

D.R. NO. 96-18

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

SOMERSET COUNTY LIBRARY COMMISSION,

Public Employer-Petitioner,

-and-

Docket No. CU-96-21

OPEIU, LOCAL 14, AFL-CIO,

Employee Representative.

SYNOPSIS

The Director of Representation clarifies a supervisory unit of librarians to exclude the title Librarian I. The Director finds that, under Wilton, actual and potential conflicts of interest exist with the continued inclusion of Librarians I in the unit.

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Appearances:

For the Public Employer
Stanton, Hughes, Diana & Zucker, attorneys
(Douglas S. Zucker, of counsel)

For the Employee Representative
Schneider, Goldberger, Cohen, Finn, Solomon, Leder &
Montalbano, attorneys
(James M. Mets, of counsel)

DECISION

On November 30, 1995, the Somerset County Library Commission filed a Clarification of Unit Petition with the Public Employment Relations Commission seeking to exclude the title of Librarian I from a supervisory unit of Librarians I, Librarians II, Librarians III and Librarians IV represented by OPEIU Local 14, AFL-CIO. The Library Commission seeks to exclude the title maintaining that actual and potential conflicts of interest exist between Librarians I and other unit members, since Librarians I supervise unit members. According to the Library Commission,

Librarians I are placed in the position of having dual loyalties to the Library and unit members thus necessitating exclusion of the Librarians I from the unit.

Local 14 opposes the petition, claiming that there is no actual conflict of interest, and there is no potential for a substantial or intolerable conflict of interest; it asserts that no unit members have encountered any conflicts between their titles in the ten years that Local 14 has been the majority representative.

We have conducted an administrative investigation into this matter. These facts appear.

On June 11, 1986, Local 14 was certified as the exclusive representative of a supervisory unit of Librarians I, Librarians II and Librarians III employed by the Library Commission. Librarians IV were added to the unit through an amended recognition clause in the parties' 1991-92 agreement. At present, the unit consists of 40 employees, nine of whom are Librarians I. The parties' last agreement expired December 31, 1995; no successor agreement has yet been reached.

Employees in the Librarian I title either serve as the Director of one of the six off-site branch libraries or as the head of one of the 4 departments in the main County library. Pursuant to their job description, Librarians I have the authority to hire, evaluate, discipline and discharge unit members, while lower level librarians have authority over primarily paraprofessionals or clerical support personnel who are not unit members.

Since 1990, the hiring duties of Librarians I include recruitment, interview and the final selection. While lower level librarians may participate in the interview process, Librarians I make the decision who to hire and do the actual hiring. They recruit, interview and extend the job offer.

A Librarian I exercised discharge authority last year when on July 6, 1995, Librarian I Virginia Parks discharged a bargaining unit member. Parks made her decision after discussing it with Library administration.

Also within the past year, a Librarian I filed a contractual grievance against a Librarian II whom she supervises, alleging insubordination. Library administration handled the matter by directing the Librarian I to withdraw the grievance and treat the matter as a disciplinary issue. A lower level librarian could file a grievance against his/her Librarian I supervisor, pursuant to Article XXII of the parties' expired agreement.

Librarians I prepare the employee performance review forms of other unit members while the evaluations of Librarians I are prepared by the Assistant Library Director.

In the last three years, the parties negotiated a formula for salary increases in which a portion of each librarian's increase was based on the performance evaluation score the librarian received. Recently, some lower level librarians have appealed evaluation scores received from their Librarian I supervisors.

In branch libraries, Librarians I are the decision-makers

for the branches. The job description of Librarian I-Branch Director gives them the authority "to adapt library procedures to meet local needs and to interpret personnel and library service and collection policies to staff and public." Where library service and personnel policies are silent or allow for discretion, the Librarian I may have to apply policies where the interest of unit members are in conflict with the interest of the Library.

Librarians I are also responsible for preparing budgets for their individual branch or department, which includes a line for salaries and benefits. However, the Library cannot reveal to Librarians I its projected percentage increase in budgetary expense for salaries, without risking compromising its bargaining position with the union.

Analysis

In Bd. of Ed. of Town of West Orange v. Wilton, 57 N.J. 404 (1971), the New Jersey Supreme Court considered the appropriateness of including different levels of supervisors in the same organizing unit; it found that a director of elementary education could not be included in the same bargaining unit as the principals and assistant principals she had supervisory authority over. In reaching its decision, the Court espoused the following principles:

Ordinary considerations of employer-employee relations make it sensible to say that if performance of assigned duties by a particular supervisor bespeaks such an intimate relationship with the management and policy-making function as to indicate actual or potential substantial

conflict of interest between him and other supervisory personnel in a different or lower echelon of authority, such supervisor should not be admitted to the same negotiating unit. Admission would not be fair either to the other supervisory employees or to the employer. Obviously no man can serve two masters.

Wilton at 416.

In Wilton, the Court found conflicts of interest because the director's position had responsibilities for the recruitment, selection and assignment of other unit members. Here, as in Wilton, the same conflicts of interest exist.

Librarians I evaluate subordinate unit members and such evaluations impact on salary increases received. Moreover, some unit members have appealed evaluations received from Librarians I. This creates an impermissible conflict. Woodbridge Tp. Hous. Auth., D.R. No. 96-5, 21 NJPER 344 (¶26212 1995); Atlantic Cty. Welfare Div., D.R. No. 94-2, 19 NJPER 408 (¶24179 1993).

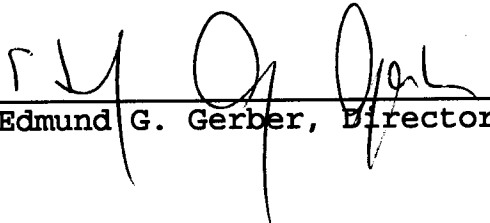
Librarians I have the authority to discipline and discharge. In fact, within the past year, a Librarian I discharged a unit member. Also, Librarians I function as the first step of the grievance procedure for most unit employees. This creates a conflict of interest substantial enough to remove the title from the unit. Watchung Hills, P.E.R.C. No. 85-116, 11 NJPER 368 (¶16130 1985).

Librarians I hire unit members; they are responsible for budget formulation, including providing a line for unit employees' salaries and benefits and they apply library policies and procedures

where the interest of unit employees may be in conflict with the interest of the library. These circumstances place them in a position of having dual loyalties, and thus warrant removing them from the unit, notwithstanding their inclusion in the unit for the past ten years. Watchung Hills, Wilton.

Accordingly, the OPEIU's supervisory unit is hereby clarified to exclude the positions of Librarians I, effective immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: May 10, 1996
Trenton, New Jersey