

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 LABOR ASSOCIATION OF WISCONSIN, INC. :
 :
 : Case 29
 for an Election Involving : No. 48759 ME-3296
 Certain Employes of : Decision No. 27604-A
 :
 VILLAGE OF HALES CORNERS (LIBRARY) :
 :

Appearances:

Davis & Kuelthau, S.C., by Mr. Lon D. Moeller with briefing by Messrs.
Mark F. Vetter and Victor A. Lazzaretti, 111 East
Kilbourn Avenue, Milwaukee, Wisconsin 53202-6613,
 appearing on behalf of the Village of Hales Corners (Library).
Messrs. Patrick J. Coraggio and Kevin W. Naylor, Labor Consultants,
 appearing on behalf of Labor Association of Wisconsin, Inc.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER CONCERNING CHALLENGED BALLOTS AND RELATED MATTERS

A mail ballot election was conducted in the above matter pursuant to an April 8, 1993 Direction of Elections issued by the Wisconsin Employment Relations Commission. During the course of that election, the Village advised the Commission and Association by letter dated April 23, 1993, that the Village was challenging any ballot returned by Cindy Secker or Jan Couturier on the grounds that they are supervisors. The Association responded by letter dated April 27, 1993, that the parties' pre-election agreements preclude the Village from challenging Couturier's ballot and that if the Village pursues that challenge, the Association withdraws its pre-hearing agreement to exclude Carol Bomberg from the unit and from the list of eligibles as a confidential employe. Because the election results could in no event be certified without a determination whether to count the ballots of Secker and Couturier, none of the ballot envelopes returned to the Commission have been opened pending the disposition of disputes reflected in the above-noted correspondence between the parties.

Pursuant to notice, a hearing was conducted regarding those disputes by Commission examiner Marshall L. Gratz. The parties submitted post-hearing briefs and reply briefs, the last of which was received on August 31, 1993.

On the basis of the record, and upon consideration of the parties' arguments, the Commission makes and issues the following Findings of Fact, Conclusions of Law and Order Concerning Challenged Ballots and Related Matters.

FINDINGS OF FACT

1. The Hales Corners Library (herein Library) is operated as a department of the Village of Hales Corners, with its governance shared between the Village of Hales Corners Board of Trustees (herein Village Board) and the Village of Hales Corners Library Board of Trustees (herein Library Board). The parties to this dispute have treated the Library Board as the employing entity as regards the individuals who work at the Library. The Library Board is a municipal employer with a mailing address of 5885 South 116th Street, Hales Corners, Wisconsin.

2. Labor Association of Wisconsin, Inc., (herein LAW) is a labor organization with offices at 2825 North Mayfair Road, Wauwatosa, Wisconsin.

3. On February 5, 1993, LAW petitioned for a representation election among all regular full-time and regular part-time municipal employes employed at the Library, all of whom are presently unrepresented. On April 5, 1993, the Library Board and LAW submitted a Stipulation for Election. Then the Commission, on April 8, 1993, directed that an election be conducted in such a way as to permit the professional municipal employes to separately self-determine whether they wished to be included in a unit with the non-professionals, in addition to the balloting regarding representation. As noted in the preface, above, the processing of the mail ballot election in the matter has been interrupted by the need to resolve disputes as to the voting eligibility of Jan Couturier and Cindy Secker whom the Library Board would exclude as supervisors and Carol Bomberg whom the Library Board would exclude as a confidential employe.

4. The Library is housed at a facility known as the W. Ben Hunt Center, which also includes space utilized by the Village Health Department, the Hales Corners Historical Society, Citizens Cable TV, and two meeting rooms and surrounding grounds. That facility is located approximately three blocks distance from Hales Corners Village Hall.

5. The Library provides library services to the public and is a member library of the Milwaukee County Federated Library System (herein MCFLS), which facilitates County-wide sharing of library materials and services. The Library is typically open to the public 64 hours per week, Monday-Friday 9AM-9PM and Saturdays 9AM-5PM.

6. The complement of regular full-time and regular part-time employes employed at the Library and certain of their names and/or numbers of hours worked are as follows:

Professionals (all full-time)
Library Director -- Patricia Laughlin
Circulation Supervisor -- Jan Couturier
Reference Librarian/Night Supervisor -- Cindy Secker
Children's Services Coordinator -- Jeanne DeIanni
Adult Services Librarian -- Lee Alexander

Nonprofessionals (most or all are part-time)
four Library Aides (16-20 hr/wk)
three Page IIs (work title: desk Clerks) (8 hr/wk)
three Page Is (working title: Shelves)
one Library Helper (a part time custodial position)
one Secretary and Bookkeeper -- Carol Bomberg (20 hr/wk)

From time to time, as many as two temporary employes at a time have also been employed at the Library, under government grant programs.

7. The Library Director manages and supervises all aspects of the Library's day-to-day operations, and she also bears certain responsibility for the entire W. Ben Hunt Center, as well. Only the Library Director reports directly to the Library Board. The Library's operations are divided into the following service areas: circulation services; reference services; children's services; adult services; and administrative services. Each of the four professional employes besides the Library Director plays a key role in the supervision of the first four of those service areas, respectively, and the Library Director plays the key role in the administrative service area and, since about February of 1993, in the technical library services area, as well.

The Library Director convenes monthly meetings of all Library employes except those who are unavailable for the 8-9AM meetings on Thursdays because of their high school attendance. Except in weeks when a staff meeting is held, the Library Director conducts Planning Committee meetings attended by the other four professionals, at which the need for new or modified policies and procedures are discussed and recommendations to be presented to the Library

Board are developed.

8. The job descriptions for all four of the professional positions other than the Library Director's, as revised by the Library Board in January or February of 1993, provide in part that the employe: reports to the Library Director; is responsible for the particular aspect of Library activity referred to in the employe's job title; is "Responsible for supervisory duties requiring the exercise of individual initiative and independent judgment"; has a range of duties and responsibilities consisting mostly of professional librarian work but also including provision of "information to the Library Director for budgeting purposes" and being "Responsible for librarian-in-charge duties when the Library Director is not present or available. Sees that all policies and procedures of the library are maintained"; and is to have, among "essential knowledge and abilities," the "Ability to perform basic supervisory functions."

9. Couturier and Secker spend the vast majority of their time performing either non-supervisory professional librarian work or non-supervisory library work similar to that performed by non-professional employes of the Library.

10. The role of the librarian in charge (herein LIC) referred to in the above-noted job descriptions is defined in the following portion of the Hales Corners Library Personnel Policies Manual, which was approved and revised by the Hales Corners Library Board of Trustees in November of 1992:

3.00PERSONNEL MANAGEMENT

3.01LIBRARIAN-IN-CHARGE

3.01 (A).The supervisory responsibility for the library will be vested in the following order:

3.01 (b)The Librarian-in-charge is authorized to carry out the policies of the library as defined by the Library Board, to settle disputes with patrons, to resolve employee concerns including scheduling and work assignments, to inform Library Board members in an emergency and to perform other routine duties as defined below.

3.01 (c)When the Director of Library Services will be absent for a period of time, the following responsibilities will be delegated:

- = approving payment of bills
- = signing purchase orders
- = approving petty cash transactions
- = approving payroll

11. When she is at the library and not participating in a meeting, the Library Director serves as the LIC and personally supervises the work of all personnel on duty. The Library Director also personally determines what work is ordinarily to be performed by whom and when, establishes and modifies the work schedule, receives and approves or disapproves of employe requests for vacation or other time off. Because the employes, once trained, perform established work assignments and routines without direction, when the Library Director is away or otherwise unavailable to serve as the LIC, the LIC ordinarily performs her own assigned tasks and gives work direction to the other employes on duty only when they complete their regular work and ask for additional duties or when the Director has left a particular project to be assigned to them. If an employe calls in sick, the LIC decides whether to try to call in a replacement or to get along without the absentee, and redirects the available staff to cover the most important Library functions. The procedures to be followed in such situations have been fairly well-defined by the Library Director's practices in dealing with them, such that the exercise

of independent judgment required of the LIC in such situations is relatively limited. The amount of time involved in supervisory activities performed by LICs other than the Library Director ranges from none to a maximum of 15 minutes per day. In addition, in the Library Director's absence, the LIC occasionally approves payments of bills, signs purchase orders, approves petty cash transactions or approves payrolls. On at least some of the occasions when she is away from the Library, the Library Director leaves word where she can be reached by telephone.

12. The Library Director is typically scheduled to work 7:30AM-4:30 or 5PM Monday-Friday, and every third week 9AM-5PM on Saturday with the following Monday off. The Library Director is typically away from the Library or otherwise not available to serve as the LIC as follows: weekly Wednesday morning meetings at Village Hall of all Village department heads; monthly meetings of MCFLS library directors every first Thursday of the month (until returning at 1 or 1:30 PM); monthly meetings of the MCFLS Board of Directors every third Monday morning (until return at 1 or 1:30 PM); monthly meetings of Friends of the Library Board (usually on Monday mornings in the Library); eight to ten other full- or half-days annually spent at continuing education or workshops; six days of Wisconsin Library Conferences annually; and two weeks of vacation annually, generally taken a week at a time.

13. Couturier typically is scheduled to work 9AM-5PM on Tuesdays, 8AM-4PM on Wednesdays and Thursdays, 8AM-3:30 PM on Fridays, and 8:30AM-5PM on Saturdays. Accordingly, she typically serves as the LIC every Wednesday morning, every first Thursday of the month (until return at 1 or 1:30 PM); two Saturdays out of three from 8:30AM-5PM; and several additional days when the Library Director is away at conferences, conventions or on vacation. The number of employes on duty in addition to Couturier when she serves as LIC does not typically exceed six, including three other professionals and three non-professionals.

14. Secker is typically scheduled to work 1-9PM Monday-Thursday and 9AM-5PM every other Saturday. Accordingly, she serves as LIC Monday-Thursday from 4:30 or 5PM until 9PM and on those Monday afternoons when the Library Director is absent or unavailable. There are typically three employes in addition to Secker on duty when she serves as LIC, all non-professionals.

15. DeIanni is typically scheduled to work 8AM-4PM Monday-Friday. Accordingly, she typically serves as LIC every third Monday morning (until the Director returns at 1 or 1:30 PM), certain other Monday mornings, certain Friday afternoons from 3:30-4PM and on those other occasions when the Library Director, Couturier and Secker are all not present.

16. Alexander serves as LIC from 4-5PM on Fridays when the Director is away or unavailable.

17. Couturier has in the past occasionally attended Village Department Head meetings in the Library Director's place.

18. The Library Director has exercised ultimate decision-making authority as regards the hiring of both professional and non-professional Library employes. Selections for Library Aide, Desk clerk and Shelver positions have typically proceeded as follows: the Library Director receiving the applications; showing them to Couturier and asking for Couturier's personal knowledge about any of the applicants; the Library Director deciding which of the applicants to interview; the Library Director interviewing the applicants one-on-one; Couturier testing the applicants' ability to sort and shelve books and/or to follow instructions and perform a computer task, but not otherwise interviewing the applicants about their background, qualifications or interests; the Library Director meeting with Couturier, learning the candidates' test results, and asking which candidate Couturier would hire and why; and the Library Director deciding whom to hire, with the selections matching Couturier's stated preference in perhaps half of the nine non-professional selections made in the past five years. The Director has also

asked DeIanni for her opinion of individuals who were under consideration for temporary grant-funded non-professional positions involved with Children's Services, but without involving DeIanni in interviewing or testing of the applicants.

19. There have been two professional positions for which selection processes have been undertaken in the past five years. The selection of Alexander as Adult Services Library in 1991 was the product of a panel or committee process that involved the Library Director, Couturier, Secker and DeIanni grading the applications based on criteria established by the Library Director so as to determine whom to interview, conducting the interviews (as a group for the most part, with DeIanni not participating), and then sharing opinions about whom to select. The panel narrowed the choices to two by consensus. When they were unable to reach consensus on a choice, they agreed instead that the Library Director should choose between the two, which she did.

Couturier had expressed her preference for the selection of the other candidate, whereas Secker had expressed a preference for Alexander. That was the only instance in which Secker was involved in the hiring process. The other selection process for a professional position involved a technical services position in February of 1993. Library management decided to separate technical services from circulation services with which it had previously been combined in the position then held by Couturier. Two existing employees applied for the technical services position; Couturier was not one of them. Couturier informed the Library Director which one of those two she thought should be selected. The Library Director decided in that instance to be joined on an interview panel by the Village Administrator and the West Allis Library Director, and not to include any of the professionals working at the Library. It was ultimately decided that neither of the two candidates was qualified for the position and that the Library Director herself would perform the technical services function.

20. Couturier is responsible for new-hire and in-service training concerning the various aspects of circulation service area. She provides such training upon hire to all professional employees and to employees in the classifications of Library Aide, Desk Clerk and Shelver. Because the training provided is on-the-job in nature, it may take several months or more before some functions have been performed often enough to fully familiarize a newly-hired person with them. The initial training of a newly-hired shelver involves approximately two hours of detailed instruction followed by a period of perhaps two weeks during which the employee's work is monitored with additional coaching as needed to assure that it is being performed properly. Couturier does that follow-up training for new employees working when she is on duty, and Secker does the follow-up and coaching of new employees during the evening hours when Couturier is not on duty.

21. Only the Library Director has exercised the authority to impose discipline on Library employees. Couturier and Secker have never been told that they have the authority to impose discipline in any form whatsoever, and neither has ever done so. In exercising her disciplinary authority, the Library Director: has sought and obtained information orally and in writing from Couturier and Secker about their observations of employees experiencing job performance problems; has discussed with the two of them ideas for solving those performance problems; has kept the two of them apprised of developments related to the performance problems observed; and, when contemplating discharge, has asked both whether there are any other remedial steps that could be taken to avoid discharge. In three separate instances in which the Library Director warned and ultimately discharged employees, she did so in part on the basis of information received from and discussions had with Couturier and Secker, and she had Secker present with her when she told the employees they would be discharged if they did not resign. When the Director asked Couturier and Secker if there was any further remedial action that could be taken, they both agreed with the Director that there was not. In the only other instance of disciplinary action, a written warning was issued to another employee in connection with excessive chatting with one of the employees who was ultimately discharged. In that instance, as well, the Library Director's written warning

followed discussions with and receipt of information regarding the on-the-job observations of Couturier and Secker.

22. The Library Director issues written evaluations to new employees after six months of employment and annually thereafter, usually on or about the employees' anniversary date of hire. A poor six-month evaluation could delay a new employee's receipt of a pay increase, but no evaluation has ever had any such effect, and there is no Library policy in place whereby an adverse annual evaluation could have any effect on an employee's pay. Before preparing her evaluations of non-professional employees performing circulation desk functions, the Library Director has always asked for and obtained from Couturier and Secker their comments about each Library Aide, Desk Clerk and Shelver whose performance they have respectively had an opportunity to observe during the evaluation period. In April of 1993, the Library Director developed a formal written evaluation form which was completed and given to the Library Director by Couturier and Secker in advance of the Library Director's issuance of a 6-month evaluation of a non-professional employee. The Library Director intends to have DeIanni complete the same form as regards the Library Aide who assists her in Children's Services. The formal evaluation form calls for assessment of the employee's performance in various respects, but it does not call for a recommendation concerning completion of probation or any other personnel action.

23. There is no formal procedure regarding the creation or filling of vacancies in the Library. While the Library's more recent practice has been to utilize a formalized posting and interview process even where there are existing employees interested in open positions, there have been occasions in the past in which employees' classifications have been changed without a formal posting and selection process being utilized. In some of those instances, the Library Director acted without asking for Couturier's opinion. In others, she obtained Couturier's opinion before acting. In at least one instance, she sought and obtained DeIanni's opinion before acting. On another occasion, Couturier recommended that Amy Kostuik be upgraded from Desk Clerk to Library Aide on the basis of Couturier's opinion that Kostuik was doing a considerable amount of Library Aide work and performing it and her other duties reliably and well. The Library Director decided not to upgrade Kostuik on the basis that there was no open Library Aide position at that time.

24. Neither Couturier nor Secker have exercised or been told that they have any authority to layoff employees or to make recommendations regarding decisions to lay off employees.

25. The Library has no written grievance procedure. In practice, employees bring their concerns and complaints to the Library Director, to Couturier and/or to Secker, and those concerns are sometimes discussed at meetings of the whole staff or of the Planning Committee.

26. The Library's pay ranges and rates of pay as of the end of 1992 are as follows. The Library Director is paid a salary of \$29,900, which translates to approximately \$14.76 using a 2080 hour work year. The Library Director does not receive extra compensation for extra time worked. All other Library employees are paid on an hourly basis such that they do receive extra compensation for extra time worked, with premium rates applicable to hours worked in excess of forty in a week or on Sunday, payable in cash or compensatory time at the discretion of the employee. The District's professional personnel other than the Library Director are paid within two pay ranges: the Librarian V range (\$9.30-10.58) for those not holding a Masters Degree in Library Science (herein MLS) and the Librarian VI range, which has a higher range maximum, for those with an MLS degree. Couturier's job description does not call for an MLS degree, she does not have an MLS degree, and she is paid at a rate of \$10.30 per hour. Secker's job description calls for an MLS degree, she has an MLS degree, and she is paid at a rate of \$12.30 per hour. DeIanni does not have an MLS degree, and she is paid at a rate of \$10.25 per hour. Alexander's job description calls for an MLS degree, she is the professional employee hired most recently, and she is paid at a rate of

\$10.10 per hour. The 1992 pay ranges for the non-professional Library employes are as follows:

Library Aide -- 7.84 - 8.92
Desk Clerk -- \$5.63 - 6.41
Shelver -- \$4.42 (4.25 for some high school students) - 5.03
Secretary and Bookkeeper -- \$7.84 - 8.92
Library Helper -- \$5.22 - 5.95

27. Despite the substantial periods of time during which Couturier and Secker are in charge of the Library due to the Library Director's absence or unavailability, their limited supervisory responsibilities in that capacity and the others noted above are routine in nature rather than requiring the use of independent judgment, and the extent to which they provide information and opinions about other employes to the Director does not rise to the level of effective recommendation of other employes' hiring, transfer, promotion, discipline, discharge, reward or grievance adjustment. Accordingly, while they are lead workers responsible for supervising their respective service area activities, they do not, on balance, possess indicia of supervisory authority in sufficient combination and degree to render their positions supervisory.

28. The Library Secretary and Bookkeeper is the sole administrative clerical employe working at the Library. She reports to and is directly supervised by the Library Director. The job description for Library Secretary and Bookkeeper, revised in September of 1992 by the Library Board: describes the position as generally responsible for duties relating to the library's secretarial and bookkeeping services; makes specific reference to maintaining files for Library Board members, compiling and preparing material for Board meetings, maintaining public information files on Library Board activities, and maintaining files for the Library Director, including those dealing with personnel and correspondence; describes the position as in charge of receiving all incoming mail from Village Hall, the U.S. mail and other sources and processing all outgoing mail, serving as a courier between the Village Hall and the library, and being responsible for making deliveries to the post office and for recording minutes of monthly staff meetings and routing information to staff members unable to attend.

29. The Secretary and Bookkeeper shares a work location in the Library Workroom with Couturier, DeIanni and Alexander. That location is down a corridor and through another room from the Library Director's office. The Library Director keeps the only key to locked files concerning Library personnel matters. When the Library Director is on duty in the Library, she unlocks those files upon arrival and locks them upon her departure. Only the Secretary and Bookkeeper and the Library Director are permitted to access those files. The Secretary and Bookkeeper maintains and updates those files which are used by the Library Director.

30. The Secretary and Bookkeeper's duties include serving as secretary to the Library Director. The Library Director's role in the event that one or more units of Library employes obtain collective bargaining rights has been discussed by the Library Board, but it has not been decided upon. Based on the preliminary discussions, it is likely that the Library Director will be a member of the employer's bargaining team in collective bargaining negotiations with the exclusive representative. It also appears likely that the Library Director will have a significant role in contract and grievance administration, as well.

31. The Library Director has developed a revised job description reflecting her ideas about the expanded responsibilities of her secretary in the event an exclusive representative is certified. That description has not been presented to the Library Board, but it has been reviewed by and discussed with the President of the Library Board. That description was not developed with any input from Bomberg, and there has been no decision made about whether

the rate of pay currently received by Bomberg will be adjusted in the event that the job duties are modified as reflected on the proposed revised description. It is the Library Director's opinion that, as revised, the position would require more than the 20 hours per week currently worked by Bomberg. The proposed revised description would change the job title to Administrative Secretary and Bookkeeper. It would state that the position provides confidential secretarial and bookkeeping support to the office of the Library Director, and it would specifically add the following to the duties listed for the position:

Serves as confidential secretary to the Library Director, including preparation of confidential correspondence relating to employment and personnel matters. Assists in preparation of cost estimates of collective bargaining proposals and grievance settlements.

Types correspondence and reports, including confidential reports relating to personnel records, evaluations, employee discipline, collective bargaining proposals, and confidential financial data as assigned by the Library Director.

Records minutes and attends regular Board and staff meetings, union negotiation meetings, and other special meetings as assigned by the Library Director. Types, files and distributes the resultant minutes.

Maintains files of regular and special library budget accounts, statements, Village financial printouts, invoices, purchase orders, reports, and correspondence and provides access to same as requested by the Library Director.

Maintains confidential personnel records including hours and benefits, prepares periodic reports of same for the Village payroll office as requested by the Library Director.

Types, organizes and transmits materials for Library board and committee meetings. Maintains accurate listings of Board and staff addresses. Types and posts official meeting notices and agendas.

The proposed revised description would add to the required knowledge and skills the following: "Ability to maintain and hold in confidence information relating to personnel functions of Hales Corners Public Library."

32. The Library Director is, herself, a proficient word processor. She personally typed the written warnings given to employes and certain of the notes she gave to Couturier and Secker concerning the employes who were ultimately warned and/or discharged. The Library Director also personally word processed the proposed Administrative Secretary and Bookkeeper job description noted above. It is the Library Director's opinion, however, that she would not have time to assume all of the confidential clerical responsibilities that would arise in the event of the certification of an exclusive representative for a unit or units of Library employes. The Library Director has already found herself working significant extra hours to complete the extra work associated the representation petition and the instant hearing.

33. The Village employs a secretary who is excluded from any collective bargaining as a confidential employe. That individual attends Village Board meetings, works as the Village's office manager, and oversees the Village's administrative services and treasurer functions. She works in Village Hall which, as noted, is in a different building some three blocks distance from the Library. It is the Library Director's opinion that it would be extremely difficult to operate the Library's administrative affairs and a relationship with an exclusive representative of a bargaining unit of Library employes using that individual for the clerical work regarding confidential labor relations.

34. If an exclusive collective bargaining representative were certified for a unit or units of Library employes, Bomberg's position, as the secretary to the Library Director and the sole clerical employe working at the Library, would give her sufficient access to, knowledge of, or participation in confidential matters relating to labor relations to render her position confidential in nature. In that event, it would be unduly disruptive to require the Village to have the Library's confidential labor relations work of a clerical nature performed by the Library Director or by the Village's existing confidential secretary.

CONCLUSIONS OF LAW

1. The Circulation Supervisor position held by Jan Couturier is that of a municipal employe and not that of a supervisor within the meaning of Secs. 111.70(1)(i) and (1)(o)1, Stats., respectively.

2. The Reference Librarian/Night Supervisor position held by Cindy Secker is that of a municipal employe and not that of a supervisor within the meaning of Secs. 111.70(1)(i) and (1)(o)1, Stats., respectively.

3. The Secretary and Bookkeeper position held by Carol Bomberg is that of a confidential employe and not that of a municipal employe within the meaning of Secs. 111.70(1)(i), Stats.

4. Jan Couturier and Cindy Secker are eligible to vote in the pending representation election proceeding, but Carol Bomberg is not.

ORDER

1. The Library Board's challenges of the ballots of Jan Couturier and Cindy Secker are denied, such that the ballots returned by either of them shall be opened and processed along with the other ballots returned by employees eligible to vote in the pending representation election proceeding.

2. LAW's request that Carol Bomberg be provided an opportunity to vote in the pending representation election proceeding is denied.

3. The ballot count in the pending representation election shall be conducted in accordance with 1 and 2, above.

Given under our hands and seal at the City of
Madison, Wisconsin this 30th day of November,
1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

Village of Hales Corners (Library)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER CONCERNING
CHALLENGED BALLOTS AND RELATED MATTERS

The Municipal Employer has challenged the mail ballots submitted by Circulation Services Supervisor Jan Couturier and Reference Librarian/Night Supervisor Cindy Secker (whom the parties agree are professional employees) on the ground that their positions are supervisory such that they are not eligible to vote in the election previously directed in this matter. The Union has responded by asserting that Secretary/Bookkeeper Carol Bomberg (whom the parties agree is not a professional employee) should be sent a ballot and permitted to vote on the ground that she is a municipal employe rather than a confidential employe. The ballots received by the Commission have remained unopened because the outcome of the unit-determination vote among the professionals could have been affected by the ballots cast by Couturier and Secker. The parties agree that the Commission should determine the eligibility of all three positions in dispute without regard to any prior stipulations that may have been entered into concerning any of them. The parties further agree that, if Bomberg is determined to be a municipal employe rather than a confidential employe, then she should be sent a ballot and given an opportunity to vote before the rest of the ballots are opened and counted.

Claimed Supervisory Status of
Circulation Services Supervisor Jan Couturier and
Reference Librarian/Night Supervisor, Cindy Secker

Applicable Decisional Standards

Section 111.70(i)(o), Stats., defines "supervisor" as

. . . any individual who has authority in the interest of the municipal employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In determining whether a position is supervisory, the Commission considers the following well-established criteria:

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 or her skills or for his or her supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employes; and
7. The amount of independent judgment exercised in the supervision of employes.

E.g., City of Milwaukee, Dec. No. 6960 (WERC, 12/64); Sauk County (Sheriff's

Department), Dec. No. 17201-A (WERC, 6/87). It is not necessary that all of the listed factors be present in order to conclude that an employe's position is supervisory. Rather, the question is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employe occupying the position is supervisory. E.g., West Bend Joint School District, Dec. No. 16669-A (WERC 12/92).

Position of the Library Board

The Library Board asserts that Couturier and Secker are both supervisors for the following reasons. Their job descriptions expressly require them: to perform supervisory duties requiring the exercise of individual initiative and independent judgment; to supervise and (in Couturier's case) to train personnel; and to assist in developing Library policies and procedures pertaining to circulation, registration and technical services (Couturier) and reference services (Secker). Both also are responsible for serving as Librarian in Charge -- being in charge of the entire staff of employes on duty and of all Library operations and of making sure that all policies and procedures are maintained -- on the frequent occasions when the Director is out of the building or otherwise unavailable. Couturier is Librarian in Charge (LIC) in the Director's absence or unavailability approximately 10 hours per week, and Secker serves in that capacity when those two are not present approximately 20 hours per week, including four nights each week. In addition, both supervise multiple classes of employes, assign those employes specific tasks during the work day as necessary, train new personnel, and conduct performance evaluations of the employes each supervises. They both are authorized to make decisions to redirect employees to cover for absentees, to call employes in to work when the Director is unavailable, and (in Couturier's case) to fill in for the Director at various meetings she cannot attend.

The Library Board further argues that Couturier has conducted interviews and made hiring recommendations and that both were on a panel that ultimately decided to hire the Adult Services Librarian. Each has also been directly involved in discipline and discharge of three employes over the past several years. Both kept notes about former employe J.P. and reported observations to the Director orally and in writing; both joined with the Director in reaching the decision that there was no choice but to discharge J.P., and Secker was present at the discharge meeting with that former employe. Again, with respect to former employe S.J., both kept notes on his performance and gave the Director input on how to handle him. The Director made the decision to discharge based on the employe's performance and notes and meetings with Couturier and Secker. Finally, with respect to former employe E.B., both Couturier and Secker brought performance problems to the Director's attention via notes and meetings, the Director consulted both of them before the discharge decision was made, and both were in agreement with the Director that the employe should be discharged.

The Library Board further notes that the Library Director regularly meets with Couturier and Secker on an as needed basis concerning Library operations; that the Library Director has met with Couturier regarding the Library budget; and that both are on the Planning Committee that meets once a week and provides input to the Library Board on policies which, when approved, apply to all Library employes. Couturier and Secker are the two highest paid employes in the Library besides the Director.

The Library Board notes that if Couturier and Secker are not considered supervisors "there would effectively be no one in charge" of the Library for approximately 30 out of 64 hours per week, and there would be no one directly supervising at least ten employes on a daily basis. It is fundamental that an employer has the right to have at least one supervisory employe present at all

times, citing, Elkouri and Elkouri, How Arbitration Works, (4 ed., 1985) at 581 82.

For the foregoing reasons, the Library Board asserts that Couturier and Secker are supervisors and hence not eligible to vote. Citing, City of Madison (Public Library), Dec. No. 19906 (WERC, 9/92); City of Eau Claire (Public Library), Dec. No. 15150 (WERC, 12/76); and City of Manitowoc (Library Board), Dec. No. 24442 (WERC, 4/87).

In its reply brief, the Library Board emphasizes that to designate the Library Director as the sole supervisor in a unit of 16 employes would yield an absurd and unworkable result. The Library Board also takes issue with various contentions advanced in the Union's initial brief. The Library Board notes that the Director asks Courtier for her hiring recommendations and follows them about half the time. While Secker has been asked for such a recommendation only once, the frequency with which supervisory authority is exercised is not controlling where the evidence shows the authority is in fact possessed. Citing, Lakeland UHS District, Dec. No. 17677 (WERC, 4/80). The Union's contention that the Director rejected Courtier's recommendation that Kostuik be promoted is misleading because there was no available position to accommodate the promotion Couturier had recommended; that incident does not demonstrate the Couturier lacks the authority to effectively recommend promotions. The Director has considered Couturier's recommendations on at least three occasions when existing employes were considered for vacancies in other Library jobs, accounting for nearly every instance in which an employe has been promoted at the Library. The evidence concerning the three discharges shows that Couturier and Secker evaluate the performance of the employes they supervise and that the Director places great importance on those evaluations in connection with discipline and discharge decisions. The amount of time involved in redirecting employes when necessary is less significant than the fact that there would be no supervisor to perform that function on the Library Board's behalf during the Director's frequent absences and in the evenings if Couturier and Secker are not excluded from the bargaining unit. That redirection function alone should be sufficient to warrant their exclusion. The fact that Lee Alexander also serves as Librarian in Charge is insignificant because she ordinarily does so only for a brief time on Friday afternoons.

The evidence does not negate the possibility that Couturier and Secker are the two highest paid employes besides the Director, at least in part, because they have supervisory responsibilities. The Library policy and the Library Director's testimony establish that the LIC's responsibilities include "resolving any problems or employee concerns such as scheduling or work assignments. If there was an emergency and I was not available, the individual would be responsible for informing the Library Board of emergency conditions." Citing, tr. 13-14. That responsibility could also include approving payment of bills, signing purchase orders, and approving petty cash transactions and payroll. It would be impossible for Couturier and Secker to perform their various supervisory responsibilities without exercising independent judgment and discretion.

Position of the Association

LAW asserts that Couturier and Secker are lead workers rather than supervisors. Both spend the vast majority of their time performing professional librarian work as assigned by the Director. When the Commission looks beyond their job titles and descriptions to the evidence concerning their duties and responsibilities, it will find that neither of them possesses supervisory authority in sufficient quality and degree, and neither exercises sufficient independent judgment or discretion, to warrant exclusion from the unit as a supervisor.

LAW further argues that, while they have both played a limited role in the hiring process, neither Couturier nor Secker can be said to effectively recommend whom the Director will hire. The Library Director makes those decisions without giving much weight to the opinions of others. Similarly, the Director is the only person who decides if a promotion is warranted and who will be promoted. Couturier's recommendation that Amy Kostuik be promoted from Page II to Aide was not followed, and the Director promoted an employe named Kathy from Shelver to Page without any input from either Couturier or Secker. Neither of them has been shown to have disciplined or effectively recommended discipline of an employe, and neither has been told that she is authorized to impose discipline in any form. They both report facts to the Director, and the Director on occasion discusses problems with subordinates' performance with them and has Secker present to witness disciplinary meetings that the Director has with employes. However, the Director decides for herself what disciplinary action, if any, is to be taken.

The Director also determines what work is to be performed, by whom, and when. When the Director is present, the Director makes all of the supervisory decisions herself. In the Director's absence, the senior employe among the four other Library professionals is deemed Librarian in Charge. However, since Couturier works days as does the Director, she is Librarian in Charge only on a relatively few days a year. Secker serves in that capacity more often because she works evenings. However, the policy also permits the two other professionals whom the Library Board agrees are properly included in the bargaining unit to serve in that capacity when they are the senior professional on the premises as they are from time to time. More importantly, even when they are the Librarian in Charge, it is generally with respect to the relatively few employes who work at any given time, and the extent of the authority and discretion exercisable in that role is quite limited. The Librarian in Charge merely sees to it that the Director's orders and schedules are carried out. Once trained, Library employes perform their daily routine without meaningful direction from Couturier and Secker. The Librarian-in-Charge may occasionally identify tasks to be performed by employes who ask what they should do next when they are finished with their normal tasks, but that does not occur on a daily basis and it involves only ten or fifteen minutes per day when it does occur.

LAW also argues that Couturier and Secker are being paid in accordance with their educational attainment, not on account of their supervisory responsibilities. Like all other Library employes aside from the Director, they are paid on an hourly basis and they receive extra pay when they work extra hours. The only salaried Library employe not paid extra for extra time worked is the Director. Couturier is paid about the same as DeIanni and Alexander (\$10.70, \$10.25 and \$10.10) whereas the Library Director testified that Secker was paid the higher \$12.30 because she holds a Master's degree.

If they supervise anything, LAW asserts that Couturier and Secker supervise the circulation and reference activities, respectively. The Director has retained total personal control of all Library functions and personnel. The supervisory authority she has delegated is extremely limited and does not involve a meaningful exercise of independent judgment by Couturier or Secker. The Director personally reviews all job applications, schedules all staff, contacts all job applicants, interviews and hires employes, approves all vacations and time off requests, and has the only key to the personnel files.

Accordingly, LAW concludes that there is only one supervisor in the Library, and that is the Director.

Discussion

The record supports LAW's basic contention that the Library Director has

retained a broad range of detailed supervisory control and responsibility with respect to all of the employes of the Library. Among other things, the Director decides who does what and when. She personally makes out the schedule, approves time off and vacation requests, evaluates each employe, interviews candidates for hire or promotion and is the principal and controlling actor in the Library's disciplinary and hiring activities, as well. The frequency of instances in which the Library Director has chosen not to hire candidates recommended by Couturier undercuts the Library Board's contention that her recommendations and opinions are "effective" within the meaning of the statutory definition of a supervisor. While the Director has the benefit of written comments from (and sometimes discussions with) Couturier and Secker about employes with whom they work closely before issuing those employes' written evaluations, the evaluations are then written independently by the Director. It is also notable that the Director also seeks such input from the undisputedly non-supervisory DeIanni in connection with the Director's issuance of the written evaluation of a non-professional employe who works closely with DeIanni. In addition, the Director testified that if either Secker or Couturier were to impose even a verbal reprimand (something neither has ever done nor been told they were authorized to do), the Director expected that they would discuss the matter with her before they took any such action.

In our view, the record establishes that Couturier and Secker respectively supervise a specific service area. They spend the vast majority of their time performing either professional librarian work or duties similar to those performed by some of the non-professional Library employes. In the latter two respects, Couturier and Secker's statuses closely parallel those of their fellow professionals DeIanni and Alexander, who join them and the Library Director for the monthly Planning Committee meetings. Couturier's modest pay differential compared with DeIanni and Alexander does not clearly show that she is higher paid than the other two because of her supervisory responsibilities as opposed to other factors such as length of service. Whether Secker's higher pay level is attributable entirely to her possession of the MLS degree and length of service or to some extent to her supervisory responsibilities is also not clearly established in the record.

The Library Board places great emphasis on the fact that Couturier and Secker -- far more than either DeIanni or Alexander -- spend substantial periods of time in charge of the Library and the staff on duty when the Library Director is absent or otherwise unavailable to supervise the employes. While the LIC is in charge of the Library and the staff on duty, the record indicates that that role involves merely routine exercises of supervisory authority rather than the use of independent judgment. The discretion exercised by the LIC when an employe calls in sick appears quite limited, and the Director characterized the LIC's decision-making involved in those situations as "cut and dried." (tr. 117) Once trained, both the professional employes and the non-professional employes have well-established assignments allocated by the Director. The staff on duty ordinarily goes about their appointed tasks without significant supervisory inputs from the LIC. The instances in which the non-professionals finish their regular assignment and ask the LIC what they should do next are relatively infrequent and involve relatively routine supervisory determinations. The LIC policy itself refers to duties delegated to the LIC as "routine" in nature (see Finding of Fact 10, Sec. 3.01(b)). There are 16 Library employes subordinate to the Director, but the part-time nature of most or all of the non-professional employes results in there being far fewer employes than 16 typically on duty when Secker and Couturier are serving as the LIC (see Findings of Fact 13 and 14). The training functions performed by Couturier and Secker, while important, are also relatively routine and quite consistent with the role of a lead worker responsible for a service area activity.

While the Library Board and Director have the power to delegate sufficient supervisory authority to Secker and Couturier so that they are supervisors within the meaning of the statute when they are in charge of the library and

staff on duty as the LIC, they have chosen not to delegate supervisory authority to Secker or Couturier -- as LICs and generally -- in sufficient combination and degree to render either of their positions supervisory.

We have therefore concluded that the positions held by Couturier and Secker are not supervisory and that they are both eligible to vote in the pending representation election. Accordingly, we have denied the Library Board's challenges to each of their ballots.

Claimed Confidential Employee Status of
Part-Time Secretary/Bookkeeper, Carol Bomberg

Applicable Decisional Standards

The Commission's standards for determining whether a position is that of a confidential employe so as to be excluded from the Sec. 111.70(1)(i), Stats., definition of municipal employe are well established. As reiterated in Village of Saukville, Dec. No. 26170 (WERC, 9/89) those standards are as follows:

It is well-settled that, for an employe to be held confidential, such employe must have access to, knowledge of, or participation in confidential matters relating to labor relations; for information to be confidential, it must (A), deal with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and, (B), be information which is not available to the bargaining representative or its agents. 1/

While a de minimis exposure to confidential materials is generally insufficient grounds for exclusion of an employe from a bargaining unit, 2/ we have also sought to protect an employer's right to conduct its labor relations through employes whose interests are aligned with those of management. 3/ Thus, notwithstanding the actual amount of confidential work conducted, but assuming good faith on the part of the employer, an employe may be found to be confidential where the person in question is the only one available to perform legitimate confidential work 4/ and, similarly, where a management employe has significant labor relations responsibility, the clerical employe assigned as her or his secretary may be found to be confidential, even if the actual amount of confidential work is not significant, unless the confidential work can be assigned to another employe without undue disruption of the employer's organization. 5/

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- 1/ Dane County, Dec. No. 22976-C (WERC, 9/88).
 - 2/ Boulder Junction Joint School District, Dec. No. 24982 (WERC, 11/87).
 - 3/ Cooperative Educational Service Agency No. 9, Dec. No. 23863-A (WERC, 11/87).
 - 4/ Town of Grand Chute, Dec. No. 22934 (WERC, 9/85).
 - 5/ Howard-Suamico School District, Dec. No. 22731-A (WERC, 9/88).

To the same effect was our decision in City of East Troy, Dec. No. 26553 (WERC, 7/90).

Position of the Library Board

The Library Board argues that Bomberg is properly deemed a confidential employe for several reasons. She is the sole administrative/clerical employe in the Library building and department. She alone shares access to personnel files with the Director. She also presently compiles material for Library Board meetings and maintains files on Library Board activities. If the Union prevails in the election, the Director will surely be significantly involved in collective bargaining and contract administration, such that Bomberg will be typing confidential negotiations-related correspondence, maintaining confidential negotiation files, accessing and preparing confidential information for negotiations. Her current and revised job descriptions show that she will be spending between 5 - 10% of her time on sensitive labor relations matters. The Library Board cannot reasonably be expected to utilize the Village Administrator's secretary who works several blocks away for that work both because that employe already has a full workload which includes managing the Village Hall office, overseeing the treasurer function, and attending Village Board meetings. Nor can the Library Board be expected to rely on the Director to perform those functions because, as she testified, the Director will not have time to do them herself. Therefore, Bomberg's is a confidential position under the principles established in Village of East Troy, Dec. No. 26553 (WERC, 7/90) and Village of Saukville, Dec. No. 26170 (WERC, 9/89) and City of Racine, Dec. No. 17724 (WERC 4/80) (held confidential City's payroll supervisor who spent 5-10% of her time costing bargaining proposals for City negotiators).

In its reply brief, the Library Board asserts that whether Bomberg wishes to be a confidential employe does not limit the Library Board's right to assign her duties of a confidential labor relations nature. The fact that the Library Board has not yet determined the rate of pay applicable to Bomberg's position when and if it is revised does not indicate a lack of good faith intentions to modify the duties of that position when and if LAW obtains bargaining rights with respect to Library employes. The Director testified that she would not have time to maintain confidential files and to handle and prepare personnel information for collective bargaining. Neither would the confidential secretary at Village Hall, who has no contact with the Library Director or any other individuals at the Library and who works for a different department of Village government governed by a different board. It follows that those duties will be assigned to the Library's sole clerical employe. LAW's reliance on City of Cornell, below, is misplaced since the work force there was half the size of the instant Library staff, and the labor relations duties were quite de minimis in amount and limited to routine typing of grievances.

Position of the Association

LAW argues that the Director's revised job description for Bomberg's position is a mere "paper exercise" and not the product of a good faith employer determination of its future clerical needs in the event LAW succeeds in the election. Unlike the situation in Cudahy Public Library, Dec. No. 26931-B (Gratz, 5/92) aff'd -C (WERC, 10/92), Bomberg had no input into or knowledge of the revised description; the Library Board has not offered any increase in Bomberg's rate of pay; Bomberg does not share an office with the Director and therefore does not have occasion to hear the Director's conversations about confidential labor relations matters; the Director does not share a key to the confidential personnel files with Bomberg or anyone else; the Director is proficient at word processing; and the Director has historically kept a tight reign on all facets of running the library and seems likely to continue to prefer to handle typing of confidential matters such as the revised job description for the Administrative Secretary and Bookkeeper which the Director typed herself. The idea of assigning such work to Bomberg came up for the first time only after the election petition was filed, such that Bomberg has never performed clerical work regarding prior discipline and discharge of library employes. Finally, the Village Administrator who serves as chief negotiator for other Village bargaining units, was present throughout the instant hearing, making it conceivable that the Library Board and Village will utilize the Village Administrator and her confidential secretary to work

with the Library Director in negotiating a contract. The fact that that secretary is located three blocks away from the Library does not preclude the Library Board from reasonably being expected to utilize her instead of excluding Bomberg from the unit. Citing, City of Cornell, Dec. No. 24028-29 (WERC 10/86).

In its reply brief, LAW asserts that the Library Board's confidential clerical employe, Carol Cyrus, currently works on all personnel matters pertaining to Library employes. Newly hired library employes report to her at Village Hall where she fills out and maintains their employe work record. She also explains their wages, benefits and working conditions, answers their employe benefit questions, and administers termination benefits to resignees. Cyrus also participates in collective bargaining process for the Library Board. The few blocks separating the Library from Village Hall has not prevented Cyrus from performing those personnel functions for the Library to date, so there is no reason to believe that Bomberg would be assigned confidential labor relations duties if and when LAW obtains bargaining rights regarding Library employes.

Discussion

In this case, Bomberg is the sole clerical employe in the Library. She serves as secretary to the Library Director. If LAW obtains exclusive representative status as regards library employes, it seems likely that the Director will play a significant role in contract negotiations and that she will conduct the Library's day-to-day labor relations and contract administration. As the sole Library clerical and the only employe besides the Director who is currently allowed access to personnel records on file in the Library, Bomberg is the logical assignee of the increased confidential clerical duties that would arise if the LAW obtains bargaining rights regarding Library employes. Unlike the situation in City of Cornell, those duties would relate not only to grievance administration but also to collective bargaining.

The facts, that the proposed modified job description was developed without Bomberg's input and that it has not yet been presented to the Library Board for approval and for a determination of the impact of changes in the job on its hours or rate of pay, do not persuasively demonstrate that the Library Board would not make material changes in Bomberg's position in the event that an exclusive representative is ultimately certified as a result of this representation proceeding.

Neither the Library Director's word processing proficiency nor the availability of a confidential secretary in Village Hall are sufficient to negate the reasonable likelihood that Bomberg will be assigned additional duties which, when combined with her present duties, will render her position confidential in nature. It would be unduly disruptive of the Library's organizational structure to require the Library Director herself to not only type correspondence and other documents, but also to maintain the personnel files, gather and prepare information in support of bargaining, keep minutes of bargaining meetings and perform various other functions involving sensitive labor relations information that may arise in the context of a collective bargaining relationship. It would also appear unduly disruptive of the Library Board's and Village's operations to require the Library Director to rely on the separately-located and apparently fully-occupied confidential secretary located at Village Hall for those functions. 1/

1/ Neither the facts asserted in the LAW's reply brief about the extent to which the Village confidential secretary may now be performing employe benefits and other personnel-related functions for and in personal contact with Library employes, nor the Library Board's assertions in its brief and reply brief that that secretary has no contact with the Library Director or any other individuals in the Library, are reliably confirmed or undercut by the record evidence. Even if the LAW's assertions are credited, however, the additional clerical responsibilities likely associated with a collective bargaining relationship at the Library would, in our view, make reliance on the Village confidential secretary unduly disruptive of Library Board and Village operations.

In accordance with the above-quoted principles set forth in the Saukville and East Troy cases, then, we are excluding Bomberg's position from the bargaining unit as a confidential employe. If LAW prevails in the election and Bomberg's duties do not become such as would warrant her continued exclusion as a confidential employe, LAW can, of course, seek her inclusion in the bargaining unit by means of a petition for unit clarification.

Accordingly, Bomberg is not eligible to vote in the pending election, and we have denied LAW's request that she be given an opportunity to vote.

Dated at Madison, Wisconsin this 30th day of November, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner