

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
TEAMSTERS LOCAL UNION NO. 43

Involving Certain Employees of
VILLAGE OF DARIEN

Case 5
No. 63691
ME-3974

Decision No. 31236

Appearances:

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

Mark B. Hazelbaker, Attorney at Law, 3240 University Ave., Suite 3, Madison, Wisconsin 53705, appearing on behalf of the Village of Darien.

Gordon E. McQuillen, Director of Legal Services, Wisconsin Professional Police Association/LEER Division, 340 Coyier Lane, Madison, Wisconsin 53713, appearing on behalf of the Wisconsin Professional Police Association/LEER Division.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

On May 24, 2004, Teamsters Local Union No. 43 filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employees of the Village of Darien currently represented by the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (WPPA) for the purposes of collective bargaining wish to be so represented by Teamsters. Efforts to reach a stipulation as to the appropriate bargaining unit for an election were unsuccessful and hearing on the petition was held in Darien, Wisconsin on September 9, 2004, by Examiner Peter G. Davis. The parties filed written argument until December 30, 2004.

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Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The Village of Darien, herein the Village, is a municipal employer.
2. The Village of Darien Library Board, herein the Board, is responsible for the operation of the Village of Darien Library pursuant to Sec. 43.52, Stats.
3. Teamsters Union Local No. 43, herein Teamsters, is a labor organization.
4. Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, herein WPPA, is a labor organization that serves as the collective bargaining representative of three full-time Village employees.
5. The Village of Darien Library currently has six employees: the full-time Director; a part-time Assistant Director; and four part-time Library Assistants. In January 2004, prior to moving into a new building, the Library only employed a part-time Director and was open only 16 hours a week.

The Library Director and Library Board hire and discipline employees. The Library Board establishes the wage rates and hours of work for employees. The Library has no personnel policies. The Village performs payroll services for Library employees and currently maintains the personnel files for Library employees.

The Library Board relies on the Village for the vast majority of its funding. The Library Board submits a proposed budget to the Village for approval.

6. The Library Board exercises sufficient control over the wages, hours and conditions of employment of Library employees to be the employer of said employees.

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

CONCLUSIONS OF LAW

1. The Village of Darien Library Board is the municipal employer within the meaning of Sec. 111.70(1)(j), Stats., of the employees of the Darien Library.

2. That a question concerning representation exists within the meaning of Sec. 111.70(4)(d)3, Stats., in the following bargaining unit found to be appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats.:

All regular full-time and regular part-time employees of the Village of Darien excluding employees with the power of arrest, supervisors, and managerial, confidential and executive employees.

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 shall be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days of the date of this Direction among all employees in the bargaining unit set forth in Conclusion of Law 2 who were employed on February 10, 2005, except such employees who subsequently quit their employment or are discharged for cause prior to the election, for the purpose of determining whether a majority of the employees voting wish to be represented by Teamsters Local Union No. 43 or by the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division or by neither of said labor organizations for the purposes of collective bargaining with the Village of Darien.

Given under our hands and seal at the City of Madison, Wisconsin, this 10th day of February, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Village of Darien

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

Teamsters seek an election in a bargaining unit of all regular full-time and regular part-time employees of the Village of Darien excluding employees with the power of arrest, supervisors, and managerial, confidential and executive employees. Teamsters, contrary to the Village, contend that employees working in the Darien Library are employees of the Library Board and thus are ineligible for inclusion in a Village employee unit. Should the Commission conclude that the Village is the employer of the Library employees, Teamsters assert that a Village employee unit excluding those Village employees working in the Library is nonetheless appropriate. WPPA agrees with the Teamsters' position. The Village argues that the unit sought by Teamsters and WPPA is inappropriate because it excludes five non-supervisory Village employees working in the Library. The Village of Darien Library Board chose not to take a position as to whether it was the employer of the Library employees.

Resolution of the dispute between the Village and Teamsters/WPPA as to the appropriate unit for an election turns initially upon whether the Library employees are employed by the Village or the Library Board. If the Library employees are employed by the Library Board, then all parties agree that the unit sought by Teamsters/WPPA is appropriate. From our review of the record, we are satisfied that the Library Board is the employer of the Library employees.

The Commission has addressed the status of Library Boards as municipal employers on many occasions. CITY OF COLUMBUS LIBRARY BOARD, DEC. NO. 29492 (WERC, 11/98); CITY OF NEW BERLIN LIBRARY BOARD, DEC. NO. 13173-E (WERC, 2/96); CITY OF CUDAHY, DEC. NO. 21887 (WERC, 8/84); VILLAGE OF HALES CORNERS, DEC. NO. 15229-A (WERC, 4/78). Those decisions generally acknowledge the fiscal control that a city or village typically has over the library board in question but conclude that the library board is nonetheless the employer if it exercises sufficient control over employees' wages, hours and conditions of employment. Here, the Library Board hires and fires Library employees and sets their wages and hours. This level of control over employees' wages, hours and conditions of employment is more than sufficient to establish that it is the Library Board and not the Village that serves as the municipal employer of the Library employees.

In reaching this conclusion, we acknowledge the substantial fiscal influence that the Village has over the Library Board. However, as we noted in the CITY OF BERLIN decision upon which the Village places much reliance here, the unique statutory existence of library boards lessens the impact of fiscal considerations on our determination of employer status.

We also acknowledge the uncertainty that the Library Board has about its own status in this proceeding. Such uncertainty is understandable in the context of a Library Board that only recently hired its first employees and was unsure as to the weight to be given the Village's budgetary role. However, the testimony of the Library Board President reflected the substantial control over employee wages, hours and conditions of employment that we have found to be determinative. Because of the separate employer status, the Library Board employees are not eligible to be included in a Village employee unit and therefore we have directed an election in the unit sought by Teamsters/WPPA.

Dated at Madison, Wisconsin, this 10th day of February, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner