

AUG 08 1986

STATE OF WISCONSIN : CIRCUIT COURT : COUNTY OF KEWAUNEE : WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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KEWAUNEE COUNTY,

Petitioner,

-vs-

DECISION  
Case No. 86-CV-022

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION,

Decision No. 13185-D

Respondent.  
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Kewaunee County appeals an order by the Wisconsin Employment Relations Commission, dated January 17, 1986. The commission determined that the positions of Register in Probate, Probate Registrar and Probate Court Commissioner, are included in the bargaining unit described in Finding 3 of its decision.

In essence, the commission determined that those positions were not within the "managerial" exception to the Municipal Employment Relations Act, Section 111.70(1)(i), Wisconsin Statutes.

At page 8 of its findings, the commission recites the significant facts that it considers in determining whether a particular employee is in a managerial capacity:

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 possess effective authority to commit the employer's resources.

The commission applies a two-pronged test. First, participating in the formulation and implementation of policy to a significant degree; second, effective authority to commit the employer's resources.

In the first prong, the commission found that the vast majority of the duties of the Register in Probate, Probate Registrar and Probate Court Commissioner are statutorily defined; thus, there is little if any opportunity for the individual occupying these positions to significantly affect the formulation, determination or implementation of management policy. The commission determined that the record in this case does not persuade it otherwise. Based on the record, I must agree with the commission on first prong.

With respect to the second prong, however, I must respectfully disagree with the commission's findings. In so doing, I believe I am following the dictates of Eau Claire County v. WERC, 122 Wis. 2d 363 (1984):

Accepting the facts as found by the commission, we conclude that the commission's application of the statute has no rational basis. Although the county board has final authority to establish the county budget, sec. 65.90, Stats., the board cannot be the only county body that establishes an original budget. No county employee could qualify as a managerial employee by this route if we were to accept the commission's reasoning that the communication of an opinion about an office's budget to the county board is insufficient. "Establishing an original budget" must necessarily mean something more than independent budgetary authority or the power to force the county

board to accept a proposed budget. The circuit court accurately noted that budgets are typically prepared for positions or departments and incorporated in the final and formal county budget. We conclude that, by forwarding a recommended budget to the county board, the register in probate/probate registrar followed this usual practice and created an original budget. While we approve of the commission's narrow interpretation of managerial employee, the commission cannot apply the statute as interpreted to effectively eliminate one route for determining managerial status.

The record before this court establishes that the job description for the various positions held by Ms. Riemer includes preparing the budget and meeting with the Finance Committee of the County Board to secure approval of the budget.

It may be that the budget Ms. Reimer prepares and files is of modest dimensions. However modest it is, that budget, when approved by the County Board, does commit the county's resources.

In this case there are other problems that Eau Claire County v. WERC does not address. Once the judge appoints a register in probate, probate registrar or probate court commissioner, that employee holds the office subject to removal by the judge. Other than in a county having a population in excess of 100,000, such appointment may be terminated by the judges of the county, subject to approval by the chief judge of the district.

This power to terminate may be inimical to an employee who is represented by a union under its contract with the county. But the judges, who are state officers, are not parties to the union's contract.

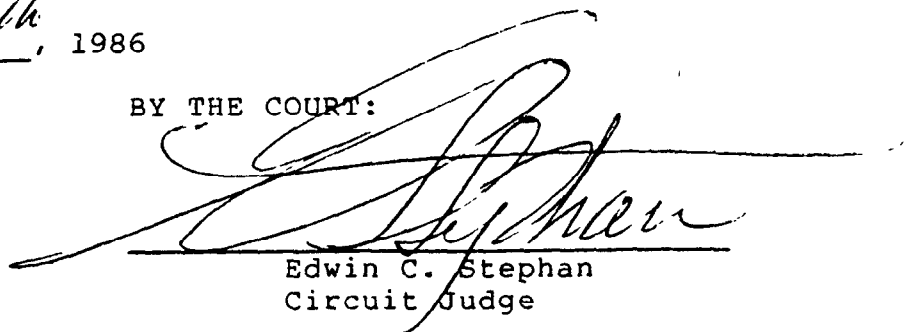
I concede that the judges' authority to discharge an employee without cause is an anachronism from the past, about as scarce as a dinosaur. Perhaps such authority is also inimical to modern-day employment practices, but this authority does exist, and in my mind it must be regarded as a "special exception" to the normal indicia that the commission relies on in determining whether a register in probate is an employee eligible for union membership.

I also find that, because of the special type of employment conditions existing by statute between the judge and the employee, the employee and the circuit judge cannot be bound by the terms of the contract between the union and the county as long as that employee is performing the services of the register in probate, probate registrar and probate court commissioner.

Accordingly, I hereby reverse the findings and order of the commission and the examiner. I find that the register in probate, probate registrar and probate court commissioner is not includable in union membership.

Dated August 6<sup>th</sup>, 1986

BY THE COURT:



Edwin C. Stephan  
Circuit Judge