

VERMONT LABOR RELATIONS BOARD

LOCAL 1369, AFSCME,	)	
AFL-CIO	)	
	)	
and	)	DOCKET NO. 91-63
	)	
KELLOGG-HUBBARD LIBRARY	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 17, 1991, Local 1369, AFSCME, AFL-CIO ("Union") filed a petition for Election of Collective Bargaining Representative, requesting an election among the bookkeeper, custodians and the librarians, excluding the Library Director, employed by the Kellogg-Hubbard Library ("Employer"). The Employer responded to the petition on November 12, 1991, and raised two objections. First, the Employer contended that the Youth Services Librarian ("Children's Librarian") is not eligible for inclusion in the proposed bargaining unit because she is a supervisor. Second, the Employer contended that the National Labor Relations Board ("NLRB") had jurisdiction over this matter, not the Vermont Labor Relations Board.

By Memorandum and Order of February 10, 1992, the Vermont Labor Relations Board took jurisdiction of this matter. Local 1369, AFSCME, AFL-CIO and Kellogg-Hubbard Library, 15 VLRB 60.

A hearing on the issue of whether the Children's Librarian is a supervisor was held on March 23, 1992, before Board members Louis A. Toepfer, Chairman, Catherine L. Frank and Carroll P. Comstock. Attorney Scott Cameron represented the Employer. AFSCME Representative Ralph Crippen represented the Union. The Employer filed Requested Findings of Fact and Memorandum of Law on April 6, 1992. The Union filed a brief on April 7, 1992.

#### FINDINGS OF FACT

1. The Kellogg-Hubbard Library is a private non-profit library. The Library is organized into a main circulation library for adults ("adult library") occupying two floors at 135 Main Street in Montpelier, Vermont, and a circulation library for children ("children's library"), which occupies the basement floor of the library. The adult library and the children's library each have their own circulation desk, card catalogues, and separate book purchasing budgets.

2. The Kellogg-Hubbard Library is governed by a Board of Trustees. Janet Nielson is the Library Director and acts as chief administrator of the Library. Nielson is directly responsible to the Board for the operation of the adult library and the children's library.

3. Nielson directly supervises the employees who work in the adult library, including three Library Assistants, a Technical Services Librarian, an Inter-library Loan and Reference Librarian. Several teenage pages also work in the adult library.

4. Morgan Irons is the Youth Services Librarian, or Children's Librarian. Irons has worked for the Employer for over three years and as Children's Librarian for nearly two years. Irons works full-time and reports directly to Nielson. At present, there are two adult employees in the children's library, Ruth McCullough and Clair Gilbertson, in addition to Irons. McCullough is the Chief Circulation Librarian. She works 25 1/2 hours per week. Gilbertson, who works three hours each week, looks after the card catalogue, mends books and performs a variety of clerical duties. There is a third adult position in

the children's library, which until recently was occupied by Rose Lydum-Duma, who worked 28 1/2 hours per week. Lydum-Duma was responsible for story hours, billing, and other duties. Lydum-Duma recently resigned, and to date has not been replaced. Nielson hopes that the position will be filled. Also, two teenage pages work exclusively in the children's library, while one other page works in both the adult library and the children's library.

5. The teenage pages are high school students who work in the Library when school is not in session. The pages perform a variety of tasks and work approximately 400 hours per year. Each of the adult employees of the children's library direct the activities of the pages. Pages earn up to \$5.00/hour. Pages are not included in the proposed bargaining unit.

6. Irons spends approximately 2% - 5% of her time in directing the activities of employees who work in the children's library. Each employee has distinct duties and responsibilities. The current employees are well aware of their duties and responsibilities and generally work independently. All the adult employees assist in the training of new employees. At such times, Irons may ask each employee to spend time working with the new employee.

7. Pursuant to the Employer's Personnel Policy, the Children's Librarian has no authority to hire employees. The Personnel Policy provides that "(t)he head librarian should be selected by the Board (of Trustees) and other positions filled by the librarian with the approval of the Board." The "head

librarian" and "librarian" referenced in the Personnel Policy refers to the Library Director (Union Exhibit 1).

8. Since Irons became the Children's Librarian, the Employer has hired two employees for the children's library, Lydum-Duma and a teenage page.

9. Irons interviewed Lydum-Duma and other applicants for the position into which Lydum-Duma was hired. Nielson did not participate in the interviews. Irons recommended to Nielson that Lydum-Duma be hired. Nielson then recommended the hiring of Lydum-Duma to the Board of Trustees, who approved the hiring.

10. The page hired to work in the children's library initially approached Irons and expressed interest in working in the library. Irons discussed the position with the individual, whose older sibling had previously worked in the library. Irons did not interview other candidates for the page position, and recommended the hiring of the individual. The recommendation of Irons was followed.

11. Irons has not disciplined any employees. She would consult with Nielson if the occasion arose to possibly discipline an employee. Irons has counseled employees. In one instance, Irons had concerns with respect to the performance of an employee and she discussed these concerns with Nielson.

12. Nielson evaluates the performance of all the adult employees of the adult library and the children's library. Nielson meets with Irons once a year with respect to the performance of the employees in the children's library, and Irons provides Nielson with information regarding the performance of

those employees. Nielson occasionally works in the children's library, and evaluates the performance of employees there based on her direct observation and information provided her by Irons.

13. Irons has not transferred any employees. If additional assistance is needed in the children's library, Irons requests assistance from Nielson. Nielson selects an employee from the adult library to temporarily work in the children's library. Nielson permanently transferred a page from the adult library to the children's library.

14. Irons has not laid off, recalled, promoted or rewarded employees, or adjusted employee grievances, or recommended such actions. The Board of Trustees determines the wages to be granted employees.

15. The Board of Trustees determines the annual budget for book purchases. Nielson allots approximately one third of this amount to the children's library. Irons has exclusive authority to purchase the children's books with this allotment. Nielson is not involved in the selection and purchase of children's books.

#### OPINION

The issue before us is whether the Children's Librarian is a supervisor, and thus ineligible to belong to a bargaining unit pursuant to 21 VSA §1502(13) and §1722(12).

Supervisor is defined in 21 VSA §1502(13) as:

An individual having the authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

In order to be considered a supervisor, an employee must pass two tests: 1) the possession of any one of the listed powers in the statutory definition; and 2) the exercise of such power "not of a merely routine or clerical nature but requiring the use of independent judgment." Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 138 Vt. 347, 351-52 (1980). The statutory test is whether or not an individual can effectively exercise the authority granted him or her; theoretical or paper power will not make one a supervisor. Id. at 351. Nor do rare or infrequent supervisory acts change the status of an employee to a supervisor. Id.

The existence of actual power, rather than the frequency of its use, determines supervisory status. AFSCME, Local 490 v. Town of Bennington, 153 Vt. 318, 320 (1989). However infrequently used, the power exercised must be genuine. Id. Also, the Board has the discretion to conclude supervisory status does not exist although some technically supervisory duties are performed, if such duties are unimportant or insignificant in comparison with overall duties. Id. at 323. Otherwise, an employer could circumvent the very spirit and intent of the statute by creating de minimus supervisory duties for the sole purpose of excluding classes of employees from union representation. Id.

It is clear that the Children's Librarian has no authority to lay off, recall, promote, reward or transfer employees, or to adjust employee grievances, or to effectively recommend any of such actions.

The Employer contends that the Children's Librarian is a

supervisor because she has the authority to: 1) discipline employees, 2) assign and direct employees, and 3) hire or effectively recommend the hire of employees. We discuss each of these areas of supervisory authority in turn.

The authority to take a specific disciplinary action or to effectively recommend a specific disciplinary action must be demonstrated for supervisory status to be found. Teamsters, Local 597 and Burlington Housing Authority, 9 VLRB 126, 131 (1986). The Children's Librarian has not disciplined any employees. Further, the evidence indicates that the Children's Librarian would consult with the Library Director if the occasion arose to possibly discipline an employee. Under these circumstances, the evidence is insufficient for the Board to conclude that the Children's Librarian has the authority to take, or effectively recommend, specific disciplinary action against employees.

In determining whether the responsibility to assign and direct the the work of other employees rises to a level sufficient to make the Children's Librarian a supervisor, we look to our many previous cases focusing on the assigning and directing responsibilities of employees. The key determination in such cases has been whether the employee is exercising independent judgment, or is simply ensuring that standard operating procedures are followed. If an employee is relaying instructions from a supervisor or ensuring that subordinates adhere to established procedures, the employee is not a supervisor. Local 1201, AFSCME and City of Rutland, 10 VLRB 141

(1987). Teamsters, Local 597 and Burlington Housing Authority, 9 VLRB at 131-33. City of Winooski and Winooski Police Employees' Association, 9 VLRB 85 (1986). If an employee's duties go beyond simply ensuring that established policies and procedures are followed, and require the use of independent judgment in directing and assigning employees, then the employee generally meets the statutory definition of supervisor. South Burlington Police Officers' Association and City of South Burlington, 11 VLRB 332 (1988). However, if assigning and directing responsibilities of an employee means that some technical supervisory responsibilities are being performed, the employee is not a supervisor if such responsibilities are insignificant or unimportant in comparison with overall duties. Bennington, 153 Vt. at 323.

In applying these standards to the facts of this case, we conclude that the duties of the Children's Librarian with respect to assigning and directing employees does not rise to the level sufficient for supervisory status. The adult employees in the children's library have distinct duties and responsibilities of which they are well aware, and such employees work independently. Given these facts, we are not persuaded that the Children's Librarian is doing any more than ensuring that standard operating procedures are followed when directing the work of such employees. Also, since all adult employees in the children's library direct the work of the teenage pages, the assigning and directing responsibilities of the Children's Librarian with respect to the pages does not result in supervisory status.



Further, the fact that the Children's Librarian spends only 2% - 5% of time directing the activities of pages indicates that such responsibilities are insignificant in comparison with overall duties. In sum, we conclude that the Children's Librarian does not exercise independent judgment in assigning and directing employees, and that such duties are insignificant in comparison with overall duties.

The final contention of the Employer is that the Children's Librarian is a supervisor because she has authority to hire, or effectively recommend, the hiring of employees. In the area of hiring employees, it must be demonstrated that an employee actually has taken the action or effectively recommended the action. Colchester Education Association, Vermont-NEA and Colchester Supervisory District Board of School Directors, 12 VLRB 60, 80-81 (1989).

The Employer's contention that the Children's Librarian has the authority to hire employees is contrary to the Employer's Personnel Policy, which provides that positions should be filled by the Library Director with the approval of the Board of Trustees. Thus, we conclude that the Children's Librarian does not have the authority to hire employees.

The remaining issue is whether the Children's Librarian has the authority to effectively recommend the hiring of employees. The present Children's Librarian, in two years in that position, has recommended the hiring of a part-time adult employee after being solely responsible for interviewing applicants for the position, and recommended the hiring of a teenage page after

discussing the position with that individual. In both cases, the Library Director and the Board of Trustees followed the recommendations and the persons were hired.

Thus, the issue squarely presented is whether the Children's Librarian has the authority to effectively recommend the hiring of employees within the meaning of the statutory definition of a supervisory employee given that the two recommendations she has made for hire have been followed. We conclude that these two instances are insufficient for us to exclude the Children's Librarian from eligibility to be part of the proposed bargaining unit. Rare or infrequent supervisory acts do not make an employee a supervisor. Brattleboro, 138 Vt. at 351. Local 1201, AFSCME and City of Rutland, 10 VLRB 141, 149-50 (1987). Two instances in two years of a hiring recommendation being followed constitute infrequent supervisory acts.

Moreover, the fact that the hiring recommendations of the Children's Librarian have been followed on the occasions where the recommendations have been made does not indicate actual power to effectively recommend the hiring of employees. Bennington, 153 Vt. at 320. The experience is simply too limited, and the evidence is insufficient, for us to conclude that the Children's Librarian has the authority to effectively recommend the hiring of employees. Rutland, 10 VLRB at 149-50.

ORDER

Now, therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

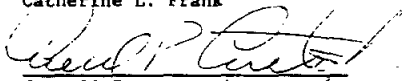
1. The Children's Librarian employed by the Kellogg-Hubbard Library is not a supervisory employee and is eligible to be included in a bargaining unit represented by Local 1369, AFSCME, AFL-CIO; and

2. The Vermont Labor Relations Board shall conduct a representation election wherein the bookkeeper, custodians and librarians, excluding the Library Director, employed by the Kellogg-Hubbard Library may determine whether they wish to be represented by Local 1369, AFSCME, AFL-CIO, or no union.

Dated the 4<sup>th</sup> day of June, 1992, at Montpelier, Vermont.

/s/ Louis A. Toepfer  
Louis A. Toepfer, Acting  
Chairman

/s/ Catherine L. Frank  
Catherine L. Frank

  
Carroll P. Comstock