

implementation of management policy and that, therefore, her duties were not supervisory or executive in nature. However, relying on Eau Claire County v. WERC, 122 Wis.2d 363, 366, 362 N.W.2d 429, 430-31 (Ct. App. 1984), the court determined that Reimer was a managerial employee because she had effective authority to commit the county's resources. In Eau Claire, we held that a register in probate/probate registrar did have such authority because "by forwarding a recommended budget to the county board, the register in probate ... created an original budget." Id. at 369, 362 N.W.2d at 432. The circuit court concluded that Eau Claire was controlling because Reimer's duties included preparing the budget and submitting it to the county board for its approval.

In reversing the commission's decision, the court determined that the unique nature of Reimer's positions created a special exception to the normal indicia used to determine whether an employee should be eligible for union membership. The court noted that a judge is empowered by statute to appoint, discharge, and describe the working conditions of registers in probate, probate registrars, and probate court commissioners. Sections 757.72(4), 851.71(1), and 865.065(1), Stats. Therefore, the court concluded that these statutory powers would conflict with an individual's collective bargaining rights under MERA.

On appeal, the commission and the union contend that the circuit court erroneously applied Eau Claire in determining that Reimer's budgetary duties demonstrated that she was a managerial employee. Conversely, the county contends that in light of Eau Claire, the court correctly determined that because Reimer prepared and submitted the budget to the county board for its approval, she was a managerial employee. We conclude that the county and the circuit court misinterpret our holding in Eau Claire. We also conclude that the commission's determination that Reimer is not a managerial employee is supported by the evidence. Finally, we conclude that no conflict between the court's statutory powers and the MERA exists. A judge appointing an individual to such a position would not be bound by the provisions of an employment contract between a union representing that individual and a county if these provisions restricted the constitutionality to discharge its duties.

In reaching our decision, we must examine the underlying facts of this case. No bright-line test exists for determining whether an individual employed as a register in probate, probate registrar, or probate court commissioner is subject to MERA and is therefore eligible for union membership. Rather, this determination involves a

case-by-case examination of the duties, responsibilities, and powers of these offices. See Eau Claire, 122 Wis.2d at 367-68, 362 N.W.2d at 431; see also Village of Whitefish Bay v. WERC, 103 Wis.2d 443, 448, 309 N.W.2d 17, 20 (Ct. App. 1981).

A two-fold analysis is used to determine whether an employee is "managerial" within the meaning of sec. 111.70(1)(i). Under the first test, a court determines whether the employee participates in the formulation, determination, and implementation of management policy. Eau Claire, 122 Wis.2d at 367-68, 362 N.W.2d at 431. It is undisputed that Reimer is not a managerial employee under this test. Under the second test, a court determines whether the employee possesses effective authority to commit the employer's resources. Id. This authority is defined as the power to establish an original budget or to allocate funds for differing program purposes under such a budget. Id. However, the power to make ministerial expenditures is not a factor. Id.

In Eau Claire, the issue was whether the managerial exception to MERA involving an employee's authority to commit the employer's resources was applicable, in light of the requirement that the county board approve a

departmental budget before its implementation. Id. at 368-69, 362 N.W.2d at 432. We concluded that the ability to prepare and submit an original budget to the board was sufficient authority to commit the county's resources because a contrary finding would have rendered the second test of the managerial analysis meaningless. Id.

The county's reliance on Eau Claire is misplaced. Eau Claire did not define what budgetary duties an employee must possess to establish that he or she has effective authority to commit an employer's resources. That issue was not raised. Rather, in Eau Claire we addressed whether the authority to expend an employer's resources may exist even though ultimate authority to appropriate the funds lies with the board. The language of the decision should not be read as equating the ministerial task of reducing a budget to writing and submitting it to the county board with the authority to prepare an original budget. The two concepts differ in substance if not in form.

Here, the commission determined that preparing and submitting a budget to the county board, standing alone, did not establish managerial status under sec. 111.70(1)(i). In making this determination, the commission refined the meaning of "effective authority to commit an employer's

services provided. This distinction is consistent with the purposes of MERA because it effectively distinguishes those employees who possess managerial interests from those who do not. See Eau Claire, 122 Wis.2d at 367-68, 362 N.W.2d at 431.

In light of the above, we confirm the commission's determination that budgetary duties involving the ministerial act of reducing numbers to paper and submitting

consistent with the purposes of the statute. City of Milwaukee v. WERC, 71 Wis.2d 709, 715, 239 N.W.2d 63, 66 (1976); see also sec. 227.57(10), Stats. The commission's expertise in distinguishing between municipal and managerial employees is well established. City of Milwaukee, 71 Wis.2d at 714, 239 N.W.2d at 66.

The commission's interpretation of sec. 111.70(1)(i) is reasonable and consistent with the purposes of MERA, which is to permit municipal employees desiring an