

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OCONTO COUNTY

Case XXI  
No. 19573 DR(M)-64  
Decision No. 14740

Lawton & Cates, Attorneys at Law, by Mr. David B. Gaebler, appearing on behalf of the Union.  
Mr. Larry Jeske, Corporation Counsel, appearing on behalf of the Municipal Employer.

Oconto County Courthouse Employees, Local 778-A, having filed a petition requesting that the Wisconsin Employment Relations Commission issue a declaratory ruling on whether, in view of the appointive powers in Sections 59.16(1), 59.19(1), 59.38(1), and 59.50 of the Wisconsin Statutes for the positions of Deputy County Clerk, Deputy County Treasurer, Deputy Clerk of Courts and Deputy Register of Deeds, respectively, it is lawful for Oconto County, as a Municipal Employer, to agree in a collective bargaining agreement with the representative of said employees to fill vacancies in said positions pursuant to a procedure whereby vacancies are posted in order that collective bargaining unit employees may apply, the employee having the greatest seniority and who can qualify shall be given a vacant position and current employees are given preference before any new employee is hired; and the parties having waived their right to a hearing and having agreed that the record in the previous proceeding between them, 1/ shall constitute the record herein; and the Commission having reconsidered the record and the briefs filed by the parties in that case, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Declaratory Ruling.

1. That the Petitioner, Oconto County Courthouse Employees, Local 778-A, hereinafter referred to as the Union, is the certified collective bargaining representative of the Oconto County Courthouse Employees, and maintains offices at 1031 Chantel Drive, Green Bay, Wisconsin 54304.

2. That Oconto County, hereinafter referred to as the municipal Employer, maintains its offices at Oconto, Wisconsin 54153.

1/ Case XVIII No. 18153 DR(H)-55; Decision No. 12970-A.

3. That, at all times material hereto, the Union and the Municipal Employer have had collective bargaining agreements covering a bargaining unit of Oconto County Courthouse Employees; and that said unit includes the positions of Deputy County Clerk, Deputy County Treasurer, Deputy Clerk of Court and Deputy Register of Deeds (collectively referred to hereinafter as the Deputy positions). 2/

4. That, at all times material hereto, the collective bargaining agreements between the Union and the Municipal Employer have contained wage scales for the Deputy positions which are higher than those for other collective bargaining unit positions in the offices of the County Clerk, County Treasurer, Register of Deeds and Clerk of Courts.

5. That since 1971, and at all times material hereto, the collective bargaining agreements between the Union and the Municipal Employer have contained the following provision relating to promotions and the filling of vacancies:

"ARTICLE IV - SENIORITY

. . .

Section 2. All promotions of employees shall be in an orderly manner as provided herein. All vacancies due to retirement, quitting, new positions or for whatever reason, shall be posted on all bulletin boards for five (5) working days giving a summary of the duties, qualifications and the rate of pay. Any employee interested in such promotion may sign the posting. The employee having the greatest seniority and who can qualify shall be given the position. If after ten (10) days he or she fails to qualify or if he himself wishes to return, he shall be returned to his former job and the next applicant shall be placed on the job until a qualified person is found. Present employees shall be given preference before any new employee is hired.

When seniority is not recognized in job preference, the case shall be subject to the grievance procedure."

6. That in 1971 a dispute arose between the Union and the Municipal Employer regarding the Employer's obligation to follow the posting and selection procedure in Article IV, Section 2 of the agreement in filling a vacancy in the position of Deputy County Treasurer; and that said dispute has not been resolved.

7. That in 1972, the Union and the Municipal Employer bargained about their dispute as to whether the Deputy positions are covered by Article IV, Section 2 of the agreement; and that, although the basic

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2/ The recognition clause in the collective bargaining agreements material hereto exclude from the unit description "elected and appointed personnel." However, the agreements by express terms cover the Deputy positions, and the parties agree that the Deputy positions are covered by the collective bargaining agreements. The Employer asserts that the Deputies are covered by all provisions of the agreements except Article IV, Section 2, relating to posting and selection procedures for vacancies within the unit.

dispute between the parties was not resolved, they agreed to add the following language to Article IV of the collective bargaining agreement:

"Section 4. Sections 2 and 3 of this Article shall not apply to appointed County officers. If, however, the Supreme Court of the State of Wisconsin determines that contract provisions relating to appointed County officers supersedes statutory provisions relating thereto, then Sections 2 and 3 shall from the time of said decision apply to appointed County officers."

8. That in 1974, a dispute arose between the Union and the Municipal Employer regarding the Employer's obligation to follow the posting and selection procedure in Article IV, Section 2 of the agreement in filling a vacancy in the position of Deputy County Clerk.

9. That the Union, at all times material hereto, has asserted that the Deputy positions are within the collective bargaining unit, that the filling of vacancies in those positions may lawfully be made subject to the posting and selection procedure in Article IV, Section 2, and that the procedure is a mandatory subject of collective bargaining.

10. That the Municipal Employer has, at all times material hereto, asserted that the County cannot be required to follow the posting and selection procedure in Article IV, Section 2 because of the appointive powers set forth in Sections 59.16(1), 59.19(1), 59.38(1) and 59.50 of the Wisconsin Statutes.

11. That as of this date, June 18, 1976, there exists between the Union and the Municipal Employer a dispute with regard to the lawfulness of applying the posting and selection procedure in Article IV, Section 2 to the Deputy positions, and the effect that the procedure may lawfully have upon the appointive powers set forth in Sections 59.16(1), 59.19(1), 59.38(1) and 59.50 of the Wisconsin Statutes.

Upon the above and foregoing Findings of Fact, the Commission makes the following

#### CONCLUSIONS OF LAW

1. That the Petitioner, Oconto County Courthouse Employees, Local 778-A, is a labor organization within the meaning of Section 111.70(1)(j) of the Wisconsin Statutes.

2. That Oconto County is a Municipal Employer within the meaning of Section 111.70(1)(a) of the Wisconsin Statutes.

3. That a procedure providing for posting vacancies in positions within a collective bargaining unit, selection of the most senior employee who can qualify to fill such a vacancy and giving preference to current employees in filling vacancies, such as the procedure in Article IV, Section 2 of the agreements between the Union and the Municipal Employer, is a "condition of employment" within the meaning of Section 111.70(1)(d) of the Wisconsin Statutes and a mandatory subject of collective bargaining under the Municipal Employment Relations Act.

4. That the positions of Deputy County Clerk, Deputy County Treasurer, Deputy Clerk of Court and Deputy Register of Deeds are properly included in the collective bargaining unit of Oconto County Courthouse employees.

5. That it is lawful for the Municipal Employer to agree in a collective bargaining agreement with the Union, the certified collective bargaining representative of the Oconto County Courthouse Employees to fill vacancies in the positions of Deputy County Clerk, Deputy County Treasurer, Deputy Clerk of Court and Deputy Register of Deeds, by the posting and selection procedure set forth in Article IV, Section 2 of the collective bargaining agreements between the parties.

6. That, to the extent that the posting and selection procedure in Article IV, Section 2 of the collective bargaining agreement between the Union and the Municipal Employer is inconsistent with the appointive powers in Sections 59.16(1), 59.19(1), 59.38(1) and 59.50 of the Wisconsin Statutes, the collective bargaining agreement modifies the statutory appointive powers. 3/

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes the following

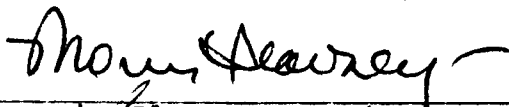
DECLARATORY RULING

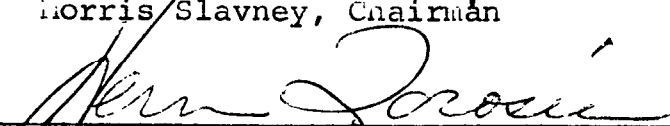
That it is lawful for Oconto County to agree in a collective bargaining agreement, entered into pursuant to the Municipal Employment Relations Act, to fill vacancies in the positions of Deputy County Clerk, Deputy County Treasurer, Deputy Clerk of Court and Deputy Register of Deeds by a procedure providing for the posting of vacancies in positions within the collective bargaining unit, selection of the most senior employees who can qualify to fill such a vacancy and giving preference to current employees in filling vacancies; and that, to the extent that such posting and selection procedure in the collective bargaining agreement is inconsistent with the appointive powers in Sections 59.16(1), 59.19(1), 59.38(1) and 59.50 of the Wisconsin Statutes, the collective bargaining agreement modifies the statutory appointive powers.

Given under our hands and seal at the  
City of Madison, Wisconsin this 28<sup>th</sup>  
day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

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3/ We have noted in paragraph seven of the Findings of Fact that the contents of Article IV, Section 4 of the collective bargaining agreements, which was added in 1972, as evidence of the dispute between the parties. We make no determination herein with regard to the effect of that section on the rights and obligations of the parties. This Declaratory Ruling deals solely with what the record reveals to be the underlying dispute between the parties, i.e., the lawfulness of an agreement between the Union and the Municipal Employer to subject the Deputy positions to the procedure in Article IV, Section 2 of the collective bargaining agreement, and the effect of such agreement upon statutory appointive powers.

MEMORANDUM ACCOMPANYING DECLARATORY RULING

On July 19, 1974, the Petitioner filed a petition for a declaratory ruling on whether, in view of the appointive powers in Sections 59.16(1), 59.19(1), 59.38(1) and 59.50 of the Wisconsin Statutes for the positions of Deputy County Clerk, Deputy County Treasurer, Deputy Clerk of Courts and Deputy Register of Deeds, respectively, it is lawful for Oconto County, as a Municipal Employer, to agree in a collective bargaining agreement with the Petitioner, as the representative of certain employees of Oconto County, including said Deputies, to fill vacancies in said positions, pursuant to a procedure whereby vacancies are posted in order that collective bargaining unit employees may apply, the employee having the greatest seniority and who can qualify shall be given the vacant positions, and current employees are given preference before any new employee is hired. After hearing and the filing of written arguments the Commission issued a Declaratory Ruling on March 27, 1975, wherein it concluded that such agreement would be lawful.

Thereafter on May 8, 1975, the Municipal Employer filed a petition for review of said decision in Dane County Circuit Court. On May 19, 1975 the Attorney General, at the request of the Commission, filed a Motion with said Court to dismiss said petition as not being timely filed. On June 17, 1975, the Attorney General withdrew said Motion for the reasons that (1) a decision on the merits were important to the parties and Commission, and (2) the Petitioner, which was the beneficiary of the Commission's Ruling, requested that said Motion be withdrawn. In addition, on July 2, 1975, Petitioner requested the Court to assume jurisdiction in the matter. On July 15, 1975 Honorable Norris J. Maloney, Dane County Circuit Court Judge, by letter, advised Petitioner of his concern as to exercising jurisdiction of the merits because of the issue as to timeliness of the Petition for Review, and therein suggested that the parties initiate a new proceeding before the Commission. On September 15, 1975, Judge Maloney, issued an order dismissing said petition, on the basis that the Court lacked subject matter jurisdiction because of the Petitioner's failure to comply with the thirty-day time limit set forth in Section 227.16(1), Wisconsin Statutes, for the filing of such petitions for review.

Acting pursuant to the Court's suggestion, the Petitioner filed the petition in the instant proceeding. Thereafter the parties agreed to waive hearing and arguments in the matter and submit the dispute on the basis of the record in the prior case.

The Commission has reconsidered the evidence and arguments presented in that case and has concluded that its decision and the rationale therefore was correct, and that no further explication is necessary. Therefore, we have this day issued Findings of Fact, Conclusions of Law and Declaratory Ruling in the matter, which are in most respects identical to those issued in the prior case.

Dated at Madison, Wisconsin this 28th day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Norris Slavney  
Norris Slavney, Chairman

Herbert Torosian  
Herbert Torosian, Commissioner