

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
KEWAUNEE COUNTY	:	Case 2
	:	No. 18385 ME-1111
Involving Certain Employees of	:	Decision No. 13185-D
	:	
KEWAUNEE COUNTY	:	
	:	
	:	

Appearances:

Nash, Spindler, Dean and Grimstad, Attorneys at Law, 201 East Waldo Boulevard, Manitowoc, Wisconsin 54220-0928, by Mr. John M. Spindler, appearing on behalf of the County.

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 370, Manitowoc, Wisconsin 54220, appearing on behalf of the Union.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

Kewaunee County having on June 25, 1984, filed a petition which, as subsequently amended, requested the Wisconsin Employment Relations Commission to clarify an existing bargaining unit consisting of all employees of Kewaunee County employed in the Courthouse and associated departments, including secretarial-clerical employees in the Highway Department and professional employees in the Department of Social Services, excluding elected officials, supervisory, managerial, confidential and deputized law enforcement employees and Highway Department employees, other than secretarial-clerical employees, presently represented by Wisconsin Council 40, AFSCME, AFL-CIO and its affiliated Local 2959, by determining whether the employee occupying the positions of Register in Probate, Probate Registrar, and Probate Court Commissioner should be excluded from the aforesaid collective bargaining unit on the basis that the employee is a supervisory, managerial and executive employee; and a hearing on the petition having been conducted at Kewaunee, Wisconsin, on October 15, 1984, by James W. Engmann, a member of the Commission's staff; and the parties having completed the filing of briefs by November 19, 1984; and the Commission, having considered the evidence and the arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Council 40, AFSCME, AFL-CIO and its affiliated Local 2959, hereinafter jointly referred to as the Union, is a labor organization and has its offices at P. O. Box 370, Manitowoc, Wisconsin 54220-0370.
2. That Kewaunee County, hereinafter referred to as the County, is a municipal employer and has its offices at 613 Dodge Street, Kewaunee, Wisconsin 54216.
3. That in Kewaunee County, Dec. No. 13185 (WERC, 1/75), following an election conducted by it, the Wisconsin Employment Relations Commission, certified the Union as the exclusive collective bargaining representative of the employees of the County employed in the following appropriate bargaining unit:

All employees of Kewaunee County employed in the Courthouse and associated departments, including secretarial-clerical employees in the Highway Department and professional employees employed in the Department of Social Services, excluding elected officials, supervisory, managerial, confidential and law enforcement employees and Highway Department employees, other than secretarial-clerical employees.

4. That in Kewaunee County, Dec. No. 13185 (WERC, 11/74), the Commission concluded that the individual occupying the position of Register in Probate was appropriately included in the collective bargaining unit described in Finding of Fact 3 above; and that no determination was made in said decision with respect to the positions of Probate Registrar or Probate Court Commissioner.

5. That on June 25, 1984, the County filed a petition requesting the Commission to exclude the individual occupying the position of Register in Probate from the collective bargaining unit described in Finding of Fact 3 above on the basis that the statutory responsibilities of the Register in Probate include supervisory, managerial and confidential responsibilities; that on September 5, 1984, the County filed an amended petition wherein it identified the position to be excluded as the Register in Probate/Probate Registrar and requested exclusion on the basis that the work and statutory responsibilities are supervisory, managerial and executive; and that at hearing on October 15, 1984, the County further amended the petition by identifying the positions to be excluded as Register in Probate/Probate Registrar, and Probate Court Commissioner.

6. That on November 1, 1983, Lorraine Riemer commenced employment in the office of the Kewaunee County Register in Probate; and that upon the retirement of the incumbent Register in Probate, County Circuit Court Judge Pies appointed Riemer to the positions of Clerk of Juvenile Court, Register in Probate, Probate Registrar, and Probate Court Commissioner, all effective April 2, 1984.

7. That approximately one month prior to the hearing held on October 15, 1984, Riemer prepared a document entitled "Job Descriptions" which contains, inter alia, the following description of her duties:

JOB DESCRIPTIONS

REGISTER IN PROBATE

To accept for filing all matters relevant to "FORMAL" estate proceedings and check them over thoroughly before presenting to the Judge for his approval and signature. If there are any corrections or additions required either per statutory or office rules that need to be called to the Judge's attention, the Register shall do so.

Inventory filing fees must be determined, based on various assets in an estate, sorting out those items which may or may not be subject to filing fees. Computations on Inheritance Tax Returns and Final Accounts must be checked for accuracy and to determine whether Receipts filed balance out with figures shown in the Final Account.

To accept for filing all documents relative to ADOPTIONS, setting up hearing dates; determining whether all necessary papers are on file with the Court to proceed to hearing; act as Clerk at hearing (take minutes and swear in witnesses); and after hearing collect fees and submit same with necessary papers to the State for purpose of obtaining new Birth Certificate.

Establish all files for MENTAL, ALCOHOL and DRUG COMMITMENTS, set up and schedule hearings on same; prepare and give notice to all interested persons. Arrange for statutorily required psychological examinations with physicians within a specific time frame, and make note of and follow through on any commitments and/or extensions thereof within specific period of time.

Responsible for setting up all files and checking all documents presented for filing; also set up hearings in all GUARDIANSHIP proceedings. After Guardianship is established, following through to see that Inventory is filed, filing fees computed, and Financial Reports and other reports required by the Court and by the Statutes filed on an annual basis thereafter. It is the Register's duty to see that these

reports are timely filed and balance out before being approved by him/her. In addition, the Register must act as Clerk and swear in witnesses at hearings in some Guardianship matters.

Establish all TRUST files which also require annual accounts to the Court. Filing fees must be determined on these Trusts and the Inventory must correspond to the amount actually received from an Estate and must balance out accordingly. Annual accountings must be checked and approved by the Register.

Registers in Probate are required, under Statute, to keep a Court record of every proceeding in the Court under Sections 850-880 of the Wisconsin Statutes.

In addition to the regular filing procedures in any matter, a second record must be kept of all Wills admitted to probate, all Letters issued and all Judgments rendered in all Estate proceedings.

PROBATE REGISTRAR

This position involves the "INFORMAL PROBATE" of estates, and this appointment gives the Registrar complete charge of all "informal probate" matters. The Circuit Judge is not involved in this type of probate at all.

The work involved is primarily the same as for "formal probate" (set forth above), however, the Registrar has complete charge and control over this procedure including admitting a Will to probate, appointing the Personal Representative, setting bond and issuing of Domiciliary Letters to the Personal Representative.

Determination as to whether the Court has jurisdiction, whether a Will can be admitted to probate and the amount of bond required are all responsibilities of the Registrar.

PROBATE COURT COMMISSIONER

This appointment gives the Commissioner the authority, in the absence of the Judge, to sign those documents he has authorized the Commissioner to sign during his absence. Since the Commissioner is responsible for these documents signed by him/her in the Judge's absence, he/she must be sure that everything is in proper order before signing the same.

. . .

8. That in addition to the above, Riemer's duties as Register in Probate/Probate Registrar, include the following: endorsing checks made payable to her office; issuing checks drawn on office accounts; and maintaining financial accounts, which accounts are subject to the annual audit of County accounts.

9. That the Circuit Court Judge, and not Riemer, determines the policies which govern the activities of the Register in Probate, e.g., the Judge requires the posting of a bond and the filing of an inheritance tax return in every estate proceeding; if the will states that no bond is necessary, the Judge requires a \$1,000 bond; and if the will is silent with respect to a bond, the bond is set on the basis of the value of the estate assets; and that the duties of the Register in Probate are primarily clerical in nature.

10. That the work of the Probate Registrar is primarily the same as that of the Register in Probate except that the Probate Registrar performs such work for informal estate proceedings, whereas the Register in Probate is involved in formal estate proceedings; and that the Probate Registrar has statutory authority to perform duties which in formal estate proceedings are performed by the Judge, e.g., determine whether the court has jurisdiction, determine whether to admit a will to probate, appoint a Personal Representative and issue letters of administration.

11. That the Probate Registrar has authority to set bond; that Riemer follows the policy instituted by the Judge and requires a bond in all proceedings; that the Probate Registrar has the right to question the reasonableness of attorney fees; that the Judge, and not the Probate Registrar, has statutory authority to deny or reduce attorney fees; that on one occasion Riemer, acting as Probate Registrar, approached the Judge and questioned the reasonableness of attorney fees; and that the Judge directed Riemer to telephone the attorney(s) involved and inform them of her concerns.

12. That prior to the 1985 budget, the budget for the office of the Register in Probate/Probate Registrar was included in the Circuit Court budget which budget was prepared by the Judge; that in August, 1984, the Circuit Court Judge advised Riemer that she would be responsible for drafting a separate budget for the office of the Register in Probate/Probate Registrar; that the Circuit Court Judge assisted Riemer in the preparation of the budget; that the budget prepared by Riemer was submitted to and approved by the County Finance Committee; and that Riemer has authority to expend monies for the purposes for which the monies have been appropriated.

13. That the 1985 budget prepared by Riemer is as follows:

Salary: Lorraine - \$ 7,955.82 - 7 mos.

4,305.60 - 5 mos.

BUDGET ESTIMATE FOR 1985

ACCOUNT NO. 51311

Subtotal

1985 Increase

TOTAL

(Calendar Year Step-up Increase on 1/1/85 will add approximately \$540.00 to base salary for 1985.)

PORTION OF 1984 SALARY ATTRIBUTABLE TO JEAN LOCKE: \$2,307.92

SUBMITTED BY: Lorraine Riemer

DEPARTMENT

	1985 APPROPRIATION ALLOWED	1985 DEPT. HEAD REQUEST	1984 BUDGET	1984 EXPENDITURES		1983 ACTUAL EXPENDITURES
				6 MONTHS ACTUAL	6 MONTHS ESTIMATED	
.02 Salaries & Wages			13,260.00	10,263.74	4,305.60	15,484.48
.04 Convention & Dues		400.00		207.14	25.00	392.00
.05 Postage		150.00		41.10	40.00	N/A
.06 Telephone		540.00		240.71	240.00	N/A
.07 Stationery & Supplies		1,000.00		600.00	400.00	N/A
.03 Register in Probate Library		140.00		-----	-----	N/A
.08 Machine Agreements & Repairs		80.00		53.00	20.00	N/A
.11 Sheriff Service Fees, Witness Fees and Costs		120.00			25.00	N/A
.13 Miscellaneous		300.00			10.00	N/A
.14 Juvenile Attorney Fees		600.00			200.00	N/A
TOTALS		3330.00		11405.69	5265.60	

OUTLAY

Electric Heater \$65.00

OUTLAY

Electric Heater \$65.00

14. That the 1985 budget prepared by Riemer does not contain an appropriation for the account which required the greatest expenditure in 1984, i.e., Salaries and Wages, that the 1985 budget contains an appropriation for one account (the library) for which no expenditures were made in 1984; that except for the aforementioned accounts, the 1985 budget contains appropriations for the same accounts as required expenditures in 1984; and that the 1985 budget is primarily an extension of the 1984 accounts and expenditures.

15. That, at hearing, the parties stipulated to the fact that Riemer performs the Probate Court Commissioner duties set forth in Sec. 757.72, Stats; that Sec. 757.72, Stats., provides, inter alia, that the Judge may assign to the Probate Court Commissioner any matters over which the Judge has jurisdiction; that Sec. 757.72 (8), Stats., provides that Probate Court Commissioners may administer oaths, take depositions and testimony, certify and report the depositions and testimony, take and certify acknowledgements, allow accounts and fix the amount and approve the sufficiency of bonds; that the Judge has granted Riemer limited jurisdiction, i.e., to sign, in his absence, those documents he has authorized the Commissioner to sign; and that Riemer's duties as Probate Court Commissioner are primarily ministerial in nature.

16. That Riemer does not participate in the formulation, determination, and implementation of policy to a significant degree, nor does she possess significant authority to commit the County's resources.

17. That Riemer does not have overall responsibility and authority for the management of an agency or major department of the County.

18. That Riemer, the only individual working in her office, has not hired, supervised, reprimanded or discharged any employee during her tenure as Register in Probate/Probate Registrar; and that Riemer does not exercise the indicia of supervisory status set forth in Sec. 111.70(1)(o) of MERA.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That Riemer, the individual occupying the positions of Register in Probate, Probate Registrar and Probate Court Commissioner, is not a supervisory employee within the meaning of Sec. 111.70(1)(o) of the Municipal Employment Relations Act.

2. That Riemer, the individual occupying the positions of Register in Probate, Probate Registrar, and Probate Court Commissioner is not a managerial employee within the meaning of Sec. 111.70(1)(i) of the Municipal Employment Relations Act.

3. That Riemer, the individual occupying the positions of Register in Probate, Probate Registrar, and Probate Court Commissioner is not an executive employee within the meaning of Sec. 111.70(1)(i) of the Municipal Employment Relations Act.

4. That Riemer, the individual occupying the positions of Register in Probate, Probate Registrar, and Probate Court Commissioner is a municipal employee within the meaning of the Municipal Employment Relations Act and is appropriately included in the collective bargaining unit represented by the Union.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

That the position of Register in Probate remain, and the positions of Probate Registrar and Probate Court Commissioner hereby are, included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 17th day of January, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Chairman

Marshall L. Gratz /s/
Marshall L. Gratz, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

(Footnote 1 continued on Page 6)

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

KEWAUNEE COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CLARIFYING BARGAINING UNIT

POSITIONS OF THE PARTIES

The County 2/

The County primarily argues that the following are significant and material developments that have occurred since the Commission's 1974 determination that the Register in Probate should be included in the bargaining unit: (1) the position of Probate Registrar was statutorily created conferring the authority of a circuit court judge on said position; (2) since 1977, the Probate Court Commissioner has statutory duties including matters over which the judges have jurisdiction; (3) the present Probate Registrar has assumed duties and responsibilities which make her a "management" and/or executive employee; and (4) two circuit court decisions have held that the Probate Registrar is managerial or executive and, therefore not a municipal employee. In light of the above developments the County asserts that Riemer, the current Register in Probate, Probate Registrar and Probate Court Commissioner, should be excluded from the unit as both an executive and managerial employee. The County also contends that Riemer is a supervisor.

The Union

Initially, the Union argues that circumstances have not changed since the Commission determined that the Register in Probate should be included in the bargaining unit; therefore, the County should not be allowed to "rehash" the same issue. In the alternative, the Union asserts that the instant Register in Probate/Probate Registrar is the only person working in her office; thus, having no employees to supervise, she is not a supervisor under MERA. Citing numerous Commission and Wisconsin Supreme Court cases in support of its position, the Union argues that because Riemer neither formulates, determines or implements policy, nor does she have the effective authority to commit the employer's resources, she is not a managerial employee. Furthermore, consistent with the Commission's rationale in Manitowoc County, Dec. No. 8152-E (WERC, 7/81), Riemer is not an executive employee. Finally, the Union states that the parties' most recent agreement harmonizes the collective bargaining process regarding job-posting and seniority for the Register in Probate position and the circuit judge's statutory authority to appoint said position. Thus, a finding that Riemer is a municipal employee and one who should remain in the bargaining unit would not conflict with other Wisconsin statutes.

DISCUSSION

In a previous proceeding, the Commission was presented with the question of whether the fact that the Kewaunee County Register in Probate was appointed by and served at the sufferance of a County Judge, rather than the County, precluded a finding that the Register in Probate was a County employee. 3/ Answering in the negative, the Commission included the position in the collective bargaining unit represented by the Union. The Commission, however, was not confronted with the issues presented herein, i.e., whether the person occupying the position of Register in Probate is a managerial, supervisory and/or executive employee.

2/ Although the County's original petition contained the assertion that the employee is also a confidential employee, the assertion was abandoned when the County amended its petition on September 5, 1984. At hearing, the County sought to further amend the petition to include a determination of whether Riemer's duties as Juvenile Court Clerk warrant her exclusion from the unit. Neither the County's evidence at hearing, nor its post-hearing arguments, however, were directed towards this issue. The Commission, therefore, considers the County to have abandoned its claim with respect to the position of Juvenile Court Clerk.

3/ Kewaunee County, Dec. No. 13185 (WERC, 11/74).

Moreover, no determination was made with respect to the inclusion or exclusion of the positions of Probate Registrar or Probate Court Commissioner. 4/ Since the prior proceeding and the instant proceeding do not share an identity of issue, the Commission rejects the Union's assertion that the instant petition seeks to "rehash" matters which have been previously decided.

Supervisory

In determining whether an employee is supervisory within the meaning of Sec. 111.70(1)(0), Stats., the Commission considers to the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
3. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees;
4. Whether the supervisor is a working supervisor or whether he spends a substantial portion of his time supervising employees;
5. The number of employees supervised and the number of employees exercising greater, similar or lesser authority over the same employees;
6. The amount of independent judgment and discretion exercised in the supervision of employees; and
7. The authority to direct and assign the work force. 5/

Riemer, the only individual working in her office, has not hired, supervised, reprimanded or discharged any employee during her tenure as Register in Probate/Probate Registrar nor is there any indication in the record that she possesses authority to do same. Since the record is devoid of any of the indices of supervisory status, the Commission is satisfied that Riemer is not a supervisory employee within the meaning of Sec. 111.70(1)(0), Stats.

Managerial

The Commission has consistently held that a managerial employee is one who participates in the formulation, determination, and implementation of policy to a significant degree or who possesses effective authority to commit the employer's resources. 6/ In determining whether Riemer is a managerial employee, we first address the issue of whether she participates in the formulation, determination, and implementation of policy to a significant degree.

We have previously held that the vast majority of the duties of the Register in Probate/Probate Court Commissioner are statutorily defined and, thus, there is little, if any, opportunity for the individual(s) occupying these positions to

4/ The record of the prior proceeding is silent with respect to the positions of Probate Registrar and Probate Court Commissioner.

5/ Town of Allouez, Dec. No. 22065 (WERC, 11/84); Manitowoc County (Highway Department), Dec. No. 20847 (WERC, 7/83).

6/ Kenosha County (Sheriff's Department), Dec. No. 21909 (WERC, 8/84); City of Cudahy (Fire Department), Dec. No. 18502 (WERC, 3/81); Village of Whitefish Bay (Police Department), Dec. No. 16928 (WERC, 3/79). The Commission's definition of managerial employee was approved by the Wisconsin Supreme Court in City of Milwaukee v. WERC, 71 Wis.2d 709, 716-17 (1976);

significantly affect the formulation, determination or implementation of management policy in this area. 7/ The instant record does not persuade us otherwise.

As the County argues, Judges assigned probate jurisdiction have authority to assign to Probate Court Commissioners any matters over which the Judges have jurisdiction. 8/ In the present case, however, Riemer has been assigned very limited jurisdiction, i.e., in the absence of the Judge, Riemer signs those documents which the Judge has authorized her to sign in his absence. The Commission considers such duties to be ministerial in nature, rather than managerial.

As Register in Probate, Riemer is responsible for establishing and maintaining court records involving Formal Probate, Adoptions, Commitments, Guardianships and Trusts. For example, Riemer accepts papers for filing, verifies the accuracy of mathematical computations, monitors Court files to ensure that the proper forms are filed in a timely manner, calculates filing fees, records Court proceedings, swears witnesses, schedules hearings, notifies interested parties of scheduled proceedings, and arranges psychiatric examinations. The duties Riemer performs as Register in Probate are routine and clerical in nature, rather than managerial.

According to Riemer, the work of the Probate Registrar is "primarily the same" as the work of the Register in Probate, the difference being that the Probate Registrar performs such work in informal administrations of estates, whereas the Register in Probate is involved in formal administrations. As we concluded above, such work is not managerial in nature.

As the County argues, however, the Probate Registrar also performs duties which are not performed by the Register in Probate. Specifically, the Probate Registrar has statutory authority to perform duties which, in the formal administration of estates, are performed by the Judge. For example, the Probate Registrar determines whether the court has jurisdiction over the estate of the decedent; determines whether to admit a Will to probate; appoints the Personal Representative and issues letters of administration; and sets bond. Relying upon the opinion of Judge Warren Winton in Eau Claire County, Dec. No. 17488-C (10/83), the County argues that these "judicial" duties are managerial.

We do not disagree with Judge Winton's finding that the statutes grant discretion to the Probate Registrar. Further, we do not disagree that there may be Probate Registrars who work independently of the Judge and, through their exercise of discretion, determine management policy. In the present case, however, where Riemer has had an opportunity to exercise discretion, she has followed policies instituted by the Judge, 9/ or otherwise sought his guidance. 10/

7/ Waupaca County (Courthouse), Dec. No. 20854-C (WERC, 9/85).

8/ Sec. 757.52(2), Wis. Stats.

9/ For example, Riemer has statutory discretion to determine whether a bond is required and to set the amount of the bond. Riemer, however, follows the policy instituted by the Judge and requires a bond in all proceedings. Where the Will provides that no bond is required, the court requires a \$1,000 bond. If the will is silent with respect to bond, the bond is determined by a formula based upon the assets in the estate.

10/ As the County argues, the Probate Registrar has discretion to question the appropriateness of attorney's fees. The Probate Registrar, however, does not have statutory authority to deny or reduce the fees, but rather, must refer the matter to the court for disposition. In the instant case, Riemer has had one occasion to approach the Judge regarding the reasonableness of attorney fees in an informal administration. The Judge directed Riemer to call the attorneys involved and inform them that she thought the fees were unreasonable. The record, however, fails to establish that the Judge gave Riemer authority to deny or reduce the fees should the attorneys prove unresponsive to her telephone call.

We are not persuaded, therefore, that Riemer utilizes the discretion afforded her Office to formulate, determine, or implement management policy.

To be sure, Riemer's work involves a degree of responsibility in that she is entrusted to perform her work with minimal supervision. Further, failure to perform her work properly could have an adverse effect upon judicial processes. The record, however, fails to establish that Riemer's work as Probate Registrar, Register in Probate, and Probate Court Commissioner involves significant participation in the formulation, determination, and implementation of management policy.

The second indicia of managerial status is effective authority to commit the employer's resources. The Commission has interpreted the power "to commit the employer's resources" to mean the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 11/ However, preparation of a budget, per se, does not establish effective authority to commit the employer's resources. The Commission will not confer managerial status on an employee whose budget preparation duties primarily involve projecting the cost of implementing the policy decisions of another. 12/ Rather, to be considered managerial, an individual's budget preparation duties must involve authority to allocate resources in a manner which significantly affects the nature and direction of the employer's operations. Authority to significantly affect the nature and direction of the municipal employer's operations includes, inter alia, authority to determine the following: the kind and level of services to be provided; the kind and number of employees to be utilized in providing services; the kind and number of capital improvements to be made; and the systems by which the services will be provided, including use of outside contractors. 13/

A review of the record reveals that, with one exception, the 1985 budget prepared by Riemer contains appropriations for the same kinds of expenditures as the 1984 budget, which budget was prepared by the Judge. 14/ We are persuaded, therefore, that Riemer's budgetary duties primarily involve projecting the cost of continuing current operations. Since the decision to conduct the operations was made by another, we consider Riemer's budget preparation duties to be ministerial. 15/ As we have previously held, extending an existing budget by adjusting for anticipated changes in costs of supplies or level of existing services does not constitute effective authority to commit the employer's resources. 16/

11/ Manitowoc County (Highway Department), Dec. No. 20847 (WERC, 7/83); Shawano County (Sheriff's Department), Dec. No. 15257 (WERC, 3/77). See, Eau Claire County et al. v. WERC et al., Dec. No. 84-298 (CA3, 12/84) wherein Court of Appeals approved Commission's exclusion of ministerial authority to commit employer resources.

12/ See Generally: Waupaca County, Dec. No. 20854-C (WERC, 9/85); Shawano County (Maple Lane Health Care Facility), Dec. No. 7197-A (WERC, 10/84); Kewaunee County, (Highway Department), Dec. No. 21344 (WERC, 1/84); Iowa County, Dec. No. 16313-A (WERC, 4/83).

13/ See generally: Forest County, Dec. No. 17528-B (WERC, 6/85); City of Jefferson, Dec. No. 10344-A (WERC, 3/85); Town of Pewaukee, Dec. No. 20759 (WERC, 6/83); Milwaukee Board of School Directors, Dec. No. 17009-C (WERC, 7/82); Manitowoc Public School District, Dec. No. 18128 (WERC, 10/80); Milwaukee Area Board of Vocational, Technical and Adult Education District No. 9, Dec. No. 8736-B, 16507-A (WERC, 6/79); Village of Germantown, Dec. No. 12315-B (WERC, 4/77); City of Wausau, Dec. No. 14807 (WERC, 7/76).

14/ The one new account, the Library account, allocates the sum of \$140 in a total budget expected to exceed \$15,000.

15/ Assuming arguendo, that Riemer made the decision to fund the new Library account, we are not persuaded that the decision to commit \$140 to the purchase of Library materials significantly affects either the nature or the direction of the employer's operations.

16/ Brown County (Mental Health Center), Dec. No. 7954-C (WERC, 11/84).

While it is true that Riemer has authority to issue checks on her department's accounts, her check-writing authority is limited to expending money for appropriated purposes. As the Commission stated in Shawano County (Sheriff's Department), supra,

The power to commit the employer's resources involves the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. By comparison the authority to make expenditures from certain accounts to achieve those program purposes is ministerial, even though some judgment and discretion are required in determining when such expenditures should be made. Thus, the authority to spend money from a certain account for a specified purpose is not a managerial power, even though managerial employees also have that authority.

Despite the County's assertions to the contrary, neither Riemer's check-writing duties, nor her budget preparation duties, establishes that Riemer has effective authority to commit the employer's resources. Further, as discussed supra, she does not participate in the formulation, determination and implementation of policy to a significant degree. As a result, Riemer is not a managerial employee within the meaning of Sec. 111.70(1)(i), Wis. Stats.

Executive

The County, relying upon Judge Orton's opinion in McEwen, 17/ asserts that Riemer's duties as Probate Registrar and Register in Probate are executive. We disagree. We see no reason, on the record before us herein, to deviate from our conclusion in Manitowoc County 18/ wherein we determined that the Register in Probate was not an executive employee since she possessed no significant managerial responsibilities. As we have previously held in City of Oak Creek, Dec. No. 17633 (WERC, 3/80) an executive employee is:

" . . . an individual possessing managerial authority who has the overall responsibility for the management of an agency or major department of the employer. Thus an executive employee also has managerial and/or supervisory responsibilities, but is distinguishable by reason of his or her possession of the overall responsibility and authority for an agency or major department."

For the reasons discussed supra, we have concluded that Riemer is neither a supervisory nor a managerial employee. We further conclude that she does not have overall responsibility for the management of her office. Therefore, she is not an executive employee.

Dated at Madison, Wisconsin this 17th day of January, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Chairman

Marshall L. Gratz /s/
Marshall L. Gratz, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner

17/ The County cites William E. McEwen, Circuit Judge, et al, v. Pierce County and Pierce County Courthouse Employees Local 556A, AFSCME, AFL-CIO, Case No. 77-CI-D116, November 25, 1980, wherein Circuit Judge Richard W. Orton stated as follows:

(Footnotes 17 and 18 continued on Page 12)

(Footnotes 17 and 18 continued from Page 11)

I further find that the Register in Probate is not a municipal employee because, in my judgment -- and I have considered this as carefully as I could in looking back over the years that I have been a lawyer and a judge and have had personal opportunity to view Registers in Probate and their duties and the method that they conduct their affairs -- I find that the Register in Probate is an executive employee. I do that because I believe that she or he has full possession of the overall responsibility and authority for the operation of the Probate Branch of the Circuit Court. I know -- and I take judicial notice of the fact -- that Probate -- that Registers in Probate practically run the probate business of the County Court. They -- if there ever was a person who could be considered an executive, in my opinion, it is a Register in Probate. Next to the judge, she is the boss or he is the boss, so I therefore conclude that this Agreement is void so far as it affects or relates to the Register in Probate because I find she is not a municipal employee.

18/ Dec. No. 8152-E (WERC, 7/81).