

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

FAUST PUBLIC LIBRARY,
Public Employer,

-and-

MICHIGAN AFSCME COUNCIL 25, AFL-CIO,
Labor Organization-Petitioner.

Case No. R09 D-053
Docket 12-000981-MERC

APPEARANCES:

Fausone Bohn, LLP by Michael M. McNamara, and Steven H. Schwartz & Associates, PLC by Steven H. Schwartz, for the Public Employer

Tere M. McKinney, AFSCME Council 25, for the Petitioner-Labor Organization

ORDER ON REMAND

This matter is before the Commission on remand from the Michigan Court of Appeals. The Commission issued a Decision and Order Regarding Election on September 16, 2013, finding that the position held by librarian Lisa Hausman, as head of children's services, does not qualify as a supervisor and that, therefore, the challenged ballot cast by Hausman should be opened and counted with the results of the election that was conducted on May 23, 2012. Two other employees also cast challenged ballots at that election: Marilyn Kwik, a librarian and head of adult services; and Diane Mehl, a non-librarian and head of circulation. The Employer asserted that each of the three employees are supervisors and, therefore, should be excluded from the bargaining unit. The Union conceded that Kwik and Mehl are supervisors with the authority to hire and discharge employees; AFSCME agreed that they should be excluded from the unit. The Employer attempted to assert, in the alternative, that if either Hausman, Kwik, or Mehl was found not to be a supervisor, then all three should be held not to be supervisors. Inasmuch as both parties had acknowledged that Kwik and Mehl were both supervisors, the ALJ denied the Employer's request to pursue its alternative theory with respect to the status of Kwik and Mehl and limited the evidentiary hearing to the question of whether the position held by Hausman is supervisory. We agreed.

In a July 23, 2015 published decision, the Michigan Court of Appeals affirmed our Decision and Order in part, vacated it in part, and remanded the matter for further proceedings. The Court of Appeals upheld our finding that the position of head of children's services does not qualify as a supervisor. However, the Court concluded that the Employer should have been given the opportunity to present evidence of whether the head of adult services and the head of

circulation were also nonsupervisory positions. The Court pointed out that the Employer sought to admit testimony to establish the duties of the head of the adult services and the head of circulation to support the Employer's contention that the duties of those positions were effectively the same as the duties of the head of the children's services. Citing *HJ Tucker & Assoc, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 561; 595 NW2d 176 (1999), the Court found that the ALJ erred by not permitting the Employer to plead inconsistent claims and facts and to produce evidence in support of its alternative theories. The Court, therefore, held that our failure to consider the evidence that the Employer sought to offer regarding the head of the adult services and the head of circulation was a substantial and material error of law and remanded this matter to us for the purpose of determining whether the ballots cast by Kwik and Mehl should be opened and counted.

The Court held that we must first consider whether Kwik's and Mehl's ballots would be determinative of the election in light of Hausman's vote. Inasmuch as thirteen bargaining unit members voted in favor of representation by Petitioner and thirteen voted against, whichever way Hausman voted, the votes by Kwik and Mehl could determine the outcome of the election.

Further, the Court ruled that if we find that the two challenged ballots would be determinative, as we have, the parties may present evidence concerning the duties and authority of Kwik and Mehl. After considering that evidence, we must determine whether the position of head of adult services is nonsupervisory, whether the position of head of circulation is nonsupervisory, and, in accordance with those determinations whether, either or both positions should be included within the bargaining unit, such that their ballots should be opened and counted.

The Court of Appeals decision is attached hereto and incorporated by reference.

ORDER

This matter is hereby referred to an administrative law judge for an expedited evidentiary hearing on the questions of whether the position of head of adult services is a statutory supervisor and whether the position of head of circulation is a statutory supervisor.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

Dated: November 13, 2015 _____
Natalie P. Yaw, Commission Member