

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

ONEIDA COUNTY

Involving Certain Employes of

ONEIDA COUNTY

Case VIII

No. 17102 ME-972

Decision No. 9134-A
12247

ORDER CLARIFYING BARGAINING UNIT

Oneida County having, on August 7, 1973, filed a petition with the Wisconsin Employment Relations Commission, wherein it requested the Commission to make a clarification of a collective bargaining unit wherein the Commission had previously certified the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO as the exclusive representative; 1/ and, pursuant to notice, a hearing having been held in the matter at Rhinelander, Wisconsin, on October 25, 1973, Marvin L. Schurke, Hearing Officer, being present; and the Commission having considered the evidence and arguments and being fully advised in the premises, makes and files the following

ORDER

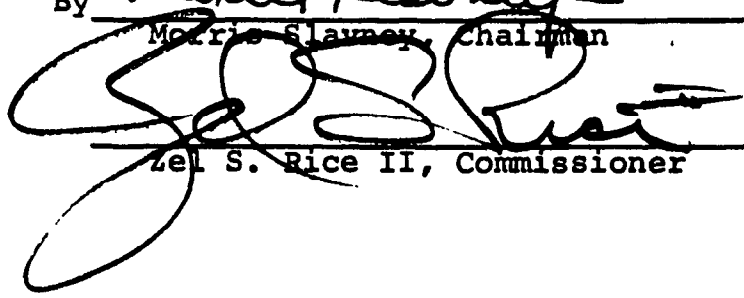
That the position of Probate Registrar shall be, and the same hereby is, included in the collective bargaining unit consisting of all regular full time and regular part time employes of the Oneida County Courthouse, excluding all elected, supervisory and confidential personnel.

Given under our hands and seal at the
City of Madison, Wisconsin, this 1st
day of November, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawson, Chairman


Zel S. Rice II, Commissioner

1/ Oneida County, Case II, (9134) 7/69, 8/69.

No. 9134-A
12247

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

Oneida County Employees Local Union No. 79, WCCME, AFSCME, AFL-CIO and Oneida County are parties to a collective bargaining agreement effective for the calendar year 1973 covering all regular full time and regular part time employees of the Oneida County Court-house, excluding all elected, supervisory and confidential personnel. The position of "Register in Probate" was specifically included in the list of job classifications covered by the collective bargaining agreement. In a letter to the Commission, under date of August 16, 1973, the County Judge of Oneida County requested that the Commission clarify the status of the newly created position of "Probate Registrar" in relation to the bargaining unit set forth above. Said letter was treated by the Commission as a petition for unit clarification.

The employee involved in this proceeding has held the position of Register in Probate since 1964. The position does not require a legal background or other specific training, but the present occupant of the position received a considerable period of on-the-job training. The duties of the Register in Probate position include record keeping concerning the mentally ill and illegitimate children, as well as the maintenance of probate records and dockets. The same person also acts as Clerk of the Juvenile Court, Deputy Clerk of the Circuit Court and Assistant Court Reporter. The Register in Probate is appointed by the County Judge and serves at the will of the County Judge. Pursuant to Section 253.53, Wisconsin Statutes, Oneida County sets and pays the salary of the Register in Probate.

Chapter 865 of the Wisconsin Statutes, effective October 1, 1973, created new procedures for informal probate and created a new position titled "Probate Registrar". The new position is in addition to, rather than in substitution for, the position of Register in Probate, and in Oneida County the former Register in Probate has been appointed to the dual position of Register in Probate/Probate Registrar. Provisions for appointment and payment of the Probate Registrar are similar to those for the Register in Probate.

The Probate Registrar is authorized to make independent determinations on the validity of requests for informal probate. No informal review of such determinations is available, but the determinations made by the Probate Registrar may be reviewed in formal probate proceedings before the County Court. At the time of the hearing in the instant matter the informal probate procedures had only been in effect for four days, and Oneida County had no actual experience with the new procedures. However, a significant increase in work load has been anticipated, and the Employer has contemplated the appointment of a Deputy Probate Registrar. It is anticipated that the Probate Registrar would have authority to make effective recommendations concerning the employment of any Deputy, and the Probate Registrar has already participated in the selection of the person who would be appointed Deputy, if the decision is made to appoint a Deputy. The Register in Probate/Probate Registrar has authority to order supplies for the operation of the County Court.

During the course of the hearing, the County Judge alleged that the Petitioner in this case should be identified as the County Court of Oneida County, rather than the County itself, and that the individual

in question was an employe of the County Court rather than an employe of the County. While acknowledging that the Register in Probate position had formerly been included in the bargaining unit, the contention in this proceeding is that the additional duties and responsibilities of the new Probate Registrar position warrant the exclusion of the occupant of that position from the collective bargaining unit. It is asserted that, under Chapter 865, Wisconsin Statutes, the Probate Registrar is authorized to act like a judge in another branch of court.

The Union contends that the Probate Registrar should be included in the bargaining unit. The Union points out that any confidential duties relate to the records kept, and not to matters affecting labor relations. The Union contends that the position lacks sufficient authority to commit the resources of the County to be classed as a managerial employe, and that the lack of formal education requirements prohibits classification of the Probate Registrar as a professional employe.

The question concerning identification of the employer is not unlike one of the issues raised and determined in the original presentation proceedings concerning the Oneida County Courthouse bargaining unit. In its Memorandum Accompanying Direction of Election, the Commission stated:

"The petition as originally submitted, claimed the appropriate collective bargaining unit as 'all regular full-time and regular part-time employes of the Oneida County Courthouse, but excluding all elected and appointed personnel, supervisory personnel, and confidential personnel as defined by the Act.' At the hearing the Petitioner amended the exclusions so that the exclusions on the amended petition read '. . . but excluding all elected personnel, supervisory personnel and confidential personnel as defined by the Act.'

"At the hearing an issue arose concerning the eligibility of the Deputies to the Treasurer, Register of Deeds, County Clerk and Clerk of Court. The Union contends the deputies are 'employes' eligible to vote, while the County contends that they are appointed officials and therefore should not be eligible to vote. These deputy positions are clerical in nature except that each deputy is authorized by Statute to perform the duties of the elected official whom he serves in cases in which the deputies assume positions of those who they normally serve, they are not supervisory positions.

"The Commission, in Ashland County ^{1/} has previously determined the status of such deputy positions. It said in that case,

'Although the elected official has power to appoint his deputy, the County Board has the power to veto such selection, if it chooses, by failing to appropriate salary for the appointee. Moreover, the County Board is the locus of the authority to determine the deputy's conditions of employment

"^{1/} Dec. No. 7214, July 9, 1965."

not prescribed by statute. These conditions may be the subject of conferences and negotiations between the Union and the County in the event the Union is selected as the bargaining representative. The fact that statutes affect the nature of a seniority provision which the County and the Union might effectively negotiate has no bearing on the question of whether the deputy may be considered an employee under the statute. Therefore, except so far as tenure is concerned, the deputy is in the same situation as any other County employee. His conditions of employment are set by the County Board."

The Commission stated further in the Ashland case,

"The fact that a deputy fills in for his supervisor during the latter's absence, does not, under the situation existing in this matter, convert the deputy into a supervisor or executive."

"The Commission has concluded that no reason exists to exclude the deputies herein from the coverage of Section 111.70 and they are thus eligible to vote in the election. Employees Dalum, Kuehn, Landeck and Stefonek, the employees holding the deputy positions are in the unit and are included on the eligibility list for the election."

While the Registrar in Probate was not among the appointive positions specifically mentioned in the foregoing, the Commission finds no basis on which the Register in Probate should then have been, or should be now, treated differently from other appointive positions in County government. The same considerations would apply to the newly created appointive position of Probate Registrar.

The Union does not challenge the assertion that the new Probate Registrar position will entail new and greater responsibilities and work load. The record indicates that the positions could be separated, but that most Counties have chosen to create a dual position rather than two separate positions. The implementation of new procedures and the assumption of new duties does not necessarily warrant the exclusion of the employee involved from collective bargaining under the Municipal Employment Relations Act. The Commission has based the exclusion of employees as "confidential" on the exposure of the employee to matters concerning the Municipal Employer's labor relations, 2/ but nothing in this record indicates that the Register in Probate/Probate Registrar is, or is expected to be, a member of a management team setting policy or engaged in determinations on significant commitments of the resources of the County. Accordingly, the Commission finds the record insufficient to warrant the exclusion of the position as confidential or managerial. The Commission also concludes that the Register in Probate/Probate Registrar cannot be classified as "Professional" within the meaning of Section 111.70(1)(1) of the MERA.

At the present time the Register in Probate/Probate Registrar is the only employee, other than the County Judge, who is engaged in the

2/ See, e.g. Outagamie County (11923) 6/73; Rusk County (11768) 4/73; Calumet County (11158) 7/72; Village of Greendale (11019) 5/72.

probate functions of the County Court. To be classified as a supervisor within the meaning of the Municipal Employment Relations Act, the Register in Probate/Probate Registrar would have to exercise authority over employees, and the position in question therefore cannot be regarded as supervisory at this time. Should the Municipal Employer proceed with the appointment of one or more Deputy Probate Registrar(s), and should the Probate Registrar be authorized to exercise supervisory authority over such subordinates, a different fact situation would be presented. Exclusion of the Register in Probate/Probate Registrar from the collective bargaining unit on the potential future supervisory duties would be inappropriate. In correspondence prior to the hearing in this matter, the Municipal Employer cited the exclusion of the Dane County Register in Probate from a collective bargaining unit of Dane County employees. In Dane County (10492-A) 3/72, the Commission established a county-wide unit of office and clerical employees, in conformity with the admonition of Section 111.70(4)(d)(2)(a) of the Municipal Employment Relations Act to avoid fragmentation of bargaining units, whenever possible. The exclusion of the Register in Probate from said unit was on the basis of supervisory authority, exercised in a Department having a number of employees, and not on the basis of the unique duties of the position.

Dated at Madison, Wisconsin, this 1st day of November, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawney, Chairman


Del S. Rice II, Commissioner