

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

MILWAUKEE DISTRICT COUNCIL 48,  
AFSCME, AFL-CIO

Involving Court Reporters Employed in

MILWAUKEE COUNTY CIRCUIT COURTS  
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Case XXXV

No. 13480 ME-517

Decision No. 9621

ORDER OF DISMISSAL

Milwaukee District Council 48, AFSCME, AFL-CIO having petitioned the Wisconsin Employment Relations commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes, among court reporters employed in the Milwaukee County Circuit Courts to determine whether said court reporters desired to be represented for the purposes of collective bargaining by said Labor Organization; and hearing on such petition having been conducted at Milwaukee, Wisconsin, on October 29, 1969, by Robert B. Moberly, Hearing Officer; and the Commission having considered the evidence and arguments of Counsel, and being satisfied that the court reporters involved herein are not municipal employees within the meaning of Section 111.70, Wisconsin Statutes, and that the Commission therefore has no jurisdiction to conduct a representation election herein;

NOW, THEREFORE, it is

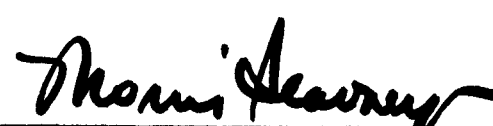
ORDERED

That the petition filed in the above entitled matter be, and the same hereby is, dismissed.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 28th  
day of April, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE COUNTY CIRCUIT COURTS

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No. 9621

As is apparent, the Circuit Court Reporters perform services for Circuit Judges, which are State constitutional positions,<sup>1/</sup> and it is apparent that the Circuit Judges maintain a great deal of authority over their reporters. Pertinent statutory provisions provide as follows:

"252.18 Court reporter and assistant; oaths of office.

(1) (a) Every circuit judge may, in his discretion, appoint a competent phonographic reporter for the circuit or the branch of a circuit, as the case may be, for which he was elected or appointed; and when he shall deem it necessary he may appoint one or more competent assistant reporters provided he has the approval of the administrative director of courts. The appointing judge or his successor may remove any such reporter or assistant reporter at pleasure and appoint a successor. Every person so appointed as reporter or assistant reporter is an officer of the court and shall take and file the official oath. When so qualified every reporter and every assistant reporter shall be authorized to act in any circuit court in the state. Every reporter shall attend upon the terms of court in the circuit or branch for which he is appointed and, when requested by the judge appointing him, upon the sessions of court presided over in other counties by such judge and shall discharge such other duties as the court or judge thereof requires; and every assistant reporter shall attend upon the court for which he is appointed, whenever requested so to do by the circuit judge.

(b) In branches 11, 12 and 17 of the 2nd circuit (criminal court branches) the circuit judge may appoint 2 reporters in each branch. The reporters and assistant reporters serving in the municipal court of Milwaukee county on December 31, 1961, shall be given the first appointments, shall retain their civil service status and shall be paid by the county in the same total salary as is received by other reporters under county civil service. The state shall reimburse Milwaukee County annually on voucher signed by the circuit judges of such branches for that portion of said reporter's salary which is paid by the state. Whenever the service of any of the reporters first appointed is terminated, his successor shall be appointed and paid in the same manner as the reporters in the other branches of the circuit, under par. (a).

(2) A reporter or assistant reporter attending a term of court or attending by the direction of the court the trial of a compulsory reference, outside the county in which he resides, or attending the sessions of court presided over in other circuits by the judge appointing him, at the request of such judge, shall be reimbursed his necessary traveling expenses and hotel bills. Every assistant reporter shall be compensated in such amount as the judge appointing him directs, but not more than the per diem equivalent of the state salary of the official court reporter for any day or more than the monthly state salary of the official court reporter for any month."

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<sup>1/</sup> Article VII, Section 5 et seq., Wisconsin Constitution.

"252.19 Additional compensation of reporters. In addition to the compensation payable from the state treasury, each reporter appointed pursuant to S. 252.18 in the 2nd circuit (Milwaukee County, Sec. 252.06, Stats.) shall be further compensated for his services at the rate of not less than \$75 nor more than \$200 per month, payable out of the treasury of the county comprising such circuit, and in any other circuit divided into 2 or more branches shall be further compensated for his services at the rate of \$50 per month, payable out of the treasury of the counties embracing such circuit. If there are 2 or more counties in each circuit, each county shall pay such proportion of said sum as its population at the last census bears to the entire population of such circuit according to such census. The county board of any county comprising all or part of a circuit having only one judge may elect to pay to the reporter appointed pursuant to s. 252.18 for the circuit such additional compensation as it determines. Such payment shall be made upon affidavit of the reporter and certificate of the judge with whom the service was performed, showing performance, and filed with the county clerk."

"20.923 Statutory salaries.

. . .

(4) The salary range for circuit court reporter shall be established as an amount equal to the salary range for stenographic reporter 2 in the state classification and compensation plan for positions in the classified service. The rate payable on original appointment shall be the minimum of the salary range; however, if a potential appointee possesses unusual qualifications directly related to the requirements of the position the appointing officer may hire him at any step up to the three-quarter point of the salary range commensurate with the employee's prior experience. Pay adjustments based on merit may be granted annually by the appointing officer and they shall be in an amount equal to the salary range step for stenographic reporter 2. If the stenographic reporter 2 classification is abolished or reduced in salary grade, the salary range and other provisions related thereto shall remain in effect as to circuit court reporters, subject to change by the legislature."

Circuit Court Reporters in Milwaukee County are presently paid a salary of \$9180 by the State of Wisconsin. The County is required by Section 252.19, Statutes, to supplement this State salary by not less than \$75, nor more than \$200, per month. Thus the County supplement, on an annual basis, is not less than \$900 and not more than \$2400. Milwaukee County currently is supplementing the salary paid by the State by \$2048, or \$352 less than the maximum amount possible. At one time the County provided the full \$2400 yearly supplement, but it appears that as the amount of salary paid by the State increased, the contribution of the County was decreased.

Circuit Court Reporters are eligible for group life insurance under a County plan and option, to the extent of the contribution made by the County to their total salary. They may participate in the County retirement system, but again only to the extent that their salary is paid by the County. Such contribution by the County is 6% of the \$2048 paid by the County, and it is considered earnable compensation under the County pension system.

However, as is clear from the statutes quoted above, Circuit Court Reporters are appointees of the Circuit Judges and serve at the will of the judges. The County neither hires nor fires Circuit Court Reporters. The County does not direct their activities, nor does it evaluate the accuracy or quantity of their work, and it has no authority over the work and performance of the Circuit Court Reporters. Vacation, sick leave and holiday benefits are provided by the State government and not by the County.

We do not discount the fact that the County contributes certain financial benefits to the Circuit Court Reporters. However, we believe this contribution alone cannot establish an employment relationship sufficient to consider Circuit Court Reporters as County employees when all other indicia of their employment relationship indicate that they are not.

We further deem it impractical in this situation to consider the State of Wisconsin and Milwaukee County to be joint employers, particularly since both employers are not regulated by the same statutory provisions governing employment relations.

Since the Circuit Court Reporters are not employees of Milwaukee County, they are not employees within the meaning of Section 111.70 of the Wisconsin Statutes and therefore we are dismissing the petition in the matter.

Dated at Madison, Wisconsin, this 28th day of April, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slayney, Chairman

  
Zel S. Rice II, Commissioner