

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
TEAMSTERS LOCAL UNION 75

Involving Certain Employees of

BROWN COUNTY

Case 22
No. 48726
ME-628

Decision No. 11983-F

Appearances:

Attorney John C. Jacques, Assistant Corporation Counsel, Brown County, 305 East Walnut Street, P.O. Box 23600, Green Bay, Wisconsin 54305-3600, appearing on behalf of Brown County.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, by **Attorney Andrea F. Hoeschen**, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters Local Union 75.

ORDER DENYING MOTION TO DISMISS

On February 21, 2003, Teamsters Local Union 75 filed a Petition to Clarify Bargaining Unit with the Wisconsin Employment Relations Commission. The Petition seeks to add nine Judicial Assistants to an existing bargaining unit of Brown County employees for which Local 75 is currently the exclusive collective bargaining representative.

On March 10, 2003, prior to any hearing on the Petition, Brown County filed a Motion to Dismiss.

On March 28, 2003, Local 75 filed a response to the Motion.

Dec. No. 11983-F

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

ORDER

The Motion to Dismiss is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of June, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul Gordon /s/

Paul Gordon, Commissioner

Brown County

**MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO DISMISS**

Brown County proposes five bases of support for its Motion to Dismiss Local 75's Petition to Clarify Bargaining Unit.

Citing *BARLAND v. EAU CLAIRE COUNTY*, 216 Wis.2d 568 (1998), the County first posits that the Commission lacks statutory authority and subject matter jurisdiction over the Judicial Assistant positions. Attaching a position description of the disputed positions to its Motion, the County argues that these positions are outside the statutory provisions of Ch. 111.70, Wis. Stats., when considered in conjunction with the *BARLAND* case.

The County next asserts that “. . . the Commission is required to dismiss the Petition since, on its face, it fails to state a valid Petition for Unit Clarification over Judicial Assistant positions. . . .” According to the County, under the Wisconsin Supreme Court's ruling in *BARLAND*, these positions cannot be constitutionally subject to the Commission's authority.

The third basis advanced by the County in support of its Motion to Dismiss is that the Commission is required to refuse to assert jurisdiction over the Petition because “. . . any provision of a collective bargaining agreement purporting to apply to Judicial Assistant positions is unconstitutional under doctrines of inherent judicial authority and separation of powers . . .” as set forth in *BARLAND*.

Fourth, the County contends that Judicial Assistant positions are exempt from the provisions of Ch. 111.70, Wis. Stats., because they are “confidential positions” and seeks a declaratory ruling to this effect. In support of this theory, the County argues (1) that the confidential status of these positions renders their occupants “. . . unable to effectively perform duties as bargaining unit members because of inherent conflicts of interest . . .” between them and other bargaining unit employees, and (2) that because of their sole allegiance to the appointing Circuit Judge, the duties of Judicial Assistants cannot be harmonized with the duties of the circuit judges arising under the Wisconsin Constitution and the Wisconsin Statutes, including Ch. 111.70, Wis. Stats., Ch. 227, Wis. Stats., reviews of Commission decisions, and Ch. 788, Wis. Stats., reviews of arbitration awards.

Fifth and finally, the County urges that the positions of Judicial Assistants are exempt from the provisions of Ch. 111.70, Wis. Stats., as a matter of constitutional law, and that the term “municipal employee” as set forth in Ch. 111.70, Wis. Stats., cannot include Judicial Assistant positions because these positions are entirely supervised by members of the Wisconsin judicial system, namely, circuit judges.

In opposition to the County's Motion to Dismiss, Local 75 responds (1) that BARLAND did not reach the issue of whether Judicial Assistants could be included in a bargaining unit, and (2) the issue of whether or not the duties of Judicial Assistants make them "confidential employees" cannot be resolved without a factual record.

We deny the Motion to Dismiss.

In support of its motion, the County places great reliance on BARLAND. As to the propositions the County seeks to advance, we find the County's reliance on BARLAND misplaced, for the BARLAND Court did not directly address those propositions.

The only issue before the BARLAND Court was ". . . whether circuit court judges have the exclusive, inherent constitutional authority to prevent the unilateral removal of their judicial assistants by way of a collective bargaining agreement between county government and its employees." BARLAND at 566. The Court added: "Because we typically decide cases on the narrowest possible grounds (citation omitted), this decision solely encompasses a circuit court judge's power to remove his or her judicial assistant." *Id.*, at 566, n. 2.

In resolving the issue it defined, the Supreme Court found that a "bumping provision" in the labor agreement covering the collective bargaining unit that included the Judicial Assistants impermissibly intruded upon the judiciary's "core zone of exclusive authority." Thus, as it applied to the Judicial Assistants, the bumping provision was void and unenforceable. BARLAND, at 590.

The BARLAND majority did not, however, address any of the constitutional or statutory issues raised by the County herein. Specifically, BARLAND did not consider whether: (1) Judicial Assistants are outside the statutory provisions of Ch. 111.70, Wis. Stats.; (2) the Judicial Assistant positions are not constitutionally within this Commission's authority; (3) *any provision* of a collective bargaining agreement purporting to apply to Judicial Assistant positions is unconstitutional under doctrines of inherent authority and separation of powers; and (4) the positions of Judicial Assistants are exempt from the provisions of Ch. 111.70, Wis. Stats., and the term "municipal employee" as used therein cannot include Judicial Assistant positions.

We also note – as did the BARLAND majority – a Court of Appeals case that preceded BARLAND by some three years. In WINNEBAGO COUNTY V. COURTHOUSE EMPLOYEES ASSOCIATION, 196 WIS.2D 733 (CT. APP. 1995), the Court of Appeals found no impropriety with the inclusion of a Judicial Assistant in a collective bargaining unit. The Court of Appeals distinguished between a judge's authority to remove and appoint a member of his or her staff and the subsequent termination of that staff member's county employment without regard for the "just cause" provision contained in the labor agreement that covered the bargaining unit of which the affected employee was a member.

The County has also argued that its Judicial Assistants have duties and supervision that require them to be found “confidential employees.” In the alternative, the County suggests the Judicial Assistants are not “municipal employees” within the meaning set forth in Ch. 111.70, Wis. Stats. Evaluation of these arguments requires a factual record, which has yet to be made. 1/ Thus, we reject this portion of the County’s argument, as well.

1/ The County did attach a Judicial Assistant Position Description to its Motion. However, job descriptions generally do not provide the comprehensive and accurate understanding of a job that is produced by an evidentiary hearing.

Given all of the foregoing, we have denied the Motion to Dismiss and the Petition will be scheduled for hearing.

Dated at Madison, Wisconsin, this 3rd day of June, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul Gordon /s/

Paul Gordon, Commissioner