

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
MILWAUKEE DISTRICT COUNCIL 48, :
AFSCME, AFL-CIO and its affiliated : Case 65
LOCAL 742 : No. 43100 ME-370
Involving Certain Employees of : Decision No. 26680
CITY OF CUDAHY (LIBRARY) :
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Appearances:
Podell, Ugent & Cross, S.C., Attorneys at Law, 207 East Michigan Street,
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Mr. Eugene Smolen, President of City of Cudahy Public Library Board,

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FINDINGS OF FACT, CONCLUSIONS OF LAW,
ORDER, AND DIRECTION OF ELECTION

Milwaukee District Council 48, AFSCME, AFL-CIO, and its affiliated Local 742, filed a petition with the Commission on July 24, 1989, requesting that an existing bargaining unit with the City of Cudahy be clarified to include certain individual employees at the Cudahy Public Library. A hearing in the matter was conducted on January 9 and March 5, 1990, in Cudahy, Wisconsin before Examiner Karen J. Mawhinney, a member of the Commission's staff. The Cudahy Public Library Board appeared at this hearing and participated as a party. Following distribution of the transcripts, Local 742 and the City filed briefs by June 21, 1990. The Commission has considered the evidence and arguments of the parties, taken administrative notice of prior Commission proceedings involving the same bargaining unit, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law, Order and Direction of Election.

FINDINGS OF FACT

1. Milwaukee District Council 48, AFSCME, and its affiliated Local 742, hereinafter referred to as the Union, is a labor organization having its principal offices located at 3427 West Saint Paul Avenue, Milwaukee, Wisconsin.
2. The City of Cudahy, hereinafter referred to as the City, is a municipal employer having its principal offices located at 5050 South Lake Drive, Cudahy, Wisconsin.
3. The Cudahy Public Library Board, hereinafter referred to as the Library Board, is located at 4665 South Packard Avenue, Cudahy, Wisconsin. Eugene Smolen is President of the Library Board and Gary Schlunz is Vice President and Personnel Chairman of the Library Board.
4. On August 22, 1962, in City of Cudahy, Dec. No. 6028, following an election conducted by it, the Commission certified the Union as the exclusive collective bargaining representative of the employees of the City employed in the following unit:

All regular full-time employees employed in the Department of
Public Works and Water Department excluding office and
clerical employees, engineers, engineer trainees,
supervisors and executives and all craft employees.
5. On September 3, 1968, the Common Council of the City adopted Resolution No. 2300, recognizing the Union as the exclusive bargaining agent for "certain clerical employees in a specific unit in the City Hall in the Assessor's, Clerk's, Treasurer's, Engineer's, Inspector's, and Water Utility Offices and the two custodial positions in the City Hall."
6. The parties voluntarily expanded the collective bargaining unit recognized in Resolution No. 2300 to include the certified bargaining unit noted in Finding of Fact 4.
7. On December 7, 1981, the Union filed a petition requesting the Commission to clarify the bargaining unit represented by the Union by determining whether the positions of Police Clerk and Department of Public Works Cost and Records Clerk should be included in said unit. The Commission, on December 15, 1982, in Dec. Nos. 19451-A, 19452-A, determined that it would be inappropriate to expand the voluntarily-recognized unit as requested without an election and accordingly dismissed the petition for unit clarification.
8. In City of Cudahy, Dec. No. 21887 (WERC, 8/84), the Union petitioned for an election for the stated purpose of determining whether all municipal employees employed by the City, who were not then currently represented for purposes of collective bargaining, wished to be represented for collective

bargaining purposes by the Union. The Commission directed an election in what the Commission called a "residual" voting group and subsequently certified that by reason of the majority of that group voting favoring Union representation, "all regular full-time and regular part-time employees of the City of Cudahy in the positions of Police Clerk, Health Department Clerk, DPW Cost and Records Clerk, Engineering Aide and Engineering Technical I" were to be included in the existing voluntarily-recognized non-professional collective bargaining unit represented by the Union.

9. The Union and the City are parties to a 1989-1991 collective bargaining agreement containing the following recognition provision:

ARTICLE I - RECOGNITION

1. Exclusive Recognition: The City hereby recognized the Union as the exclusive collective bargaining agent for the appropriate certified bargaining units (and recognized units) by City of Cudahy Resolution No. 2300, and as the certified representative for those employed in these bargaining units occupying the classifications as defined in the appropriate "Certification of Representatives" promulgate by the Wisconsin Employment Relations Commission, clerical and custodial employees of the City and the Cost and Records Clerk, the Health Department Clerk, the Police Clerk, and Engineering Tech and Junior Technician, as determined by Wisconsin law. The Union recognizes its responsibility to cooperate with the City to assure maximum service at minimum cost to the public consonant with its obligations to the employees it represents.

10. In City of Cudahy, Dec. No. 21887 (WERC, 8/84), the Union also petitioned to include various Library positions in the voting group, but the City objected on the grounds that the positions were held by employees of a separate municipal employer, the Cudahy Public Library Board, and the Commission concurred with the City's position in that regard, such that Library employees were not included in the voting group. The Commission, on pages three and four of that decision, made the following Findings of Fact:

14. That the Cudahy Library Board was established by a City of Cudahy Ordinance in accordance with the Provisions of Chapter 43, Wis. Stats.; that the members of the Library Board are appointed by the City Mayor and confirmed by the City Common Council; that the Library budget is prepared by the Library Board, with the assistance of the Library Director; that the City Common Council approves and funds the Library budget; that once the monies are appropriated by the Common Council, the monies are subject to the control of the Library Board; that Sec. 43.58(4), Stats., provides that the Library Board may appoint employees, and prescribe their duties and compensation; that the Library Board determines the number and kinds of workers to be employed in the Library, as well as their wages, hours and working conditions; that the Library budget includes the salary of the Library Custodian, but that position is treated as within the Union's existing unit of City employees; that the Library Board does not participate in the City's contract negotiations regarding that bargaining unit; that the Library Board utilizes the City Civil Service process when recruiting full-time Library employees; that part-time employees are not subject to the City Civil Service process; that the Library Board has final authority with respect to hiring Library employees; that Library employees are supervised by the Library Director; that during the tenure of the present Library Director, approximately fifteen years, there has been one promotion within the Library; that the promotion involved movement from the Librarian I position to the Librarian II position; that the promotion was made by the Library Board and was based upon the fact that the employee had received her Master's Degree; that the Library does not have a formal grievance procedure; that employee problems are discussed with the Library Director and, if unresolved, the employee has the right to bring the complaint before the Library Board; that during the tenure of the present Library Director, no employee has brought a grievance to the Library Board; that employees have discussed complaints with individual Board members; that the Library Board exercises its autonomous powers to hire, supervise and set forth

employe compensation and working conditions; that the Library Board, and not the City, is the employer of Library employees; and that the Library Board was not formally served with notice of hearing in this matter and is not a party hereto.

The Commission also made the following relevant Conclusions of Law:

1. That the Library Board, and not the City, is the employer of the Library employees set forth in Finding of Fact 8.
2. That inasmuch as the Library Board was not served with notice of hearing in this matter, and is not a party hereto, it is not appropriate to direct and election among Library employees herein.

11. The Union filed the instant petition on July 24, 1989, seeking inclusion of the following positions at the Library in the bargaining unit set forth in Finding of Fact 9:

part-time:

1Library Assistant I
1Library Assistant II
2Librarian I
1 Sec./Bookkeeper

full-time:

2Library Assistant I
2Librarian I
1Librarian II

excluding:

Head Librarian
Pages

The Union contends that circumstances have changed since the Commission's decision in Dec. No. 21887 (WERC, 8/84) and the City is now the employer of employees of the Library. The Union requests in the alternative, that should the Commission not find that the City is the employer of the Library employees, that an election be held to determine whether the Library employees wish to be represented by the Union. Contrary to the Union, the City and the Library Board maintain that the Library Board, not the City, is the employer of the library employees; that the Commission has previously found the Library Board to be the employer and that the instant petition should be dismissed; that the library employees do not share a community of interest with other employees represented by the Union; and that certain Library employees are supervisory and/or managerial employees.

12. The parties stipulated to those Findings of Fact from Dec. No. 21887 quoted in Finding of Fact 10, above 1/ except the Union would not stipulate to the following Findings from Dec. No. 21887:

- . . . that once the monies are appropriated by the Common Council, the monies are subject to the control of the Library Board; . . .
- . . . that the Library Board determines the number and kinds of workers to be employed in the Library, as well as their wages, hours and working conditions; . . .
- . . . that the Library Board has final authority with respect to hiring Library employees; . . . that the Library Board exercises its autonomous powers to hire, supervise and set forth employe compensation and working conditions; that the Library Board, and not the City, is the employer of Library employees; . . .

13. During the hearing, the parties entered into the following additional stipulations of fact:

1. The payroll for Library employees is prepared by the City of Cudahy payroll clerk.
2. The payroll checks for Library employees are signed by Frank

1/ The reference in quoted Finding of Fact 10 of Dec. No. 21187 to the "present" Library Director is to the Library Director during that period of time when Dec. No. 21187 was rendered. A new Library Director, Richard Nelson, became the Library Director on January 8, 1990.

Janicek, the City Clerk, and Robert Sadowski, the City Treasurer.

3. The sick leave, health insurance, social security, state and federal tax, and retirement benefits are administered by the City of Cudahy on behalf of and for the Library employees.

4. Rebecca Roepke, Linda Jackson, and Jean Dushensky are professional employees within the meaning of Sec. 111.70(1)(L), Stats.

5. The Union seeks to represent all part-time and full-time Library employees except for the Library Director and the pages.

14. Through the end of 1987, the City and the Library used separate employer identification numbers for federal tax accounts and W-2 forms. City Clerk Janicek and Payroll Clerk Lu Robert had a meeting with Internal Revenue Service agents who indicated that there was no need to have two separate employer identification numbers and recommended that the City and Library use one identification number. Effective January 1, 1988, the City used its identification number for Library employees, with the practical effect being that the City does not have to keep two sets of accounts or run two sets of W-2 forms.

15. In 1988, the then Library Director Mary Ann Molleson went on sick leave and Rebecca Roepke, the Adult Services Librarian, filled in for Molleson as interim Library Director. On June 15, 1988, the Library Board, at its monthly meeting, approved a motion appointing Roepke as interim Director with additional compensation of \$50.00 a week effective June 16, 1988. Roepke was never paid the additional \$50.00 while she acted as interim Director in 1988. When Roepke did not receive the additional compensation, she complained to Library Board President Smolen. After discovering that City payroll personnel had never received any authorization for the increase, Smolen contacted City of Cudahy Mayor Pekar to discuss the matter. Pekar advised Smolen that he had withheld authorization because he believed the additional compensation to be inconsistent with the general past practice of not providing additional compensation to employees who replaced the Library Director during absences and with the City's policy of not granting employees additional compensation when they were filling in for higher paid employees. Smolen considered the Mayor's views and concluded that the Library Board should follow the past practice and City policy discussed by the Mayor. Molleson retired in 1989 and Roepke was made acting Director and was compensated an additional \$50.00/week from July 17, 1989 until January 8, 1990 when Richard Nelson became the Library Director.

16. A regular meeting of the Library Board was held on February 15, 1989, where a discussion was held on the Library personnel salaries as compared with teachers and City workers. Frank Schovanec, a member of the Board, as well as an alderman for the City of Cudahy, indicated he would set up a meeting with the City Council, the labor negotiator and the Library Board. The issue of salary comparisons for Library personnel came up at the Board's regular meeting on April 19, 1989, at which time it was reported that the City Council felt Library staff salaries were consistent with those of other library staff's and that comparisons with City employees were not appropriate.

17. In November 1989, while Roepke was serving as acting Library Director, she called Mayor Pekar to obtain his approval for closing the library due to a snowstorm. Upon receiving Pekar's approval, she closed the library.

18. The facts set forth in Finding of Fact 12 to which the Union would not stipulate remain applicable to the Library Board. The record does not establish a material change in the employer status of the Library Board so as to alter our finding and conclusion in Dec. No. 21887 (WERC, 8/84) that the Library Board is the municipal employer of Library employees.

19. The Library Board was served with notice of hearing in the instant petition by service upon Eugene Smolen, President of the Library Board, and Gary Schlunz, Vice President and Chairman of this Library Board. Smolen and Schlunz appeared at the hearing and the Library Board is a party in this matter.

20. Rebecca Roepke has been the Adult Services Librarian since 1981 and is responsible for the adult book collection, reference department, inter-library loan services, periodical and pamphlet files and the audio-visual collection. Roepke spends the majority of her time performing these responsibilities rather than directing other employees. Roepke works six days one week and four the next for a total of 80 hours per two week period, 20 of which she acts as the librarian in charge. The exact hours worked each day vary in time but do not exceed 8 hours and include a Monday evening, two Wednesday evenings and a Saturday each two week period. Roepke acts for the Library Director in his/her absence and was acting Director in 1988 and 1989.

Roepke received a new job description approved by the Library Board on February 21, 1990, which indicates she interviews applicants and effectively recommends the hire of new personnel, performs personnel evaluations, recommends promotion and transfer of employees, hears and adjusts grievances and supervises and disciplines employees as necessary. Roepke has not hired, interviewed, promoted, transferred, evaluated, suspended or discharged anyone nor heard or adjusted employee grievances. She reprimanded one employee while she was the interim Director but has not disciplined anyone as the Adult Services Librarian.

21. Linda Jackson has been the Children's Librarian since 1987 and selects and maintains the children's collection, conducts story hours for pre-school and school age children, conducts library tours, publicizes children's services and is part-time Reference Librarian. Jackson spends a majority of her time performing these responsibilities rather than directing other employees. Jackson works a mirror schedule of Roepke's noted in Finding of Fact 19 which is four days one week and six days the next for 80 hours of which 20 is librarian in charge. Jackson received a new job description approved by the Library Board on February 21, 1990 which provides that she supervises employees, hears and adjusts grievances and exercises discipline. In her capacity as Children's Librarian, Jackson has not hired or recommended for hire, promoted or disciplined anyone and has not heard or adjusted any grievances. Jackson has independently determined when to adjust the work schedule of library pages and whether to call in replacements for absent employees. When functioning as librarian in charge, Jackson has verbally reprimanded employees.

22. Jean Dushensky has been the Cataloger at the Library since 1972 and her present title is Head of Technical Services/Cataloger. She works 7:00 a.m. to 3:30 p.m. Monday through Friday and her duties include cataloging all adult and juvenile books and videos, maintaining the card catalog, and posting the best seller list. Dushensky spends a majority of her time performing these responsibilities rather than directing other employees. She also acts as librarian in charge when required. Dushensky received a new job description approved by the Library Board on February 21, 1990 which provides that she interviews applicants and effectively recommends their hire, evaluates employees, hears and adjusts grievances and disciplines employees. Dushensky has not interviewed, recommended for hire or disciplined anyone and has not heard or adjusted any grievances.

23. Roepke, Jackson and Dushensky advise the Library Director of their departmental needs and discuss same with him at Department Head meetings which occur during preparation of the Library budget.

24. Roepke, Jackson and Dushensky do not possess supervisory authority in sufficient combination and degree to be deemed supervisory employees. They do not participate in the formulation, determination and implementation of management policy to a significant degree and do not possess effective authority to commit the employer's resources.

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

CONCLUSIONS OF LAW

1. The Cudahy Public Library Board is the municipal employer within the meaning of Sec. 111.70(1)(j), Stats., of the occupants of the positions set forth in Finding of Fact 11.

2. The employees occupying the positions of Adult Services Librarian, Children's Librarian and Technical Services Librarian are professional employees within the meaning of Sec. 111.70(1)(L), Stats. The occupants of these positions are not supervisory employees within the meaning of Sec. 111.70(1)(o)1, Stats. nor are they managerial employees, and are therefore municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

3. The following voting groups, whether separate or combined, constitute appropriate bargaining units within the meaning of Sec. 111.70(4)(d)2.a., Stats.:

- a. All regular full-time and regular part-time employees of the Cudahy Public Library Board excluding professional, supervisory, confidential and managerial employees and the Library Pages.
- b. All regular full-time and regular part-time professional employees of the Cudahy Public Library Board excluding supervisory, confidential and managerial employees.

4. A question concerning representation exists in the potential bargaining units set forth in Conclusion of Law 3.

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

ORDER

The Union's petition for unit clarification is hereby dismissed.

Upon the basis of the foregoing Findings of Fact, Conclusions of Law and Order, the Commission also 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:

Voting Group No. 1

All regular full-time and regular part-time employees of the Cudahy Public Library Board excluding professional, supervisory, confidential and managerial employees, and Library Pages, who were employed on November 9, 1990, except such employees as may prior to the election quit their employment or be discharged for cause, for the purposes of determining whether a majority of such employees voting desire to be represented by Milwaukee District Council 48, AFSCME, AFL-CIO, for the purposes of collective bargaining with the Cudahy Library Board on wages, hours and conditions of employment.

Voting Group No. 2

All regular full-time and part-time professional employees of the Cudahy Public Library Board excluding confidential, supervisory, managerial employees, who were employed on November 9, 1990, 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 such professional employees desire to be included in one single bargaining unit with employees set forth in Voting Group No. 1; and
2. Whether a majority of such professional employees voting desire to be represented by Milwaukee District Council 48, AFSCME, AFL-CIO, for the purposes of collective bargaining with the Cudahy Library Board on wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 9th day of November, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

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

BACKGROUND

The Union filed a petition for unit clarification seeking to accrete individuals employed at the Cudahy Public Library to the existing unit of City of Cudahy employees currently represented by the Union. The Union had previously filed a petition seeking inclusion of the Library employees in this unit and we denied same based upon our determination that the Cudahy Public Library Board was the employer of the Library employees. Because the Library Board was not served with that petition, the Union request that an election among employees of the Library be conducted was also denied. See City of Cudahy, Dec. No. 21887 (WERC, 8/84).

At hearing herein, the Union asserted that circumstances had changed since our previous decision such that the Commission should now find that the City of Cudahy is the employer of Library employees, rather than the Library Board, and that the employees share a community of interest with other City employees and should be accreted into the existing unit. Alternatively, should the Commission determine that the Library Board is the employer of the Library employees, the Union seeks an election among the Library employees. The Library Board and the City were served with the notice of the hearing and both made appearances at the hearing.

UNION'S POSITION

The Union contends that the City and not the Library Board is the employer of Library employees. The Union argues that certain changes which have occurred since our decision in City of Cudahy, Dec. No. 21887 (WERC, 8/48), demonstrate that the Library Board is nothing more than a figurehead through which City policies and decisions are passed down to Library employees. The Union refers to the change from two tax identification numbers to a single number listing the City as the Employer. It also notes that all pay and benefits are administered through the City Clerk's office and all of the Library's financial records were switched to City Hall in mid-1989. The Union claims that all personnel policies and fringe benefits for Library employees are the same as the City employees. The Union maintains the Library Board gives Library employees the same, not similar, fringe benefits as the City gives its employees.

The Union also cites Mayor Pekar's "veto" of Roepke's \$50/week increase which had been authorized by the Library Board and a discussion of pay rates for Library employees which involved the City's Common Council.

The Union submits that the City controls all aspects of the Library. It notes that the Mayor was once called to get permission to close the Library in a snowstorm.

In summary, the Union contends that contrary to the earlier decision, the Library Board does not operate in an independent autonomous fashion because the City administers all the financial responsibilities including payroll and fringes, the benefits for employees are identical and the Library Board is told what to do with respect to pay and benefits for Library employees. Therefore, the Union asserts that the City is the employer and that it is appropriate to accrete the Library employees into the existing unit of City employees because the Library employees have a community of interest with other City employees and because accretion would prevent undue fragmentation.

With respect to the three professional employees at the Library, the Union contends they are not supervisory or managerial and, at best, are lead workers.

It submits that they do not hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline employees. It points out that although these employees recently received new job descriptions which emphasized supervisory duties, the employees' actual duties have not changed. The employees have informal budget preparation duties limited to suggestions made at a general staff meeting. The Union maintains that when these employees are assigned "librarian in charge" duties, their primary function is to handle reference questions and they oversee other employees who perform according to a routine. The Union argues that any problems or decisions are referred to the

Library Director, and in this capacity, the librarian in charge is at most a lead worker. It concludes that these employees, while professionals, are not supervisors or managers and cannot be excluded from the bargaining unit on that basis.

CITY'S POSITION

The City contends that the Union has failed to show a material change in circumstances which would warrant the Commission's reconsideration of the employer status of the Library Board.

However, the City asserts that even if the Commission were to reconsider that issue, the result would be the same as reached in the prior decision. It claims that the facts the Commission originally relied upon in determining that the City and the Library Board were separate employers have not changed. It argues that the evidence presented by the Union on the \$50 pay increase for Roepke was nothing more than the City's refusal to grant an exception to the approved library budget rather than control over the Library Board's authority to determine employee compensation. The City also maintains that the discussion of Library employee salaries by the City Council fails to prove that the City rather than the Board controls Library employees' compensation. The City admits that it performs the purely clerical payroll functions for the Library but alleges that this has always been the case and was so in 1984 when the original Commission decision was issued. The City insists that since February 1976, the Library Board, and not the City, has controlled the wages, hours and conditions of complement of Library employees and thus is a separate employer from the City. Therefore, the City contends the employees of the Library are properly excluded from the City bargaining unit.

Should the Commission conclude that the City is the employer, the City contends that there is no community of interest between the Library employees and the other City employees as their interests are separate and distinct. It notes that the Library employees are physically separated from City Hall and their hours, working conditions, educational requirements and skills and lack of interchange with other departments establish a sufficiently distinct and separate community of interest such that accretion to the existing City unit is not appropriate.

The City contends that should the Commission clarify the bargaining unit to include Library employees, the three professional librarians should be excluded as supervisory or managerial. As to the managerial status of these employees, it submits that the new Library Director has instituted weekly Department Head meetings with the three employees at which the 1990 budget has been discussed and input for job descriptions has been requested.

As to the supervisory status of these employees, the City claims that the Children's Librarian and the Adult Services Librarian act as Librarian in Charge on evenings and weekends and as such are responsible for anything that happens while on duty. It notes that approximately 25% of their time is devoted to this duty which includes supervising work, assigning work and evaluating work including handling any work rule infractions. It submits that the Children's Librarian supervises two staff librarians plus pages. It refers to the Adult Services Librarian's service as acting director which included hiring a temporary service librarian, temporary secretary and two library pages as well as issuing a written letter of reprimand and verbal reprimands as evidence of her supervisory status. It points out that the Adult Services Librarian supervises nine employees including four pages and that her job description has been expanded to interview and recommend applicants for hire.

The City maintains that the Technical Services Librarian also serves as Librarian in Charge and supervises employees in that capacity as well as overseeing the work of the library assistants who work in technical services.

DISCUSSION

The City correctly notes that where we have previously made a determination on the merits of a disputed claim as to employee status, we have held that previous decision to be entitled to determinative weight absent a showing of a material change in circumstances. 2/ We are satisfied that this

2/ City of Milwaukee, Dec. No. 6960-J (WERC, 5/89); Dane County, Dec. No. 26057 (WERC, 6/89).

same rationale should apply to determinations of employer status. When determining this question of employer identity in City of Cudahy, Dec. No. 21887 (WERC, 8/84), we evaluated the evidence as to the Library Board's control over revenues and budget and as to its authority over the wages, hours and conditions of employment concluded that the Library Board was the employer.

The Union has argued that there have been certain material changes since our decision which require a different result. It cites the change from two separate I.D. numbers to one number for tax purposes, an accounting change from the Library's bookkeeper to the City Clerk's office, the denial of Roepke's \$50 increase, the Mayor's approval of the closure of the library during a snowstorm, and the City Council's involvement in a discussion of Library employee salaries as establishing the City as the actual employer.

We do not agree. The change to a common tax I.D. number was merely an administrative change for the convenience of both employers which is unrelated to the factors we evaluate when determining employer status. The accounting change merely reflects that the administration of payroll and fringe benefits has always been handled by the City Clerk's office. 3/

With respect to Roepke's \$50 increase which was originally approved by the Library Board 4/ but never paid, the record indicates that Mayor Pekar questioned the rationale for this Board decision based on past practice and on the City's policy of not paying replacement employees a higher rate when an employee is absent due to sickness or vacation. 5/ The Library Board has historically provided its employees with the same fringe benefits provided by the City to its employees including health insurance, retirement, days off, etc. 6/ It appears the Library also followed the City's policies with respect to the administration of these benefits. In this context, the Board's de facto decision to conform with the City policy and practice as to the payment of additional compensation only reflects the historical parallelism of wages, hours and conditions of employment which we have held to be an insufficient basis to conclude that employees are employed by a single employer. 7/ Thus, the denial of Roepke's \$50 increase based on City policy does not establish control by the City of the wages paid Roepke. Indeed, we note the \$50 increase paid to Roepke upon Mollenson's retirement and Roepke's assumption of the position of acting Director apparently did not parallel any City policy and is indicative of the Library Board's control over her wages. 8/

As to the question of obtaining the Mayor's approval for closure of the Library during a storm, the incident is indicative of the close relationship between the City and the Library Board. However, as to the critical matter of control over employee wages, hours and conditions of employment, this incident is not sufficient, when viewed in the context of the entire record, to establish that the City is the employer.

Similarly, the discussion by the City Council on wage levels for Library employees compared to City employees fails to establish that the Library Board does not directly control the wages, hours and conditions of employment of Library employees. 9/

Thus, a review of the record fails to establish a material change in circumstances sufficient to convince us that our decision in City of Cudahy, Dec. No. 21887 (WERC, 8/84) is no longer applicable with respect to employer status. While it is apparent that the Library Board relies heavily upon advice it solicits from the City when making decisions regarding employee wages, hours and conditions of employment, we remain satisfied that the Board still possesses the legal authority and ability to function as an independent municipal employer. We therefore reaffirm our decision that the Library Board, and not the City, is the employer of Library employees. Inasmuch as the Library employees are not employees of the City, it is appropriate to continue to exclude

3/ TR-26, 66.

4/ U. Ex.-13.

5/ TR-138.

6/ TR-7, 62-63.

7/ Door County, Dec. No. 24016-A (3/88).

8/ TR-101-103.

9/ U. Exs. 7 and 8.

them from the City bargaining unit and the petition for unit clarification is therefore dismissed. However, we reject the City's request for attorney's fees as the Union's litigation of this issue does not establish the extraordinary bad faith necessary for such an award. 10/

Unlike the situation in City of Cudahy, Dec. No. 21887 (WERC, 8/84), the Library Board was given notice of these proceedings, made an appearance and the Union sought an election if the petition for unit clarification was found not to be appropriate. Under these circumstances, we deem it appropriate to treat the instant petition as a petition for election in a bargaining unit of Library employees and have issued a Direction of Election. 11/ We now turn to the assertions raised by the Library Board that the three professional librarians are supervisory or managerial employees.

The Commission considers the following factors in determining if a position is supervisory in nature:

- 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 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 time supervising employees; and
- 7.The amount of independent judgment exercised in the supervision of employees. 12/

Not all of these factors need to be present in any given case, but a sufficient combination of said factors must be present for the Commission to find an employee to be a supervisor. 13/

Job descriptions may well be helpful in the determination of employment duties. Of greater weight in determining supervisory status, however, are the actual duties performed. 14/

A review of the record establishes that while the professional librarians do possess some authority to assign work and alter work schedules, particularly when functioning as librarian in charge, they have not exercised any significant authority in the areas of employee hiring, discipline, promotion or transfer. 15/ They spend the majority of their time performing their own duties and responsibilities as librarians and, when directing the work force, are primarily supervising the employee's activity and not the employees themselves. The level of their pay appears related exclusively to their responsibilities as librarians. Significant supervisory decisions are made by the Library Director.

10/ Hayward Schools, Dec. No. 24259-B (WERC, 3/88).

11/ See Mid-State Vocational, Technical and Adult Education District No. 14, Dec. No. 14526-A (WERC, 5/85).

12/ School District of Glenwood City, Dec. No. 20949-A (WERC, 6/88).

13/ Somerset School District, Dec. No. 24968-A (WERC, 3/88).

14/ Shawano County (Maple Lane Facility), Dec. No. 20996-A (WERC, 1/84).

15/ TR-163-167, 210-212, 240-242. Roepke did hire some employees and disciplined an employee while she was Interim Director but not while acting in her capacity as Adult Services Librarian.

Each of the three Librarians have recently been given new job descriptions 16/ which include duties and responsibilities which are supervisory in nature. However, the employees have not exercised these assigned duties and their actual duties have remained the same. The potential authority and duties do not warrant the conclusion that the employees involved are supervisors. 17/

Based on the actual duties and responsibilities performed by these three employees, we conclude that they are not supervisory employees.

The Commission has held that 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 either by exercising the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 18/

The claim that these employees are managerial flows from the budget discussions in which they have been involved during meetings with the Library Director as well as consideration of their new job descriptions. As we read the record, the input which they provide the Library Director does not reach a level of significance sufficient to qualify them as managerial employees.

Dated at Madison, Wisconsin this 9th day of November, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

16/ City Exs. 26, 27 and 28.

17/ Oneida County, Dec. No. 12247 (WERC, 11/73); Wood County, Dec. No. 13760 (WERC, 6/75).

18/ Door County, Dec. No. 24016-B (WERC, 8/88); Milwaukee v. WERC, 71 Wis.2d 709 (1976); Eau Claire County v. WERC, 122 Wis.2d 363 (Ct.App. 1986); Kewaunee County v. WERC, 141 Wis.2d 347 (Ct.App. 1987).