

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

OCONTO COUNTY,
A Municipal Corporation,

Petitioner,

-vs-

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

Respondent.

:

:

:

:

:

:

DECISION

Case No. 152-467

Decision No. 14740

This is an appeal from a decision of the Wisconsin Employment Relations Commission which contained, in part, the following findings of fact, conclusions of law, and declaratory ruling:

"FINDINGS OF FACT

* * *

"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).

* * *

"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.

* * *

"CONCLUSIONS OF LAW

* * *

"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.

* * *

"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 appointing 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.

* * *

"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 employee 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."

The issue on review is whether the collective bargaining requirement in the Municipal Employment Relations Act modifies the appointive powers for those positions specified in Secs. 59.16(1), 59.19(1), 59.38(1) and 59.50, Stats. It is undisputed that the deputy positions are included in the bargaining unit of Oconto County Courthouse Employees and are covered by the collective bargaining agreements. Petitioner argues, however, that elected officials have an absolute right, granted by statute, to appoint deputies, and that this right may not be diminished or eliminated by the collective bargaining agreements. Respondent argues that the right of elected officials to appoint deputies is not absolute, but is limited by the statutory right of the county board to establish a civil service system and to set or change the salaries of deputies. Respondent argues further that posting and seniority requirements for deputy positions are conditions of employment and thus subject to collective bargaining under sec. 111.70, Stats. It is the opinion of the court that respondent's position is correct, and that the findings of fact, conclusions of law, and declaratory ruling of the Wisconsin Employment Relations Commission should be affirmed.

THE FINDINGS OF FACT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

Findings of fact made by the WERC should not be disturbed by the court unless supported by substantial evidence. Sec. 227.20(1)(d), Stats. Petitioner challenges only Findings (3) and (10). The court has reviewed the record and found substantial evidence to support both findings.

There is substantial evidence that the deputy positions are included in the bargaining unit and covered by the collective bargaining agreement. In Article I, Section 3 of the collective bargaining agreement, the County recognizes the Union as the exclusive bargaining agent for the Oconto County Courthouse Employees, excluding the elected and appointed personnel. However, the agreement, by express terms, does cover the deputy positions. (See Agreement, Exhibit A.) Moreover, petitioner does not contest Finding of Fact (4), which found that the collective bargaining agreements contained wage scales for the deputy positions.

It is not clear why petitioner challenges Finding of Fact (10). It merely states petitioner's position in this litigation and is amply supported in the record.

THE CONCLUSIONS OF LAW AND DECLARATORY RULING ARE CONSISTENT WITH THE PURPOSES OF THE MUNICIPAL EMPLOYMENT RELATIONS ACT.

The statutory appointive powers in secs. 59.16(1), 59.19(1), 59.38(1) and 59.50, Stats. were in existence when the legislature adopted the Municipal Employment Relations Act (MERA) and amendments thereto. It is presumed that the

legislature was aware of the appointive powers when the MERA was adopted and amended, and those powers are subject to modification by subsequently passed statutes. Muskego-Norway C.S.J.S.D. No. 9 v. WERB, 35 Wis. 2d 540, 556-558, 151 N.W. 2d 617 (1967). In Muskego the Wisconsin Supreme Court held that the power of a school board to refuse to rehire a teacher under then existing school statutes was modified by the subsequently passed MERA.

The statutory appointive powers in the above statutes may be modified by a collective bargaining agreement entered into pursuant to the MERA. The Wisconsin Supreme Court has stated that a municipal employer's plenary power over the tenure of employment of its employees may be limited by civil service regulations and collective bargaining agreements negotiated pursuant to the MERA. Richards v. Board of Education, 58 Wis. 2d 444, 206 N.W. 2d 597 (1973); Adamczyk v. Caledonia, 52 Wis. 2d 270, 190 N.W. 2d 137 (1971). In addition, the legislature has granted to county boards substantial latitude in managing county government, including latitude in the area of employee relations. See secs. 59.025 and 59.15, Stats.

On May 7, 1974, the Wisconsin Attorney General issued an opinion, OAG 43-74, captioned:

"Provisions of a county civil service ordinance enacted under sec. 59.07(20), Stats., or collective bargaining agreement entered into pursuant to sec. 111.70, Stats., establishing a procedure to be followed prior to discharge of a classified employee, supersede and modify provisions of sec. 59.38(1), Stats., which authorize a clerk of court to discharge a deputy clerk of court at pleasure."

With regard to sec. 111.70, Stats. and collective bargaining agreements the Attorney General stated:

"In Richards v. Board of Education (1973), 58 Wis. 2d 444, 460b, 206 N.W. 2d 597, it was stated that a board of education could, under sec. 111.70, Stats., enter into an agreement establishing a grievance procedure relating to dismissals and that such subject is within the embrace of 'wages, hours and conditions of employment' as defined in sec. 111.70(1)(d), Stats. Section 111.70, Stats., being a subsequent enactment, modifies the otherwise absolute power to hire and fire. Muskego-Norway C.S.J.S.D. No. 9 v. W.E.R.B. (1967), 35 Wis. 2d 540, 557, 151 N.W. 2d 617.

"The county board has power to contract for the services of employees, setting up 'hours, wages, duties and terms of employment' under sec. 59.15(2)(d), Stats., and may establish 'regulations of employment for any person paid from the county treasury' and establish the number of employees in each department 'including deputies to elective officers' under sec. 59.15(2)(c), Stats. Therefore, I am of the opinion that the board can enter into a collective bargaining agreement with a duly certified bargaining unit of employees under sec. 111.70, Stats., which establishes a grievance procedure relative to discharge, without the express consent of the elected officials under whom such deputies serve. To the extent that such bargaining agreement is consistent with powers granted to the county board under secs. 59.15(2) and 111.70, Stats., it modifies the provisions of a statute such as sec. 59.38(1), Stats., which permits a clerk of circuit court to remove a deputy clerk of court at pleasure.

It is the opinion of this court that the respondent's conclusions of law and declaratory ruling are consistent with the purposes of the MERA, and they are therefore affirmed.

BY THE COURT:

Dated: February 9, 1977

William C. Sachtjen /s/
William C. Sachtjen, Judge

CC: Larry Jeske
John D. Niemisto
David B. Gaebler