

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**TEAMSTERS LOCAL UNION NO. 43**, Complainant,

vs.

**VILLAGE BOARD OF WILLIAMS BAY &  
LIBRARY BOARD OF WILLIAMS BAY**, Respondents.

Case 13  
No. 60735  
MP-3788

**Decision No. 30278-A**

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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by **Attorney Jonathan M. Conti**, 1555 North RiverCenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters Local Union No. 43.

Consigny, Andrews, Hemming & Grant, S.C., Attorneys at Law, by **Attorney Richard R. Grant**, 303 East Court Street, P.O. Box 1449, Janesville, Wisconsin 53547-1449, appearing for the Village Board and Library Board of Williams Bay.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

Teamsters Local Union No. 43 filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission on January 10, 2002, alleging that the Village Board of Williams Bay and the Library Board of Williams Bay had violated Secs. 111.70(3)(a)1 and 3, Stats., by discharging and reducing the hours of certain Library employees.

The Commission assigned Dennis P. McGilligan, an examiner on its staff, to hear the case. A hearing was convened in the Village of Williams Bay, Wisconsin, on March 20, 2002. The parties completed their briefing schedule on May 9, 2002, whereupon the record was closed.

No. 30278-A

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

Now, having considered the evidence, the arguments of the parties, the applicable provisions of the statute, and the record as a whole, the Examiner makes the following

### **FINDINGS OF FACT**

1. Teamsters Local Union No. 43 is a labor organization within the meaning of Section 111.70(1)(h), Stats. The Union maintains its principal office at 1624 Yout Street, Racine, Wisconsin 53404-2160.

2. The Village of Williams Bay, a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., operates a village hall where public functions are performed, including law enforcement. The Village maintains its principal office at 250 Williams Street, Williams Bay, Wisconsin 53191.

3. Barrett Memorial Library, a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., operates a library at 65 West Geneva Street, Williams Bay, Wisconsin 53191.

4. Ralph M. Rogers ("Mike") was hired by the Barrett Memorial Library during the week of February 15, 2000. Rogers was hired as a part-time fill-in person primarily for vacations, sickness and other absences by staff, on an as-needed basis. He worked about ten to fifteen hours a week. He was hired by his mother who is the Library Director, Marleen Rogers. He was terminated on December 27, 2001.

5. Katie Grashel is currently employed by the library as the high school page. She has been employed by the library for about two years. She works about eleven hours a week. Prior to January, 2002, she averaged about sixteen hours a week.

6. James D'Alessandro is a member of the Library Board. He was appointed to this position in April, 2001 by the Village President. Previously, he served on the Library Board for a one year term beginning in April 1999. He was not reappointed in April, 2000.

He is also a member of the Village Board, and its Finance & Personnel Committee.

7. President of the Library Board is Jack Hayes, Vice-President is Tom Stuhley, and members of the Board include George Gray, Patti Stilin, Martha Johnson, Amy Christianson and D'Alessandro.

8. James D'Alessandro spearheaded efforts by the Village Board and Library Board to do something about the library's budget deficit. During budget deliberations in the fall of 2000, the Village Treasurer gave D'Alessandro a document which showed that the library was scheduling an increase of 850 hours for 2001 and "that they were most likely going to go over on the amount that was budgeted." At that time D'Alessandro asked the Village President to put him back on the Library Board.

9. For the past ten years, the library had gone over budget by a few hundred dollars. In the past three years, the amount over budget was in the thousands of dollars.

10. At a September 27, 2001, meeting of the Village Finance & Personnel Committee, D'Alessandro was told by the Village Treasurer that the library "were going to go thousands of dollars over budget once again this year." The Committee then discussed what the Village was going to give the library in their budget. The Committee also discussed the large increase in hours at the library and the fact that "there were three full-time people on certain days at the library." The Committee was concerned that the library would be several thousands of dollars over budget once again, and was determined to do something about that.

11. On October 1, 2001, the Village Finance & Personnel Committee met with the Library Board to discuss the Committee's concerns over the Library's "deficit spending." The Committee informed the Library Board that "they were going to be going over budget and that they had overscheduled hours, and our concern was that they had a budgeted amount of money from the Village," and they were going to exceed that. The Committee informed the Library Board "that you have three months left, you need to begin to do something to adjust your hours in order to fall within the budget that we allocated." D'Alessandro informed the Library that it needed to make some reductions in hours and/or salaries in order to stay within budget for the last three months of 2001 and 2002. Otherwise, D'Alessandro informed the Library, "the Finance Committee was telling me that they were going to give them a zero percent increase basically as a message that you have a deficit . . . , and you got to do something about it."

12. The Library Board met on October 22, 2001, to discuss cutting hours and rescheduling people in order to respond to the concerns over the budget. The Board asked Library Director Rogers to come back with a revised schedule showing reduction in hours as well as rescheduling of personnel to meet both high and low traffic times.

13. The Village Finance & Personnel Committee met on November 14, 2001. Among the items discussed was the issue of projections for the Library Board budget as they currently existed in 2001 and what it should be for 2002. The Committee was "again alerted to the fact by our treasurer that the problems still existed." The treasurer noted with only six weeks left he was projecting "that we were going to go over three to \$5,000 for 2001, and that

the situation had not been rectified.” The Committee decided since the Library had not been able to rectify the situation that “we were going to give them no increase in their budget for 2002.”

14. On November 26, 2001, the Library Board met at which time they were informed by the Finance & Personnel Committee that they were not going to receive the budget increase that they had requested. A discussion then ensued as to how the Library was going to deal with the deficit. Library Board President Hayes said that the Library had to take care of this deficit, and that the Library needed to be more responsible in its budgeting. He suggested cutting hours. Library Director Rogers presented a plan for cutting employee hours.

15. In October and November, 2001, Mike Rogers contacted various unions in Wisconsin and Illinois to inquire as to whether they would be interested in representing he and his fellow librarians. Rogers received written materials from various unions such as AFSCME and the UAW, but he was ultimately rejected in his request for representation. Rogers then spoke with Wesley A. Gable, Vice-President/Organizer for Complainant. Gable expressed interest in representing the unit, and secured authorization cards from a majority of the librarians, including Mike Rogers and Katie Grashel.

16. On December 10, 2001, the Library Board met and approved a pay increase for the five librarians. The Board also heard a presentation from Library Director Rogers regarding the proposed 2002 budget. Rogers made a recommendation to reduce hours of certain employees include Mike Rogers and Katie Grashel. The Board approved the 2002 budget by a 4-2 vote.

17. Around this time, Library Director Rogers informed Mike Rogers that his hours would likely be trimmed at the start of 2002.

18. On December 17, Complainant’s representative Wesley A. Gable sent a letter to Village “Mayor”, Don Weyhrauch, seeking the Village’s voluntary recognition of the Union as the bargaining representative for its librarians.

19. On December 17, 2001, the Village Board met. Board member James D’Alessandro asked under “Approve Payment of Bills,” that he would like to meet with the Finance & Personnel Committee before any of the library bills were approved. This was approved. There was no discussion of Complainant’s request for voluntary recognition.

20. On December 18, 2001, Complainant filed a Petition for Election with the Wisconsin Employment Relations Commission seeking to represent all regular full-time and part-time librarians working at the Barrett Memorial Library of the Village of Williams Bay.

21. At the time Complainant filed its petition with the Commission, the Library employed five librarians: Leah Osman, Veronica Dealey, Julie Townsend, Katie Grashel, and Mike Rogers. They were supervised by Library Director Rogers.

22. On or about December 17, 2001, Library Board President Hayes learned that employees at the Library were involved in seeking union membership.

23. Village Board and Library Board member James D'Alessandro learned of Complainant's petition and request for recognition on December 18<sup>th</sup> when he was told by the Village Board President.

24. On December 19, 2001, the Village Board had a village-wide meeting and invited the Friends of the Library and the community "to try to clear up any misunderstandings" regarding the situation, including the deficit, at the library. A lot of people asked the Village Board how they let things get so far in terms of deficit spending. Village/Library Board member D'Alessandro felt that the community supported his and the Board's continuing efforts to have the Library eliminate its deficit and pay back the Village money owed it. Library Board President Hayes was asked "point blank" what the Library Board intended to do about the deficit. At that point, Hayes "committed to making that deficit up within our 2002 budget if we were over."

25. During the above meeting, Library Board President Hayes was "still not positive that we were going to be over" budget. However, following the above meeting the Village Treasurer told Hayes that the problem was even bigger than previously thought. Now the Library Board was faced with a deficit of \$3,000.00 to \$4,000.00 and Hayes felt "we were at a last resort." Hayes testified: "We had not talked about cutting positions, because I think to all of us cutting positions was the last resort." But with the new deficit figures, Hayes stated: "Without saying no, we're not going to buy any books next year, there wasn't a heck of a lot more we could do."

26. On December 27, 2001, the Library Board met to address the budget problems. The Library Director was not invited because the Board felt the meeting "would involve personnel because we had to cut hours, and we didn't know how far that was going to go, and that would be a personnel matter for the Board to try to resolve."

The Library Board on December 27<sup>th</sup> decided that the Library Director's recommendations did not go far enough in addressing the budget shortfall. The Board decided unanimously to eliminate the substitute position occupied by Mike Rogers. The Board also reduced hours with the high school page, Katie Grashel, as well as hours of the other employees. The Board felt that the aforesaid cuts were sufficient to at least attempt to address the budget shortfall for 2002.

27. On December 27, 2001, following the above Library Board meeting, Library Director Rogers informed Mike Rogers that Library Board President Hayes had instructed her to terminate him.

28. Katie Grahsel's hours were reduced on December 29, 2001, despite the fact that a few weeks earlier a schedule for January, 2002 had been posted showing her with her usual complement of hours.

29. On January 10, 2002, Mike Rogers applied for unemployment compensation from the State of Wisconsin Department of Workforce Development. Rogers' claim was initially denied because the Department of Workforce Development had received a letter addressed to "Marlene" (the Library Director) purporting to be Mike Rogers' resignation letter dated December 26, 2001. The resignation letter was not authored by Mike Rogers. The Department of Workforce Development, Division of Unemployment Insurance, overruled its earlier decision and awarded Rogers unemployment benefits after determining that Rogers did not voluntarily terminate his employment, that his discharge was not for misconduct with his employment, and that his discharge was not for actions on his part that showed willful and substantial disregard for the Employer's interests.

30. On January 21, 2001, Mike Rogers and Complainant representative Wesley A. Gable held an informational picket outside the Barrett Memorial Library. According to Rogers, a squad car pulled into a gas station across the street, parked so that the front end of the squad "was pointing towards us," put a camera in the window, and "started I believe filming."

31. On February 4, 2002, Mike Rogers was scheduled for a kidney examination at 2:00 p.m. at the Lakeland Medical Center. Marleen Rogers left work at noon or shortly thereafter that day, and then drove home and ate lunch. Approximately one hour later, Mike Rogers borrowed Marleen Rogers' car so that he could go to the Medical Center for his kidney examination. Mike Rogers dropped Marleen Rogers off at the library, picked up some mail from the library, and then proceeded to the post office. Rogers testified that as he was walking on the sidewalk outside the post office at approximately 1:43 p.m., D'Alessandro approached him and said "you're an asshole for causing all this trouble." Rogers understood D'Alessandro to be referring to the Teamsters petition, but Rogers dismissed D'Alessandro by replying "whatever." Rogers added that D'Alessandro then threatened Rogers by stating that he was going to get someone to kick Rogers' "fat ass." Rogers subsequently filed a police report over the incident, but the charge was dismissed.

Upon the basis of the foregoing, Findings of Fact, the Examiner makes and files the following

**CONCLUSIONS OF LAW**

1. Complainant, Teamsters Local Union No. 43, is a labor organization within the meaning of Section 111.70(1)(h), Municipal Employment Relations Act (“MERA”).
2. Respondent, Village Board of Williams Bay, is a municipal employer within the meaning of Section 111.70(1)(j), MERA.
3. Respondent, Library Board of Williams Bay, is a municipal employer within the meaning of Section 111.70(1)(j), MERA.
4. Respondents, by the acts described in Findings of Fact Nos. 4-30, were not motivated in whole or in part by hostility toward the exercise of Mike Rogers’ or Katie Grashel’s protected rights, and therefore, Respondents have not committed a prohibited practice within the meaning of Section 111.70(3)(a)3, MERA, and a derivative violation of Section 111.70(3)(a)1, MERA.
5. Respondents’ actions described in Findings of Fact Nos. 4-30 did not have a reasonable tendency to interfere with the exercise of rights guaranteed by Sec. 111.70(2), Stats., and thus Respondents have not committed a prohibited practice within the meaning of Sec. 111.70(3)(a)1, Stats.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

**ORDER**

IT IS ORDERED that the complaint filed in Case 13, No. 60735, MP-3788, is dismissed.

Dated at Madison, Wisconsin, this 21st day of June, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dennis P. McGilligan /s/

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Dennis P. McGilligan, Examiner

**VILLAGE OF WILLIAMS BAY (LIBRARY)**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

Complainant claims that Respondents committed a prohibited practice in violation of Section 111.70(3)(a)3, Stats., by discharging Mike Rogers and reducing the hours of Katie Grashel.

The parties are essentially in agreement over the standard to be applied.

Section 111.70(3)(a)3, Stats., makes it a prohibited practice for a municipal employer to “encourage or discourage a membership in any labor organization by discrimination in regard to . . . tenure or other terms or conditions of employment.” To prove a violation of this section, the Complainant must, by a clear and satisfactory preponderance of the evidence, establish that:

1. Complainant was engaged in protected activities; and
2. Respondents were aware of those activities; and
3. Respondents were hostile to those activities; and
4. Respondents’ conduct was motivated, in whole or in part, by hostility toward the protected activities. 1/

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*1/ The “in-part” test was applied by the Wisconsin Supreme Court to MERA cases in MUSKEGO-NORWAY C.S.J.S.D. No. 9 v. WERB, 35 Wis. 2d 540 (1967) and is discussed at length in EMPLOYMENT RELATIONS DEPT. v. WERC, 122 Wis. 2d 132 (1985).*

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Respondents initially argue that the complaint against the Village Board of Williams Bay is improper and should be dismissed pursuant to Sec. 43.54 and 43.58, Stats. Respondents submit that the testimony and above-quoted statutes indicate that the authority for determining and dealing with a municipal library is contained exclusively in the hands of the library board, as opposed to the municipal governing body. However, the record indicates that Respondent Village Board of Williams Bay initiated and led efforts to reduce the Library’s deficit and took action to force the Library Board to take the actions complained of. (Tr. 50-51, 55-56, 58, 62, 78, 105, 138, 140-143). Therefore, the Examiner rejects this argument of Respondents.



It is undisputed that Complainant was engaged in protected activity when it sought to represent all regular full-time and part-time librarians at the Barrett Memorial Library of the Village of Williams Bay. It is also undisputed that library employees Mike Rogers and Katie Grashel were engaged in protected activity when Rogers contacted various unions seeking representation for the aforesaid library employees in the fall of 2001, and when both Rogers and Grashel signed authorization cards.

The record is also clear that Respondents had knowledge of Complainant's concerted activity on or about December 17 and 18, 2001, prior to taking action to terminate Mike Roger's employment and reduce the hours of Katie Grashel.

However, record does not support a finding that Respondents were hostile to those activities. In this regard, the Examiner notes that Library Board President Jack Hayes has a remarkably positive attitude towards organized labor, and was aware that he could not interfere with the library employees' efforts to organize a union. (Tr. 139, 149-150). There is no evidence that Hayes or any other Library Board member were hostile to Complainant's concerted activity.

Nor is there any evidence that any Village Board members, including James D'Alessandro who served on both the Village and Library Boards and spearheaded efforts to reduce spending at the Library, were hostile to Complainant's concerted activity. Complainant argues that D'Alessandro's threatening of Mike Rogers establishes anti-union animus. However, for the reasons discussed below, the Examiner rejects this claim of Complainant.

Finally, the record does not support a finding that Respondent's conduct was motivated, in whole or in part, by any hostility toward protected activities.

Complainant argues that the timing of the decision permits an inference of anti-union animus as the motivating factor for Rogers' termination and the reduction in Grashel's hours. It is true that the Library Board voted to terminate Rogers' employment and reduce Grashel's hours shortly following the Village's receipt of Complainant's request for recognition and the filing of the election petition. However, the only evidence in the record about the motivation or intent of the Library Board for considering cuts in library employee hours, was the growing awareness of a shortfall in meeting the 2001 budget plus certain arrearage, (Tr. 57, 146), accumulated by prior Library Boards, which the Village Board was looking to be made up and indicating that no increase in the budget would be given for the next calendar year unless the deficit spending ceased. This awareness had its genesis sometime in 2000, (Tr. 57), started again with urgency in September, 2001, and continued on through the actual cuts made by the Library Board at the December 27, 2001 meeting.

It is also true that neither the Village nor the Library Board had determined that eliminating Rogers' position was a possible solution until after the election petition and Complainant's letter had been received by the Village. However, as pointed out by Library Board President Hayes, cutting positions was a last resort. (Tr. 144-145). In addition, the Library Board was under the gun on December 27 to take drastic action to cut spending at the library as a result of the community meeting on December 19. At that meeting, Village residents supported the idea of eliminating the deficit at the library, (Tr. 76-78), and Library Board President Hayes made a commitment to do so at that meeting. (Tr. 143-144). By December 27<sup>th</sup> the Library Board was "at the last resort" given the growing nature of the deficit. (Tr. 145). Short of not buying any new books, eliminating positions and cutting hours was the only alternative. (Tr. 145). The Library Board decided to eliminate Rogers' position and cut Grashel's hours because they were the least senior employees, less crucial to the operation of the library, and in order to balance the budget. (Tr. 145-146). There is no evidence that these cuts were motivated by anti-union animus.

Complainant further argues that D'Alessandro's threatening of Rogers establishes anti-union animus. In support thereof, Complainant relies on an exchange which allegedly occurred on February 4, 2002, between Rogers and D'Alessandro. This is more than a month after the Library Board, including D'Alessandro, voted unanimously to remove Rogers' position from the library staff payroll. (Respondents Exhibit No. 16). It is true that D'Alessandro learned of Complainant's petition prior to the Library Board vote on December 27, 2001, to eliminate Rogers' position. However, there is no evidence that D'Alessandro's effort to rein in spending at the Library Board or his vote to terminate Rogers' employment and cut Grashel's hours on December 27 was motivated by anti-union animus. (Tr. 83-84, 150). To the contrary, the Library Board voted to terminate Rogers' position and reduce employees' hours solely in order to reduce spending at the Library and eliminate the deficit. (Tr. 78-81, 146, 150).

Nor does the alleged exchange on February 4, 2002, support a finding of anti-union animus on the part of D'Alessandro. Complainant alleges that at approximately 1:43 p.m., as Rogers was walking on the sidewalk outside of the post office, D'Alessandro approached Rogers and stated, "you're an asshole for causing all this trouble" (referring to the Union). D'Alessandro then allegedly told Rogers that he was going to get someone to kick his "fat ass." Complainant claims that this was close enough in time to the filing of the election petition, signing of cards, and subsequent discharge, to further infer discriminatory motive in discharging Rogers. However, D'Alessandro denies that this exchange with Rogers occurred. (Tr. 85). In addition, the Village of Williams Bay Police Department investigated this incident and found that Rogers' claim was not substantiated. (Tr. 129). To the contrary, the Police Department found that the complaint by Rogers regarding this incident was "false and without merit" and closed the case file "as unfounded." (Complainant Exhibit No. 6). There is no evidence that the Police Department conducted a biased or faulty investigation into the alleged exchange. Based on the foregoing, the Examiner also rejects this argument of Complainant.

Finally, Complainant argues that Respondents' claim that the Library's budgetary problems were the reason for Rogers' discharge and Grashel's cut in hours is pretextual. However, as noted above, the Library's budgetary concerns were the only reasons for the decision to terminate Rogers and reduce Grashel's hours. As proof of Respondents' intent, Complainant cites the confusion over the amount of the deficit, and the uneven efforts by Respondents to reduce/eliminate the deficit. While both allegations are true, they do not establish that Respondents' conduct complained of was motivated in whole, or in part, by hostility toward the protected activities. Complainant also cites "the Village's submission of a falsified resignation letter" as evidence that anti-union hostility was a motivating factor in the Village and Library's decision to terminate Rogers and reduce Grashel's hours. However, there is no evidence in the record that the Village sent said letter. Therefore, the Examiner rejects these claims of Complainant.

Based on all of the above, the Examiner finds that Respondents did not commit a prohibited practice in violation of Sec. 111.70(3)(a)3, Stats., by terminating Mike Rogers' employment and reducing the hours of Katie Grashel. Inasmuch as there is no Sec. 111.70(3)(a)3, Stats., violation, there is no derivative Sec. 111.70(3)(a)1, Stats., violation.

To establish an independent violation of Sec. 111.70(3)(a)1, Stats., Complainant must prove that Respondents' actions had a reasonable tendency to interfere with the exercise of rights guaranteed by Sec. 111.70(2), Stats. BEAVER DAM SCHOOL DISTRICT, DEC. NO. 20283-B (WERC, 5/84). Looking only at the timing of the Library Board's actions in terminating Mike Rogers and reducing the hours of Katie Grashel as well as the combative conduct and attitude of James D'Alessandro at hearing, one could argue that Respondents' actions had a reasonable tendency to interfere with the exercise of rights guaranteed by the aforesaid statute. However, when those actions are viewed in the context of facts establishing that Respondents acted for sound budgetary and public policy reasons, the Examiner finds it reasonable to conclude that Respondents' actions did not have a reasonable tendency to interfere with Sec. 111.70(2) rights. Therefore, it is appropriate to dismiss Complainant's Sec. 111.70(3)(a)1 allegations.

Based on all of the foregoing, and the entire record, the Examiner finds that the allegations of prohibited practices by Complainant are without merit, and the Examiner has dismissed the complaint in its entirety.

Dated at Madison, Wisconsin, this 21st day of June, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Dennis P. McGilligan /s/

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Dennis P. McGilligan, Examiner

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