

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PIERCE COUNTY and WILLIAM MCEWEN

No. 16067

MEMORANDUM ACCOMPANYING ORDER HOLDING
PETITION FOR DECLARATORY RULING IN ABEYANCE
PENDING OUTCOME OF CIRCUIT COURT CASE

The petition for declaratory ruling filed herein involves the relationship of sec. 253.31(1), Wis. Stats., and portions of the collective bargaining agreement entered into by Local 556-A, as representative of all non-professional, courthouse employees, including the register of probate, and Pierce County. Sec. 253.31(1) provides that a county judge ". . . shall appoint and may remove a register in probate. . . ." The collective bargaining agreement provides a procedure for the filling of vacant positions. Judge McEwen, when filling the vacant position of register in probate, appointed the new register pursuant to sec. 253.31(1), not the contractual procedure. Local 556-A, in its petition for declaratory ruling, requests the Commission to:

". . . declar[e] its rights relative to the provisions of Sec. 111.70, Wis. Stat., and the terms and conditions of the Agreement bargained pursuant thereto, and in particular Article 5, Section 3 of that Agreement as they relate to Sec. 253.31(1), Wis. Stat., affirming the validity and enforceability of said provisions as they concern the posting of a vacancy in the Register of Probate position and appointment to such a vacancy of a County employee and member of the bargaining unit represented by Local 556-A, . . ."

The complaint filed in the Circuit Court case notes that:

"An actual controversy exists between the plaintiff and the defendants as to whether a county judge has statutory authority, pursuant to sec. 253.31(1), Stats., to appoint a register in probate totally independent of a labor agreement between Pierce County and the union, which agreement provides for a job posting procedure as the method of filling job vacancies within the bargaining unit (Agreement, Article 5), including the position of register in probate."

Judge McEwen asks the court to:

". . . make a binding declaration that the register in probate is an officer of the court pursuant to sec. 865.065, Stats., and that the position cannot be properly included in a bargaining unit because that person is not a "municipal employee" as defined in sec. 111.70(1)(b), Stats., and that the constitutional concept of separation of powers allows a county judge to appoint a register in probate pursuant to sec. 253.31(1), Stats., without complying with the terms of a collective bargaining agreement to which the court is not a party."

As illustrated above, the Circuit Court case filed by Judge McEwen involves the same issue of statutory construction as the petition for declaratory ruling filed by Local 556-A. It is the Commission's policy not to assert its jurisdiction over issues which also have been submitted to a court, even though the Commission may have primary jurisdiction over the issue. It is for the court to decide whether to honor the Commission's primary jurisdiction. Consequently, the Commission has issued

an order holding the instant proceeding in abeyance pending the outcome of the Circuit Court case.

Dated at Madison, Wisconsin this 17th day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman
Herman Torosian
Herman Torosian, Commissioner
Charles D. Hoonstra
Charles D. Hoonstra, Commissioner