

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
WISCONSIN COUNCIL OF COUNTY AND	:	Case 32
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO	:	No. 49247 ME-3325
	:	Decision No. 27894
Involving Certain Employees of	:	
	:	
CITY OF TOMAH	:	
	:	

Appearances:

Mr. Daniel R. Pfeiffer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, Wisconsin 54656-0333, on behalf of the Petitioner.

Mr. Richard A. Radcliffe, Assistant City Attorney, 917 Superior Avenue,

P.O. B

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO, having on May 7, 1993 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the City of Tomah to determine whether said employees desire to be represented by said Petitioner for the purpose of collective bargaining, and if they so choose, to accrete said employees to an existing collective bargaining unit; and a hearing having been held before Mary Jo Schiavoni, a member of the Commission's staff on September 1, 1993, in Tomah, Wisconsin; and the parties having submitted post-hearing briefs on November 16, 1993; and the Commission, having considered the entire record and the arguments of the parties, and being fully advised in the premises, makes and issue the following

FINDINGS OF FACT

1. The City of Tomah, hereinafter referred to as the City, is a municipal employer and maintains its principal offices at the City Hall, 819 Superior Avenue, Tomah, Wisconsin; and that among its governmental functions is the operation of a municipal library.

2. The Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner or the Union, is a labor organization maintaining its offices at Route 1, Box 333, Sparta, Wisconsin.

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3. The parties stipulated that a question concerning representation exists among certain municipal employees employed by the City's Library.

4. The parties further stipulated that the appropriate voting group in which to conduct an election is as follows:

All regular full-time and regular part-time employees of the City of Tomah Library excluding confidential, supervisory, and managerial employees.

5. The parties also stipulated that in the event that a majority of the employees who vote desire to be represented for purposes of collective bargaining by the Petitioner, the voting group should be merged with the following collective bargaining unit which is currently represented by the Petitioner:

All regular full-time and regular part-time employees of the City of Tomah Water and Sewer Department, Public Works Department, Parks and Recreation Department and the custodial, maintenance and clerical employees at the Tomah City Hall, excluding supervisory, confidential, managerial, executive or seasonal employees.

6. The parties further stipulated to the exclusion of certain students who are employed by the Library on the grounds that they are temporary employees with no expectation of continued employment.

7. While there may be certain other unrepresented employees employed by the City at this time, neither party is requesting that these employees be included in the voting group to which they have stipulated in Finding of Fact 4 above nor is either party requesting that they be accreted to the existing bargaining unit at this time.

8. The parties agree that Jeanne Rice, Head Librarian, is appropriately excluded as a supervisory employee. They agree that employees with the titles of Library Assistant and Library Aide are appropriately included in the stipulated voting group. The only issue in dispute is the supervisory status of the Assistant Librarian - Children's Librarian, Geraldine Wells. The parties stipulated that the Assistant Librarian - Children's Librarian was not a professional employee.

9. Wells has been employed by the City in the Library for 13 years. She was hired as a Library Assistant in the Adult Department but assumed her present position approximately four years ago. Wells is responsible for the Children's Department and the Audio-Visual Department of the Library. She determines the programming that takes place. She selects appropriate materials for the two departments. She makes specific recommendations to the Head Librarian as to the budget of the Children's and Audio-Visual Departments of the Library. She places orders for materials for both departments. She reads to the children during story hours. She checks out all materials during her shift and oversees the return of said materials.

The Children's Department and the Audio-Visual Department of the Library are located on the bottom floor of the library building while the Adult Department occupies the entire top floor. There are six employees and two students employed at any given time in the entire Library including the Head Librarian and Wells. A high school student works on each floor a very limited number of hours each week primarily shelving books. A Library Aide and a Library Assistant work on the top floor along with the Head Librarian. A Library Aide and a Library Assistant work on the bottom floor along with the

Children's Librarian. The Library Aides work approximately 20 hours per week. The Library Assistant on the bottom floor is the technical processor for the entire Library. She does, however, cover Wells' desk during lunch and Wells' absences such as vacation. The Library Aide on the bottom floor does not work the same hours as Wells but works during the Library's extended hours outside of the regular work day and on Saturdays. Wells has responsibility for the entire Library during any extended absence of the Head Librarian.

10. When Wells assumed her current position, her job description stated the following in pertinent part:

" 1. Administers the Children's and Audio-Visual Departments in accordance with the policies and procedures established by the Board of Trustees and Winding Rivers Library System under the general supervision of the Head Librarian. 2. Plans and supervises the work of the Children's and Audio-Visual Departments, relating library objectives to community needs. 3. Evaluates the Student Aides once a year or as necessary."

11. In a nonrepresented classification and compensation study report by a consulting firm hired by the City in November of 1990, Wells was given no credit for exercising any supervisory authority over other Library employes.

12. In December of 1991, Wells' job description was changed by the Library Board to indicate the following: "2. Plans and monitors the work of the Children's and Audio-Visual Departments, relating library objectives to community needs. 3. Evaluates student aides once a year or as necessary under the direct supervision of the Head Librarian." Wells does evaluate the student aides. Wells supervises the activities of one Library Aide and the one student, directing them to various projects on which the Children's Department is working. She monitors all activities in both the Children's and Audio-Visual Departments.

13. Wells receives approximately \$2,500 more in salary than the Library Assistants but approximately \$6,500 less than the Head Librarian.

14. The student working in the Adult Department was hired by the Head Librarian. The student working in Wells' departments was recommended by a Library Board member who is her grandmother. The Head Librarian made the official recommendation of her hiring to the Library Board.

15. Wells does not possess sufficient indicia of supervisory status to be found to be a supervisory employe.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. A question concerning representation exists in the voting group comprised of:

All regular full-time and regular part-time employes of the City of Tomah Library, excluding supervisory, confidential, and managerial employes.

2. The Assistant Librarian - Children's Librarian is not a supervisory employe within the meaning of Section 111.70(1)(o)1, Stats., but is a municipal employe within the meaning of Section 111.70(1)(i), Stats.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DIRECTION OF ELECTION

An election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the voting group consisting of all regular full-time and regular part-time employes of the City of Tomah Library, excluding confidential, managerial, and supervisory employes who were employed by the City of Tomah Library on December 10, 1993, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employes voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, or no labor organization for the purpose of collective bargaining with the City of Tomah on wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 10th day of December, 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

CITY OF TOMAH

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

The sole issue for decision is the supervisory status of the Assistant Librarian - Children's Librarian.

POSITIONS OF THE PARTIES

City

The City maintains that the underlying purpose to be served by the exclusion of supervisory employes from the bargaining unit is to avoid a conflict of interest between management responsibilities and loyalty to members of the bargaining unit. Pointing to the factors to be considered in the definition of supervisory status, the City argues that the Assistant Librarian - Children's Librarian possesses the authority to assign work, to discipline other employes and to effectively recommend such action. It notes that the frequency or infrequency with which an employe exercises supervisory authority is not determinative of supervisory status. Moreover, even though an employe may spend the majority of his or her time performing non-supervisory duties, the employe is supervisory once sufficient responsibility and authority as a supervisor are present.

In this regard, the City contends that the Assistant Librarian - Children's Librarian should be found to be a supervisory employe because she has sufficient responsibility and authority among the Library employes. According to the City, Wells makes specific recommendations to the Head Librarian as to the budget of the Children's and Audio-Visual Departments. The structure of the Library indicates that both the circulation and budgetary requirements of the Children's and Audio-Visual Departments are substantially equal to that of the Adult Department. Wells places orders for materials for both departments. She prepares formal evaluations for the student aides on an annual basis. She is responsible for the hiring of the student aides including collecting their applications, and effectively recommending them to the Head Librarian. She is and has been effectively responsible for terminating the employment of student aides under her supervision. She provides direct oversight to the assignment of work activity in the Children's and Audio-Visual Departments. Her level of pay indicates that she is assumed to be responsible for supervisory obligations. Finally, she has the responsibility and obligation for the entire Library in the absence of the Head Librarian. For these reasons, the City believes that Wells should be excluded from the bargaining unit as a supervisory employe.

Union

According to the Union, the total number of employes to be supervised supports its position that Wells is not a supervisor. The Union's argument that Wells is nonsupervisory has Rice, the Head Librarian, supervising five regular employes whereas the City's position would have Rice supervising only two regular employes and Wells supervising only two regular employes. The Union also points to the listing of the Tomah City Administrative Staff, noting that Wells is absent from the list. According to the Union, the difference in compensation between Rice and Wells is significant and has grown markedly between 1990 and 1993. Any differences between Wells' salary and that of other regular Library employes can be explained by Wells' additional duties that are not supervisory in nature such as writing grants, programming, putting on workshops for the public and schools, and working with teachers and parents.

The Union stresses that the Library Board changed Wells' duties to make them less supervisory in nature. With respect to the Classification and

Compensation Study Report, it points out that independent consultants gave her no credit for any supervisory authority. The Union maintains that Rice does not inform Wells that she is in charge when Rice expects to be absent. Wells does not sign time sheets. With regard to Wells' participation in the hiring process, the Union takes the position that municipal employers often seek the opinion of employees, including nonsupervisory employees, when hiring additional employees, especially if the applicant has previously worked with or is known to the incumbent employee.

Finally the Union asserts that the supervisory and managerial duties in the Tomah City Library are performed by Head Librarian Rice and that Wells does not perform sufficient supervisory or managerial duties to be excluded from the voting group.

DISCUSSION

The following factors are considered in determining whether an employee is a supervisor:

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 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 spends a substantial majority of his time supervising employees; and
7. The amount of independent judgement exercised in the supervision of employees. 1/

It is not necessary that all of these factors be present in order to find supervisory status, merely that they be present in sufficient combination and degree. 2/ Applying these factors to the Assistant Librarian - Children's Librarian, we are not persuaded that she is a supervisory employee.

Initially, it is important to consider the historical context which surrounds Wells' current status. When Wells first became Assistant Librarian, she viewed herself as a supervisory employee and both her job description and on-the-job conduct supported her view. Her job description made reference to supervision of work and evaluation of the student "aides". She played a significant role in the termination of an aides' employment and in the hiring of student aides and a Library Aide. In response to a Position Analysis Questionnaire in August, 1990, she evaluated herself as having final decision-

1/ City of Milwaukee, Dec. No. 6960-J (WERC, 5/89)

2/ City of Cudahy, Dec. No. 26680 (WERC, 11/90)

making authority for "hiring", "firing", and "discipline of employes". In the Questionnaire, her supervisor, the Head Librarian, did not take issue with Wells' assessment of her supervisory authority.

However, in November, 1990, the City received a Classification and Compensation Study report which, based upon the consultant's review of her questionnaire and apparently an interview, concluded that Wells had "no supervisory responsibility". The Library staff was dissatisfied with the ranking they collectively received in the Report and made their dissatisfaction known to the Library Board. One response of the Library Board was modification of Wells' job description to eliminate the word "supervises" and to lessen the extent of her authority to evaluate student aides. Given the historical context, it is apparent that the Library Board decided to resolve the conflict between the Report and Wells' job description (and prior action thereunder) by removing any significant supervisory authority from Wells.

Of the various factors we examine when determining supervisory status, all that remains for Wells is the general direction of the work of two part-time employes and limited evaluative authority over the part-time student aide. While the Assistant Librarian does provide direct oversight into the activities of the Children's and Audio-Visual Department, she is responsible for supervising the activities of the employes in the Audio-Visual and Children's Departments, and not the employes themselves. Her level of pay appears to be related exclusively to her responsibilities over purchasing and programming for both departments. With respect to disciplinary authority, it is now clear that it is the Head Librarian, and not the Assistant Librarian - Children's Librarian who possesses the authority to effectively recommend the discipline of employes. All significant supervisory decisions are made by the Head Librarian and the Library Board.

Given the historical context and the actual duties and responsibilities performed by the Assistant Librarian, we conclude that any supervisory authority which she may possess is de minimis. Given the foregoing, we conclude that Wells is not a supervisory employe. 3/

Dated at Madison, Wisconsin this 10th day of December, 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

3/ When arguing that Wells is a supervisor, the City makes reference to Wells' responsibilities for recommending the annual funding level necessary to purchase library material and for subsequently ordering material once a budget is approved. These responsibilities are relevant to managerial but not supervisory status.

We would note that these responsibilities are not sufficient to render Wells a managerial employe. See, generally, Nicolet Area Technical College, Dec. No. 23366-C (WERC, 3/93).

