial. The Union further denies that the Head Custodian is supervisory.

DISCUSSION

At issue herein is whether the positions in dispute are supervisory and/or managerial and, thus, not appropriately included in either of the two voting groups. In determining whether a position is supervisory, the WERC considers the following factors: 1/

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

Not all of the factors listed above need to be present in order for a position to be supervisory; if the factors are present in sufficient number and degree, the position is supervisory.

A managerial employee is one who participates in the formulation, determination and implementation of policy to a significant degree or who possesses effective authority to commit the employer's resources. 2/ Authority to commit the employer's resources means the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 3/

Robert Gretz

Robert Gretz, occupies a position which is known as either Head Custodian or Maintenance Mechanic Supervisor. Of the four employees hired during Gretz' tenure as Head Custodian/Maintenance Mechanic Supervisor, Gretz participated in the hiring of only the newest employee, Shavlik. Gretz recommended that Shavlik be interviewed for employment and participated in the initial portion of Shavlik's interview. When Gretz was called away from the interview, the interview was completed by the Library Director. To be sure, the Library Director consulted with Gretz prior to offering employment to Shavlik. However, the fact that the Library Director completed the interview without Gretz raises doubt as to the effectiveness of Gretz' recommendation. This fact, together with the failure of

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- 1/ Jackson County, Dec. No. 17828-B (WERC, 10/86); Village of Ashwaubenon, Dec. No. 23746 (WERC, 6/86); Waukesha County Technical Institute, Dec. No. 19751 (WERC, 7/82).
 - 2/ Kewaunee County, Dec. No. 11096-C (WERC, 2/86); Dodge County, Dec. No. 18076-A (WERC, 3/83).
 - 3/ Jackson County, Dec. No. 17828-B (WERC, 10/86). Manitowoc County (Highway Department), Dec. No. 20847 (WERC, 7/83).

Gretz to participate in the hiring of the other three employees, leads us to conclude that Gretz does not have hiring authority.

The three Custodian/Guards, whose work hours do not overlap those of Gretz, do not receive work assignments from Gretz. Gretz, however, may direct the Custodian/Guards to correct work which Gretz deems to be unsatisfactory. If a Custodian/Guard were to disregard Gretz' request, an event which has not occurred, Gretz would refer the matter to the Library Director. Thus, Gretz' supervision of Custodian/Guards is primarily the supervision of a work activity, rather than the supervision of an employee.

Gretz did effectively recommend an increase in work hours for the Janitor. While the increase in hours was of financial benefit to the Janitor, Gretz' motivation to request the increased hours was not to reward the Janitor, but rather, to obtain the help needed to complete custodial tasks. Thus, in recommending the increase in hours, Gretz was primarily involved in the supervision of a work activity, rather than the supervision of an employee. To be sure, Gretz has authority to assign work to the part-time Janitor as circumstances require. The Janitor, however, normally performs a routine set of tasks and, thus, appears to require little direction from Gretz.

In conclusion, we are persuaded that Gretz is primarily involved in the performance of maintenance/custodial tasks. The indicia of supervisory authority are not present in sufficient combination and degree as to warrant his exclusion as a supervisory employee. Gretz is appropriately included in the nonprofessional voting group.

Department Heads (Excluding Reference Services Department Head)

The Employer, contrary to the Union, maintains that the positions of Public Relations Supervisor, AV/Reader Services Department Head, Youth Services Department Head, Circulation Services Department Head, Technical Services Department and Direct User Services Department Head, hereinafter Department Heads, are supervisory/managerial and, thus, not appropriately included in either voting group.

Department Heads have authority to select applicants to be interviewed for vacancies, to interview such applicants and to recommend an applicant for employment. To date, every applicant recommended for employment by a Department Head has been hired. We are satisfied that Department Heads have authority to effectively recommend the hiring of employees.

While it is apparent that Library employees rarely need to be disciplined, the record establishes that the Department Heads have authority to issue or effectively recommend issuance of verbal and written warnings to employees. Although no Department Head would impose more severe types of disciplinary action, such as suspension and discharge, without approval from the Library Director, we are persuaded, from our review of the record, that the Library Director would give serious consideration to any Department Head recommendation that an employee be suspended or discharged. Although the Library Director has never received a recommendation that an employee be suspended, he has received and accepted a Department Head's recommendation to discharge an employee. Thus, we are persuaded that Department Heads have authority to impose and to effectively recommend the discipline of Departmental employees.

The record establishes that the Department Heads have authority to assign tasks to Department employees, direct employee work activity, to approve or deny employee vacation requests, and to schedule employee work hours. Thus, we are satisfied that Department Heads have authority to direct and assign the work force.

To be sure, not all Department Heads exercise the supervisory authority noted above with the same frequency. 4/ However, we are satisfied that the Department

4/ The frequency is a function of such variables as number of employees in the department; whether such employees are professional or nonprofessional, with nonprofessional employees generally requiring more work direction than professional employees; and amount of staff turnover.

Heads authority in the areas of hiring, discipline, and direction of the work force clearly renders them supervisory employees. Having reached this conclusion, we need not determine whether the Department Heads are also managerial employees.

Reference Services Department Head

Rosemary Singh, the Reference Services Department Head, considers herself to possess less authority than other Department Heads. However, although Singh considers her interviewing authority to have declined in recent years, she does participate in the selection of applicants to be interviewed, participates in the interview of applicants and is asked for a hiring recommendation. In fact, Linda Bendix the newest Reference Services Department employee, was hired with the recommendation of Singh. It is true that, unlike other Department Heads, Singh shares interviewing responsibility with the Library Director. Singh's Department, however, is the only Department which is comprised entirely of professional employees. As the record establishes, the Library Director generally has greater involvement in the hiring of professional employees, than in the hiring of nonprofessional employees. Thus, we do not consider Singh's hiring authority to be significantly different from that of other Department Heads.

While Singh does not consider herself to have authority to discipline employees and, in fact, has never disciplined any employee, we are satisfied from the testimony of the Library Director and the record as a whole that Singh, as Department Head, does have authority to effectively recommend the discipline of Department employees.

Singh, unlike the other Department Heads, does not have authority to prepare the Department's employee work schedule. Rather, the work schedule is prepared by the Library Director. Singh also does not have the same authority as other Department Heads to approve overtime and leave requests. It is apparent that Singh does not formally assign work to other Department employees. The Reference Services Department, however, is a small department. Further, it is the only Library Department to be comprised entirely of professional employees. It is not surprising that professional employees require little or no supervision. We credit the Library Director's testimony that Singh, as a Department Head, has authority to assign tasks to Department employees and, further, that Singh has a responsibility to maintain the Department work flow. Thus, we are persuaded that Singh does have authority to direct and assign the work force although she apparently chooses not to exercise same in the same manner as other Department Heads.

In conclusion, it is evident that Singh has fewer indicia of supervisory authority than other Department Heads. We are persuaded, however, that on balance Singh's authority in the areas of hiring, discipline and direction of the work force warrant the finding that she is a supervisory employee and thus is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats. 5/ Given this conclusion, we need not address the managerial issue.

Election Procedures

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

5/ We also note that it is not likely that the Employer would place the Reference Services Department Head in a higher wage range than other employees in the Department if, as Singh would have us believe, the position has no more responsibility than any other employee in the Department.

envelope and deposit same in the ballot box. The unit determination ballot will be a separate colored ballot and the professional employees will be instructed to deposit their unit determination ballots in the ballot box.

The unit determination ballots cast by the professional employees will be initially counted, and should a majority of the eligible professional employees vote in favor of being included in a unit with nonprofessional employees, 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 nonprofessional employees, and thereafter the tally will include the representation ballots cast by all employees.

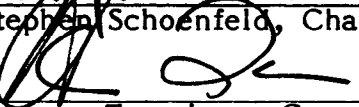
Should a majority of the professional employees eligible not vote in favor of being combined in a unit with nonprofessional employees, then the professional employees shall constitute a separate unit, and their representation ballots will not be co-mingled with the representation ballots cast by the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

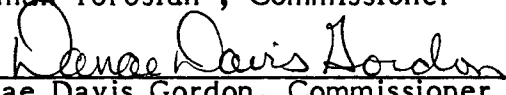
Dated at Madison, Wisconsin this 24th day of April, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Stephen Schoenfeld, Chairman


Herman Torosian, Commissioner


Danae Davis Gordon, Commissioner