

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :
 :
 BROWN COUNTY DEPARTMENT OF :
 SOCIAL SERVICES PROFESSIONAL : Case 34
 EMPLOYEES ASSOCIATION : No. 43831 ME-406
 : Decision No. 15559-A
 :
 Involving Certain Employes of :
 :
 BROWN COUNTY (DEPARTMENT :
 OF SOCIAL SERVICES) :
 :

Appearances:

Mohr & Beinlich, S.C., Attorneys at Law, by Mr. Frederick J. Mohr,
 415 South Washington Street, P.O. Box 1098, Green Bay,
 Wisconsin 54305, on behalf of the Brown County Department of Social
 Services Professional Employees Association.
Mr. John Jacques, Assistant Corporation Counsel, Brown County, County
 Courthouse, P.O. Box 1600, Green Bay, Wisconsin 54305-5600, on
 behalf of the County.

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

Brown County Department of Social Services Professional Employees Association having on March 26, 1990, filed a petition to clarify bargaining unit with the Wisconsin Employment Relations Commission; the hearing having been scheduled for July 26, 1990 but thereafter postponed to August 15, 1990; and hearing having been held at Green Bay, Wisconsin on August 15, 1990 before Sharon Gallagher Dobish, a member of the Commission's staff; and a stenographic transcript having been made of the hearing and the parties having filed post-hearing briefs, the last of which were received by the Examiner September 24, 1990; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the Brown County Department of Social Services Professional Employees Association (hereafter Union or Petitioner) is a labor organization and has its offices c/o Attorney Frederick J. Mohr, Mohr & Beinlich, S.C., Attorneys at Law, 415 South Washington Street, P.O. Box 1098, Green Bay, Wisconsin 54305.

2. That Brown County (hereafter County) is a municipal employer which operates a Department of Social Services located at 111 North Jefferson Street, Green Bay, Wisconsin and the County's principal offices are located at the Brown County Courthouse, 305 East Walnut Street, P.O. Box 1600, Green Bay, Wisconsin 54305-5600.

3. That on June 29, 1977, the Petitioner was certified as the exclusive collective bargaining representative of

all professional employees employed by Brown County (Department of Social Services), but excluding supervisors, the Director, clerical employees and all other employees of Brown County.

. . .

4. That prior to January 1, 1990, the position of Family Court Services Mediation Worker at issue in this case was known as Family Court Conciliator (FCC); that the FCC position had existed since October 1987 and reported directly to the County judges of the Family Court; that since October, 1987, the incumbent in the FCC position was Wayne Walters; that Walters remained in the Family Court Services Mediation Worker (FCSMW) position after the FCC was eliminated and the FCSMW was created as of January 1, 1990; that the FCC had an estimated salary of \$28,963 (a rate in excess of \$13.00 per hour) with estimated fringe benefits of \$7,820 for a total of \$36,783, as of January 1, 1987; that this rate for the FCC was the same rate that the Juvenile Court Administrator received at that time; that following the County's January 1, 1990 decision to eliminate the FCC position from the judicial branch, create the FCSMW, and place said position in the Department of Social Services, the Union filed the instant petition to include the FCSMW in its existing professional employe bargaining unit on the ground that the position is held by professional employe of the Department of Social Services; that the County has opposed the petition on the grounds that it believes that FCSMW lacks a community of interest with professional Social Workers who comprise the

Petitioner's existing collective bargaining unit and that the inclusion of the FCSMW in the existing bargaining unit would also violate the constitutional requirement of separation of powers between the executive and judicial branches of State government.

5. That the position description for the FCC drafted by incumbent Walters was in effect from October, 1987 until January 1, 1990 and reads as follows:

Position Purpose:

Serves as a neutral, objective third person who assists parties, utilizing the tool of discussion, in an effort to aid the parties in finding a mutually satisfying solution to their problems; subject to judicial policy and direction established by the circuit judges who exercise jurisdiction over all actions affecting the family, pursuant to Wisconsin Statute 767.01(1).

Major Duties:

1. Conducts mediation sessions between parents to resolve child visitation disputes.
2. Conducts mediation sessions between parents to resolve custody disputes.
3. Conducts studies, develops plans, reviews cases, responds to or initiates correspondence and answers or initiates telephone contacts.
4. Completes and submits quarterly and annual written reports and recommendations which pertain to visitation and custody to circuit judges and Family Court Commissioner.

Knowledge, Skills and Abilities:

Knowledge of the State Statutes relating to children, marriage and actions affecting the family; knowledge of the legal machinery and practices; knowledge of the theory and practices in the fields of child welfare, child protection services, law enforcement, and family counseling; knowledge of available community resources; ability to exercise influence in pre-divorce, post-divorce, and paternity matters relative to the specific areas of custody and visitation; the procedure being a referral process from the following sources: Court, Family Court Commissioner, Attorneys, Child Support Agency, Counselors or Agencies, Self-referrals; disposition encompassing mutual agreements, stipulations, modified judgments and at times recognition of an impasse leading to litigation; and the ability to effectively communicate orally and in writing.

Education and Experience:

Graduation from an accredited college with a minimum of 5 years experience in legal work, social work, counseling and administration;

that the position description that is currently in effect for the FCSMW was drafted by Department Social Work Supervisor Earlene Ronk after consultation with Walters and reads in relevant part as follows:

7. Description of duties

Facilitate/attend Mediation Orientation sessions as appropriate.

Provide Family Court Mediation Services per Wisconsin Statute 767.11(5) to families assigned by Supervisor.

Provide team consultation regarding mediation for individual families when appropriate.

Assist in monitoring the mediation through data gathering and record keeping.

Comply with agency, HSRS reporting requirements.

Attend supervisory conferences, and unit meetings.

Upgrade mediation skills through training and conferences whenever possible.

Provide community information/education on mediation services as requested.

Any other duties as assigned.

8. Immediate superior Earlene Ronk
Title Supervisor
9. Nature of supervision exercised over your work.
Program management, case consultation
10. Names and titles of persons supervised by you in whole or part:

NA
11. Nature of supervision you exercise.

NA
12. Names and title of employees who do work identical with yours:

NA
13. Contacts with public -- nature of and frequency.

Daily: parents, courts, court commissioner

. . .

6. That Sec. 767.11, Stats., requires that the County offer parents mediation prior to litigation in Family Court to determine custody and/or physical placement of minor children, to determine issues arising when a custodial parent wishes to move more than 150 miles away from the other parent and to mediate issues that arise after a paternity proceeding has been held; that if the parties wish to have their case mediated by a private mediator, they can do so if they pay the fees involved; that since January 1, 1990, Department of Social Services Director William Miller has been designated by the Chief Judge as Director of Family Court Counseling Services for the County and Miller is responsible directly to the Family Court judges for any problems that may arise with the FCSMW or the outside agencies providing mediation services; that although Miller has received certification and training in mediation as required by Sec. 767.11, Stats., Miller does not spend any significant amount of time directing mediation services and he has delegated responsibilities for the direction and supervision of the FCSMW, the outside agency contractors for mediation services and the clerical support worker in the FCSMW's office to Earlene Ronk, Social Work Supervisor at the Department of Social Services (DSS); that on or about January 1, 1990 when the mediation service was transferred from the judicial branch to DSS and the FCC was eliminated and the FCSMW created, the County contracted with the Zimmerman Mediation Service and with the Family Service Administration (outside agencies) to provide family mediation services as needed, and to assist the FCSMW in processing mediation cases; that over the past three years, the County has processed between 300 and 500 family mediation cases annually; that prior to January 1, 1990 then-FCC incumbent Walters handled all of these cases alone and after January 1, 1990, Walters (who assumed the new FCSMW position) has performed the same mediation services he did as FCC with the exception that the outside agencies are also now responsible, by contract, to perform essentially the same work as Walters does as FCSMW; that after the mediation position was removed from the judicial branch, Walters has essentially performed the same work as he did as FCC except that as FCSMW he no longer completes certain paperwork for the judges; that as FCSMW, Walters spends from 30 to 40 percent of his time mediating with clients and 30 to 35 percent of his time doing administrative work such as making telephone calls to clients, setting up orientation sessions, and drafting paperwork regarding mediation; that outside mediation agencies do not communicate or consult with Walters or Ronk regarding how and when mediation services should be rendered; that Walters and these outside agencies generally do not send any paperwork to the Court but the outside agencies do send a form to Walters, stating whether mediation was successful or not so that Walters can close out the County's file on cases; and that Walters also prepares such a closure form in his own cases for the County's files.

7. That the FCSMW and one DSS-employed clerical employe perform work relating to family mediation in an office in the County Courthouse which is located across the street from the DSS Building (111 North Jefferson Street); that the remainder of the DSS employes have offices in the DSS Building; the FCSMW works under the same general terms and conditions of employment and receives benefits similar to those of bargaining unit employes; that the FCSMW goes to the DSS Building on a weekly basis to meet with Ronk regarding the mediation services/cases and DSS Social Workers go to the Courthouse when called upon to testify or meet at the Courthouse regarding their cases; that DSS Director Miller would like to have the FCSMW housed in the DSS Building but there is a lack of office space for the FCSMW and there is insufficient switchboard and reception/waiting area space and numbers of employes to handle the additional mediation clients who would have to be go through the DSS reception area during the processing of their cases.

8. That when Ronk and Walters meet weekly at Ronk's office in the DSS Building they: review the cases that have been received by Ronk from the two DSS Intake Workers assigned to perform mediation case intake work at the DSS Building; discuss to whom those cases should be assigned; and discuss any specific problems that Walters might be having; that Walters can tell Ronk that he is too busy to take on any new cases but Ronk then makes the ultimate decision whether or not to assign new cases to Walters or to assign them to the other outside agencies; that during intake, the DSS Intake Workers at the DSS Building set up a time and date for a mandatory orientation and then they forward the files to Ronk for assignment; that at these weekly meetings with Ronk, Walters makes recommendations regarding which cases should be assigned to which of the outside mediation agencies based on Walter's knowledge of the abilities of these agencies, although Ronk makes the final decisions regarding assignments; that Ronk does not determine the details, means or methods of Walters' or the outside agencies' delivery of mediation services; that normally Walters will make one or two telephonic or other contacts with the parties whose case files he has already received to determine the services necessary and then, pursuant to Ronk's final decision as to whom the case should be assigned, Walters either retains the case himself or Ronk forwards the case to the outside agency to which Ronk has assigned it; that Walters closes his own as well as the outside agencies' cases upon drafting (in the former instance) or receipt (in the latter instance) of a form stating whether mediation was successful or an impasse was reached.

9. That the County's currently effective job description for the Social Workers included in Petitioner's existing unit reads as follows:

General Description

Under supervision of Social Work Supervisor utilizes environmental, supportive and insight treatment techniques for selected clients in need of social services. Individual is employed in a Social Services unit which provides services in adult protection, child protection, child care, foster care, institutional care, group home placement, family services, juvenile court services or special services. Undertakes diagnostic social studies to identify the nature, cause and extent of the client's difficulties; plans and carries out a program of preventative and rehabilitative treatment; refers and assists clients to other resources as needed. Performs other related duties as assigned.

Examples of Duties

Duties may include some but not all of the following examples: accepts requests and referrals for unit services; provides social services to individuals, families and groups by interviewing, investigating, conducting home calls, consulting with peers and supervisors; diagnoses client difficulties and carries out service plan to enable clients to achieve personal, social and economic adjustment and independence; provides follow-up services to insure continued improvement in personal functioning, maintains and provides services to assigned client caseload; completes reports for state reporting system, for courts; recruits volunteers by utilizing media, speaking engagements and other methods; provides counseling to single patents and unwed mothers; provides supervision and other services to children living in alternate care; provides supportive services to foster parents; evaluates foster and group homes; files petitions in juvenile court and implement court decisions; provides supervision services to juveniles in their own homes, group homes and correctional-type homes; screens and evaluates individuals for foster

home license; provides consultation in matching children with foster home resources; provides intake and screening of juveniles taken into custody; provides families with therapy and counseling for the purpose of strengthening and preserving them; provides marriage counseling to couples; assess and investigate reports or referrals of abuse and neglect of adults and children; provide (sic) on-call services for child protection; make collateral contacts with medical, legal, mental health, and other human services agencies and organizations; provide (sic) information and referral services; attend (sic) unit and agency meetings and attend (sic) in-service and outside agency training sessions.

Knowledge, Skills and Abilities

Knowledge of principles, methods and practices of social work; knowledge of current social and economic problems and the effect of these problems on families and individuals; knowledge of laws, regulations and practices pertaining to federal and state public welfare programs; knowledge of federal, state, and local resources, their organization, and the ways in which these resources can assist individuals and families; knowledge of living conditions, values and behavior of the ethnic and subcultural groups served by the agency; ability to provide environmental and supportive social services to individuals and/or families; ability to diagnose and provide appropriate treatment services; ability to plan and organize work to achieve objectives; ability to relate to people in an unprejudiced and understanding manner; ability to establish and maintain working relationships within agency and the community; ability to speak and write clearly and effectively; ability to participate in and appropriately use available supervision.

Education and Experience

Bachelor or Masters Degree in Social Work, or related human services field; experience in social service agency preferred or required depending upon the particular position or any combination of education and experience which provides the necessary knowledge, skills and abilities.

10. That as FCSMW, Walters' immediate supervisor is Earlene Ronk and DSS Director Miller is Walters' ultimate supervisor who, as Family Court Counseling Services Director, is responsible to the Family Court for the mediation function; that pursuant to Sec. 767.11, Stats. it is Miller, not the Court, who hires mediator workers and/or contracts with outside agencies for such services and who exercises general administrative responsibility over mediation workers and contractors; that Walters is the only person directly employed by the County who performs mediation services for the County; that Walters, DSS Director Miller, Ronk and employes of the two outside mediation agencies have completed at least 25 hours of mediation training and they are therefore State-certified mediators, as required by Chapter 767, Wis. Stats.; that several DSS Social Workers have also completed the 25 hour mediation training course and are certified as mediators but they do not currently perform any mediation services for the County; that as is true of the FCSMW, much of the Social Workers' work is required by law to be performed and the work products of the FCSMW as well as the Social Workers may end up in court files; and that although the Family Court judges have overall control of many of the family services made available to clients through Social Workers as well as the FCSMW, the judges have not been and are not now involved in direct supervision of these employes or their activities.

Upon the basis of the above Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. Due to Brown County's reorganization of the manner in which it provides Family Court mediation services, the position of Family Court Services Mediation Worker which is currently excluded from any collective bargaining unit, is appropriately included in the bargaining unit set forth in Finding of Fact 3 represented by Brown County Department of Social Services Professional Employees Association.

2. That the inclusion of the Family Court Services Mediation Worker position in the bargaining unit set forth in Finding of Fact 3 above would not

materially impair the functioning of the Family Court.

Based upon 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 Family Court Services Mediation Worker is hereby included in the bargaining unit set forth in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 30th day of January, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

1/ Please see footnote 1/ on page 8.

1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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. 227.57 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.

BROWN COUNTY (DEPARTMENT
OF SOCIAL SERVICES)

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

POSITIONS OF THE PARTIES

Initial Brief

The Union sought the inclusion of the position of Family Court Services Mediation Worker (FCSMW), formerly entitled Family Court Conciliator (FCC), after the position of FCC was removed from the County judicial branch and placed in the Department of Social Services (DSS) as the FCSMW. The Union sought inclusion on the ground that the FCSMW is a position occupied by a DSS professional arguing that the position and incumbent meet all of the requirements of Sec. 111.70(1)(L), Stats.

The Union also contended that the FCSMW position should properly be placed in its existing unit of professional employees employed by DSS since Supervisor Ronk admitted that the bulk of the FCSMW duties listed on the position description were generic social worker functions while the statutorily mandated mediation services provided to Family Court litigants were similar to other statutorily mandated social worker services. The fact that the FCSMW is housed outside the DSS Building is, in the Union's view, an ephemeral objection insufficient to require the FCSMW's exclusion from the Union's existing professional unit since a member of the existing DSS para-professional bargaining unit works in the FCSMW's Courthouse office in support of the FCSMW position and the County not claimed that inclusion of said position in the para-professional unit is inappropriate.

The Union asserted, in sum, that based upon the functions and duties of the FCSMW, the position enjoys a community of interest with its bargaining unit members; that the position is supervised by a Social Work supervisor; that its statutory functions and responsibilities to the Family Court are similar to those of other bargaining unit members; that although the FCSMW is the only position that mediates, the skills employed therein are similar to classic social worker skills; and that some social workers are currently State-certified mediators. Thus, the Union contended that the position should be included within the existing professional employee bargaining unit.

The County asserted that because the FCSMW functions as an agent/official of the judicial branch of government, it would violate the judiciary's constitutional authority to include the FCSMW position in a bargaining unit comprised of professionals employed by the County's executive branch. The County argued that inclusion would unconstitutionally curtail the Court's right under Article VII of the State's Constitution and Sec. 767.11, Stats. to appoint and oversee the operation of its own Family Court mediation service, citing, Professional Police Association v. Dane County, 106 Wis.2d 363 (1984); In the Matter of E. B., 111 Wis.2d 175 (1983), and cases cited therein.

The County contended that the FCSMW position lacks a community of interest with professional Social Workers. The County pointed out that the purpose of the Social Workers' jobs (to advocate for clients) differed from the purpose of the FCSMW (to mediate disputes); that DSS Director Miller is only expected to provide general administrative support and control of the FCSMW position while the Court is to provide all other oversight and direction; that the FCSMW has a different work place from the Social Workers and the FCSMW has different working hours, terms and conditions of employment (controlled by County Code) than do the Social Workers whose terms and conditions are controlled by contract; and that, unlike Social Workers whose work product goes through their line supervisors for review and approval, the FCSMW's work product does not go to Social Work Supervisor Ronk.

The County urged that the FCSMW should properly be placed under the Clerk of Courts or Family Court Commissioner's office organizational (unrepresented) schemes. The fact that DSS had provided clerical support and other administrative assistance for the FCSMW position does not require a conclusion that the FCSMW is a newly created social work position, the County urged. The County asserts that should the position be placed in the Petitioner's unit, Walters would have to be removed from the position; that Walters has not sought inclusion in the unit; and that his interests and duties as FCSMW are substantially different from those enjoyed by members of the bargaining unit.

Thus, the County sought a ruling that would leave the FCSMW outside the Petitioner's unit, which the County asserted would not unduly fragment bargaining units.

Reply Briefs

In its reply briefs, the Union took issue with both of the County's major arguments -- lack of community of interest and infringement on separation of powers. In regard to the former argument, the Union asserted that the FCSMW position clearly shares a community of interest with unit Social Workers when the position is analyzed under Wisconsin Employment Relations Commission case law. Second, the Union noted that unit Intake Workers are also governed in their work by written policies formulated by the circuit judges pursuant to Sec. 48.06(2)(a), Stats. The Union also disagreed with the County's argument that subjecting the FCSMW position to the collective bargaining process would unduly interfere with judicial function. In this regard, the Union noted that pursuant to the Wisconsin Juvenile Code, all other court workers (including many unit members) operate under collective bargaining agreements. Further, the Union urged that the County's suggestion that to harmonize Sec. 767.11 Stats., with MERA would require that the FCSMW position be excluded from the bargaining unit, would actually disrupt existing similar bargaining units throughout the State. Thus, the Union argues the Commission should avoid such a result and place the FCSMW position in the Petitioner's existing unit.

In its reply brief, the County repeated its initial assertions that the primary functions of the FCSMW and Social Worker positions are fundamentally different thus requiring that the Commission conclude that the FCSMW lacks a community of interest with the Social Workers. The fact that DSS Director Miller was selected by the Family Court judges to act as Director of Mediation Services does not mean that the FCSMW is a Social Worker position, in the County's view. Also, the County pointed out that DSS Director Miller and Social Worker Supervisor Ronk do not actually have the authority to review the performance of the FCSMW's work. As the FCSMW performs a judicial function for the benefit of the Family Courts, the County asserted the position should remain outside the Union's existing bargaining unit.

DISCUSSION

As to the County's separation of powers argument, in Kewaunee County v. WERC, 141 Wis.2d 347 (CtApp 1987), the Court was confronted by the question of whether inclusion of the register in probate, probate registrar and probate court commissioner in a collective bargaining unit would violate the separation of powers doctrine. The Court held:

. . . The separation of powers doctrine prohibits the legislature from acting in certain spheres that are exclusively within the province of the courts. State v. Holmes, 106 Wis.2d 31, 46, 315 N.W.2d 703, 710 (1982). The doctrine does not, however, prohibit the legislature from exercising its legislative powers in areas that may in some way affect the judicial branch. Id. The legislature's declarations must be implemented insofar as they do not embarrass the courts or impair their constitutional function. Id.

Here, MERA can be harmonized with the separation of powers doctrine and a court's statutory authority to appoint persons to and discharge them from the offices of register in probate, probate registrar, and probate court commissioner. Provisions in a labor contract that are contrary to law are unenforceable. WERC v. Teamsters Local No. 563, 75 Wis.2d 602, 612, 250 N.W.2d 696, 701 (1977). Thus, any provision in a collective bargaining agreement between the union and the county that hampers a court in its operation or interferes (sic) with its constitutional functions would be void. Furthermore, any contractual provision that conflicts with the authority vested in a judge to appoint or remove someone from such a position would also be void. Reimer may invoke her rights under MERA and negotiate with the county on those labor matters not entrusted to the courts.

. . .

Here, the position in question is not a judicial appointee and thus any

intrusion into the province of the Family Court would seem less substantial than the intrusion argued to and rejected by the Court in Kewaunee. More importantly, as the Court noted in Kewaunee, it is not inclusion in a bargaining unit but rather the provisions of the agreement subsequently bargained which have the potential to raise separation of powers concerns. 2/ Thus, consistent with Kewaunee, we reject the County's separation of powers argument.

Turning to the unit inclusion issue, in Walworth County, Dec. Nos. 9394-B and 182771-A (WERC, 12/90), the Commission held that five employees who had previously been employed in the County's Public Health Department should be included in a bargaining unit covering certain employees of the County Hospital, following the County's decision to reorganize the Public Health Department and place the five disputed positions into the Hospital structure. The Hospital bargaining unit was a broad one, consisting of "all regular full-time and part-time employees employed by the Hospital. . . ." The Commission found that the County's reorganization resulted in the five disputed positions/incumbents becoming "employed" by the Hospital and placed the five disputed positions/incumbents into the existing unit of Hospital employees.

In the instant case, as in Walworth County, supra, the existing certified unit description is very broad, encompassing

. . . all professional employees employed by Brown County (Department of Social Services) . . .

Although we are satisfied that there is a similarity between the duties of the FCSMW and the broad scope of a Social Worker's function, the scope of the unit is defined not by function but by whether the professional employee is employed by DSS. There is no question that the FCSMW is a professional employee. Further, it is undisputed that following the FCSMW position's placement in the DSS, the incumbent of the FCSMW position was then "employed" by Brown County DSS. As in the Walworth County case, the reorganization of the family court mediation service involved a change in the identity of the FCC/FCSMW's employment unit from being employed by and through the Family Court to being employed by the County DSS. Thus, although as in Walworth County the duties of the FCSMW were "substantially unaffected" by inclusion in DSS, we find that the FCSMW position now falls squarely within the scope of the professional DSS unit, and should be included therein.

Dated at Madison, Wisconsin this 30th day of January, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

2/ We have consistently held that when a position is added to a unit, the parties' have an obligation to bargain over the position's wages, hours and conditions of employment and thus that the provisions of an existing bargaining agreement do not apply unless the parties' bargain produces such a result.