

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF COLUMBUS LIBRARY BOARD

Requesting a Declaratory Ruling Pursuant to Section 227.41,
Wis. Stats., Involving a Dispute Between Said Petitioner and

TEAMSTERS UNION LOCAL No. 695

Case 31
No. 56425
DR(M)-591

Decision No. 29492

Appearances:

von Briesen, Purtell & Roper, S.C., by **Attorney James R. Korom**, 411 East Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53202-4470, appearing on behalf of the City of Columbus Library Board and the City of Columbus.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Andrea F. Hoeschen**, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters Union Local No. 695.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECLARATORY RULING**

On January 21, 1998, the City of Columbus Library Board filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 227.41, Stats., seeking a declaratory ruling that the Board is the employer of certain employees represented for the purposes of collective bargaining by Teamsters Union Local No. 695.

Settlement efforts were unsuccessful and hearing was ultimately held on June 30, 1998 in Columbus, Wisconsin by Examiner Peter G. Davis.

No. 29492

The parties filed initial post-hearing briefs and the opportunity to file reply briefs expired September 3, 1998.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. On June 21, 1996, Teamsters Union Local No. 695, herein Teamsters, filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether “all regular full-time and regular part-time library employee(s) employed by the City of Columbus, . . .” wished to be represented for the purposes of collective bargaining by Teamsters.

2. On June 24, 1996, the Commission mailed a copy of the petition to the City of Columbus City Clerk along with a set of the Commission’s Stipulation for Election forms which described the employer as the “City of Columbus (Library)” and the proposed collective bargaining unit as “all regular full-time and regular part-time employees of the City of Columbus Library, . . .”

3. On July 25, 1996, the Commission received a Stipulation for Election form signed by Jeanne Johnson, President, Columbus Public Library Board on July 22, 1996 and by Teamsters’ representative Gene Gowey on July 24, 1996. The employer and bargaining unit descriptions in the Stipulation were those set forth in Finding of Fact 2. Accompanying the Stipulation was a list of names identified as “COLUMBUS PUBLIC LIBRARY ELIGIBLE VOTERS” on stationery headed “COLUMBUS PUBLIC LIBRARY”.

4. Pursuant to the Stipulation for Election, the Commission directed an election among “all regular full-time and regular part-time employees of the City of Columbus Library.” Prior to the election, eligible employee voters received the following document on “COLUMBUS PUBLIC LIBRARY” stationery from the “COLUMBUS PUBLIC LIBRARY BOARD.”

Dear Library Employee:

Unions like to make promises about higher wages and more benefits. Well, Unions can certainly make promises, but it is important for you to remember that it is the Library that pays your salaries and provides you with benefits. Further, negotiations deal with wages, hours, and conditions of employment, and increases in one area could be a trade-off for decreases in others.

We are all aware of current tendencies of City, County and State Governments to restrain all budgets. The City of Columbus is no different. Let's look at the facts:

1996 City Budget total	\$157,038.00
1996 Wages and Benefits	\$113,672.00 or 72%
1996 Fixed Expenditures	\$ 15,125.00 or 10%
1996 Materials and Services	\$ 28,241.00 or 18%

County funds are not guaranteed, fluctuate annually and could be reduced drastically. 100% of Columbia County Funds, until the Summer of 1995 were used for Materials and Services. Now 39% of these funds are also used for salaries.

We ask you to consider that the Library is a service oriented organization and is certainly not a profit making enterprise. We don't sell a product which can generate additional revenues. Our revenues are obtained from government budgets over promises the Union has made, plus the Union dues they will charge you. For example, 3 percent wage increases are common in unionized facilities for 1996. After you pay union dues, how much of an increase will you really see in your pocket?

Please understand that we are not telling you to vote "Yes" or "No" in the upcoming election. We do ask that you DO VOTE. This important decision is made on the basis of the majority of votes cast not the total number of eligible votes. For example, if only three (3) people vote out of eight (8) ELIGIBLE VOTES, THE DECISION OF TWO (2) of the three (3) will be final and binding on all eight (8) people. Again, please vote.

5. Teamsters won the election conducted by the Commission and on August 29, 1996, the Commission issued a Certification of Representative which stated that:

"Teamsters Union Local No. 695, IBT has been selected by the required number of eligible employees of the City of Columbus (Library) who voted at said election in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the City of Columbus Library, . . ."

6. During bargaining over the initial contract for the newly represented employees, a dispute arose as to whether the City of Columbus or the City of Columbus Library Board was the employer of the employees now represented by Teamsters.

7. The City of Columbus Library Board consists of eight members-six appointed by the mayor of the City of Columbus, one appointed by the county in which the library is located (Columbia County), and the last being the local school district superintendent or designee. The City of Columbus owns the library building with maintenance of the building being primarily the fiscal and operational responsibility of the Board. The Board functions pursuant to Sec. 43.58, Stats., which states in pertinent part:

43.58 Powers and duties. (1) The library board shall have exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund, and of the purchase of a site and the erection of the library building whenever authorized. The library board also shall have exclusive charge, control and custody of all lands, buildings, money or other property devised, bequeathed, given or granted to, or otherwise acquired or leased by, the municipality for library purposes.

(2) The library board shall audit and approve all vouchers for the expenditures of the public library and forward the vouchers or schedules covering the same, setting forth the names of claimants, the amounts of each claim and the purpose for which expended, to the appropriate municipal or county financial officer or, in the case of a school district, the school district clerk, with a statement thereon, signed by the library board secretary or other designee of the library board, that the expenditure has been incurred and that the library board has audited and approved the bill. The municipal, county or school district governing body shall then pay the bill as others are paid.

...

(4) Notwithstanding ss. 59.17(2)(br) and 59.18()(b), the library board shall supervise the administration of the public library and shall appoint a librarian, who shall appoint such other assistants and employes as the library board deems necessary, and prescribe their duties and compensation.

8. The Board receives the lion's share of its funding from the City of Columbus but also receives monies from Columbia County, memorial funds, and fines for late, damaged or lost books.

The Board has a Finance Committee which independently develops an annual line item Library budget for Board approval and subsequent submission to the City of Columbus as part of the City's budget process. The City has no authority to alter the line items in the Board budget and must provide the Board with financial support for library operations which is at least equivalent to the average allotment from the preceding three years.

Once a budget amount is approved by the City, the Board is free to spend the money as it sees fit. For instance, in December 1996, when the Library Director resigned, the Board chose to hire a new director for \$5,000 less per year in salary and designated the \$5,000 savings for capital equipment. The Board neither sought nor received City approval for this action.

9. The Board recruits, interviews and hires library employees without any involvement from the City. The Board, through its hired Library Director, is responsible for any discipline of employees which is necessary. The City plays no role in the disciplinary process.

Prior to the advent of its collective bargaining relationship with Teamsters, the Board determined the wages and benefits employees would receive and established its own personnel policies and practices. While those policies and practices largely parallel the policies and practices of the City, they differ in some respects. While the Board has generally granted wage increases of the same level received by City employees, it was free to grant whatever wage increases it felt appropriate. On one occasion, the Board granted a higher wage increase to its employees than was received by City employees.

The Board is in the process of bargaining the initial collective bargaining agreement with Teamsters.

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

CONCLUSIONS OF LAW

1. Neither the Teamsters nor the Board have waived the right to receive a determination as to the identity of the employer of the library employees.

2. The City of Columbus Library Board is the municipal employer within the meaning of Sec. 111.70(1)(j), Stats., of the library employees represented by Teamsters for the purposes of collective bargaining.

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

DECLARATORY RULING

The collective bargaining agreement ultimately reached by Teamsters and the City of Columbus Library Board establishing the wages, hours and conditions of employment of the

library employes shall reflect that the City of Columbus Library Board is the municipal employer of the library employes.

Given under our hands and seal at the City of Madison, Wisconsin this 24th day of November, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

City of Columbus

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECLARATORY RULING**

In this proceeding, we are asked to determine whether the employees represented by Teamsters are employed by the City of Columbus or by the City of Columbus Library Board.

POSITIONS OF THE PARTIES

The Library Board

The Board asserts that it is the employer of the employees in question.

The Board initially contends that the Teamsters have waived the right to challenge the Board's status as the municipal employer. The Board points out that its President signed the Stipulation for Election form in her identified capacity as Board President. When Teamsters subsequently signed the Stipulation, the Board alleges that Teamsters thereby waived their right to argue that the City is the employer.

The Board denies that it has waived the right to establish that it is the employer. It contends that the only document which identified the City of Columbus as the employer was the original election petition filed by Teamsters. The Board asserts that it, not the City, was always the party responding to the petition and that the occasional parenthetical use of the phrase "City of Columbus (Library)" in Commission documents does not waive the Board's right to assert its proper status as the employer.

On the merits, the Board contends that the record clearly establishes its employer status. It asserts that Sec. 43.58, Stats., gives it the statutory authority to act as an employer and that it has independently exercised said statutory authority. The Board argues that it has retained and exercises control over its budget, day-to-day operations, and most importantly employee wages, hours and conditions of employment. Applying the teachings of CITY OF NEW BERLIN (PUBLIC LIBRARY) DEC. NO. 13173-E (WERC, 2/96), to the facts in the record, the Board alleges that it is the employer of the employees represented by Teamsters.

Teamsters

Teamsters assert the City of Columbus is the employer of the library employees it represents.

Teamsters contend the Board has waived the right to argue that City of Columbus is not the employer. Teamsters assert that because the Board did not challenge the designation of the City as the employer during the election process, and because the Board has not established any change in circumstances, the Board's petition should be dismissed.

If the Commission reviews the merits of the employer identity issue, Teamsters argue the Board is not the employer because: (1) the Board does not have a significant independent source of revenue; (2) the Board does not have significant control over its budget; (3) the City controls the employees' wages and benefits; and (4) the Library does not pay the City for services.

The City

The City appeared at the commencement of the hearing and asserted that it was not the employer of the library employees.

DISCUSSION

Looking first at the issue of waiver, we find that neither party waived its right to litigate the question of whether the City or the Board is the employer of the library employees. The issue has not been previously litigated before the Commission. Our ambiguous use of the phrases "City of Columbus (Library)" and "City of Columbus Library" when processing the election petition does not constitute a determination of employer identity. Instead, these phrases reflect: the **reality** that either the City or the Board could be the employer depending on the facts the case; the **belief** that most parties are able to voluntarily resolve any bona fide employer identity issue; and our resultant **judgment** that it is not an appropriate use of our limited resources to insist that the issue be litigated and an election delayed where the parties to the election proceeding do not raise the issue themselves. Under these circumstances, both parties are clearly entitled to an answer to the question posed in the Board's declaratory ruling petition.

The Board and the Teamsters correctly cite CITY OF NEW BERLIN (PUBLIC LIBRARY) SUPRA, as containing a good recitation of the law we apply when determining whether a city or a library board is the employer. We therein stated in pertinent part:

The question presented is whether the Library Board or the City is the municipal employer of the Library employees under Sec. 111.70(1)(j), Stats. The New Berlin Library Board was created pursuant to Chapter 43, Wis. Stats. and an ordinance of the New Berlin Common Council. The nine member Board is appointed by the Mayor and confirmed by the Common Council.

The fact that the governing body of a public entity is appointed by the elected officials of the parent municipality does not preclude a finding that the appointed body is the municipal employer. Indeed, there is no doubt the statute creating library boards empowers a Board to exercise sufficient autonomous control to enable it to operate as a separate municipal employer, and in some previous cases we have found them to be so. On the other hand, we have determined that the Board's parent municipality was the municipal employer where the powers exercised by the Library Board, especially with regard to employee wages, hours and conditions of employment were limited. In the instant case, the Library Board's authority is not insignificant. However, in the final analysis, we conclude that the City is the municipal employer of the Library employees. (footnotes omitted)

Traditionally, in determining whether an entity was a municipal employer, separate and distinct from another, we have examined the following factors: an independent source of revenue, control over the budget, a requirement that approval be granted from another body to administer its responsibilities, rent or other payment to the parent authority for services provided to it, intermixing of personnel and transfer rights for employment vacancies among the entities, its creating statute and/or ordinance control over the employees' wages, hours and conditions of employment. Of all of these factors, the last has been of paramount significance. (footnotes omitted)

We note at the outset that because of the unique statutory existence of library boards, many of the above noted factors of analysis are not meaningful determiners of separate employer status in library cases. For instance, in New Berlin, the City provides the Library with bill payment services, and the Board does not reimburse the City for these services. However, that the bill payment functions are undertaken by the City for the Library without reimbursement may be understood by reference to Sec. 43.58(2), Stats., which states that:

(2) The library board shall audit and approve all vouchers for the expenditure of the public library and forward the vouchers...to the appropriate municipal or county financial officer with a statement ... that the expenditure has been incurred and that the library board has audited and approved the bill. The municipal, county or school district governing body shall then pay the bill as others are paid.

Thus, this evidence is of no particular significance herein.

The New Berlin Public Library occupies a City owned building and it sits on land controlled by the City Parks department. A recent building renovation was executed with an ADA grant applied for and granted to the City. City

employees perform most routine maintenance, as well as grounds care and snow plowing. The Library Board does not reimburse the City for rent or services. On the other hand, the Library Board has contracted for building custodial cleaning services without City involvement or approval. However, ultimately, the Library Board's control or lack thereof over the building does not figure prominently in our determination. As was true for the bill paying function, library boards have been found by this Commission to be separate employers whether they do or do not have substantial building control.

The major source of revenue for the Library comes from a City levied tax, although the Library generates some income from library fines and other sources. After the Library Board prepares its budget, both the Mayor and the Common Council have the opportunity to make adjustments and have in the past significantly reduced the Board's budget. Dependency on an outside revenue source has not barred us from recognizing library boards as a separate employers where the library board exercises, along with other significant labor relations powers, autonomous control over the money allocated after the budget amount is approved. Here, the Library Board does exercise meaningful control after the budget allotment is made. Although the budget is submitted through line items, the amount allocated to each item is discretionary with the library both before and after Common Council action. After the budget is passed by the Council, the Library Board may move items from one line item to another without returning to the Council. Thus, if the Council decreases the Library budget submitted to it, the Library Board ultimately determines where the decrease is to be taken from. Therefore, the Library Board exercises more independence in the expenditure of revenues than was exhibited by the board in Superior supra, where we found the City to be the municipal employer. However, as noted earlier, the most significant area for our analysis is the exercise of control over wages, hours and conditions of employment. We proceed to a consideration of the record as to this critical factor. (footnote omitted)

Applying the teachings of NEW BERLIN to the facts of this case, we are persuaded that the Board is the employer.

As reflected in NEW BERLIN, the critical questions to answered are whether the Board exercises meaningful control over its budget and, most importantly, whether the Board exercises meaningful control over employee wages, hours and conditions of employment. These questions are answered affirmatively by the record in this case.

As to the matter of budget control, the Board independently determines what its proposed budget will be and independently determines how the budget approved by the City will ultimately be spent. As reflected in NEW BERLIN and contrary to the Teamsters' argument

herein, the fact that the City physically pays the Board's bills does not reflect ultimate veto power over all Board expenditures. The bill paying role is ministerial as reflected in Sec. 43.58(2), Stats.

As the question of control over employee wages, hours and conditions of employment, we are also satisfied that the Board has substantial independence from the City. The Board independently recruits and hires library employees. The Board independently determines whether and how to discipline employees. The Board has its own personnel policies which differ in some respects from those of the City. The Board independently determines employee levels of compensation and hours of work.

Unlike NEW BERLIN, the Board is entity bargaining the initial contract with the Teamsters. Unlike, NEW BERLIN, there is no existing City collective bargaining agreement which dictates wages and benefits. Unlike NEW BERLIN, the Board has retained control over all critical matters related to the determination of wages, hours and conditions of employment. Unlike NEW BERLIN, the Board is the municipal employer of the library employees.

Dated at Madison, Wisconsin this 24th day of November, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner