

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LAFAYETTE COUNTY

Involving Certain Employees of

LAFAYETTE COUNTY

Case 13

No. 34788 ME-13

Decision No. 17260-C

Appearances:

Goldberg & Woods, S.C., Attorneys at Law, by Mr. Howard Goldberg, P. O. Box 671, Suite 501, 217 South Hamilton, Madison, WI 53701, appearing on behalf of the County.

Lawton & Cates, Attorneys at Law, by Mr. Bruce F. Ehlke, 110 East Main Street, Madison, WI 53703-3354, appearing on behalf of the Union.

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

Lafayette County having on August 14, 1985, filed a petition which requested the Wisconsin Employment Relations Commission to clarify an existing bargaining unit consisting of certain employees of Lafayette County represented by Local 678, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, by determining whether the employee occupying the positions of Register in Probate/Probate Registrar and Deputy Clerk of Court should be excluded from the aforesaid collective bargaining unit; and a hearing in the matter having been held in Darlington, Wisconsin on October 16, 1985 before Andrew Roberts, an Examiner on the Commission's staff; and a stenographic transcript of the hearing having been prepared; and the parties having filed initial and reply briefs by December 23, 1985, and supplemental briefs by January 30, 1986; and the Commission having considered all of the evidence and the arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Local 678, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices located in c/o 5 Odana Court, Madison, Wisconsin 53719.

2. That Lafayette County, hereinafter referred to as the County, is a municipal employer and has its offices located at Lafayette County Courthouse, Darlington, Wisconsin 53530.

3. That in Lafayette County, Dec. No. 17260 (WERC, 11/79) following an election conducted by it, the Wisconsin Employment Relations Commission certified the Union as the exclusive collective bargaining representative of the following bargaining unit of employees of the County:

All regular full-time and regular part-time employees of the Lafayette County Courthouse and related departments, including professional social workers employed in the Lafayette County Social Services Department, professional registered nurses employed in the Lafayette County Nursing Agency, professional employees of the Unified Services, and professional accountants employed in the County Clerk's office, but excluding supervisory, confidential, craft, law enforcement employees, blue collar highway department employees, and employees of the Lafayette County Home and Lafayette County Hospital.

and that the positions of Register in Probate and Probate Registrar have been included in said bargaining unit ever since its certification in 1979.

4. That on August 14, 1985, the County filed a petition to exclude the position of Register in Probate; that at hearing on October 16, 1985, the County clarified the positions it wished to exclude as Register in Probate/Probate Registrar and Deputy Clerk of Court, all of which are jointly held by Lauretta Lade; that the County contends the Register in Probate/Probate Registrar

positions are managerial and executive and that their inclusion in the bargaining unit would conflict with the Wisconsin Constitution and Secs. 851.71(1) and 865.065(1), Stats.; and that at hearing, the County contended the Deputy Clerk of Court position should also be excluded because the Circuit Court Judge has statutory authority to appoint Deputy Clerks of Court.

5. That prior to August 1, 1985, Verna Krusiec had been the Register in Probate and Daniel P. McDonald had been the Circuit Court Judge for the County; that William D. Johnston was elected to succeed Judge McDonald, and Johnston began his term as a Circuit Court Judge on August 1, 1985; that on August 1, 1985, Johnston issued orders removing Krusiec as Register in Probate and appointing Lade as Register in Probate/Probate Registrar and Deputy Clerk of Court; that on August 1, 1985, Lade commenced employment in said positions; that shortly after commencing employment as Circuit Court Judge, Johnston drafted the following job description for the Register in Probate position:

Lafayette County

Register in Probate

JOB DESCRIPTION

POSITION: This position is appointive under sec. 851.71(1), Stats. Appointment and removal is by the Lafayette County Circuit Court Judge with the approval of the Chief Judge of the Fifth Judicial District.

DUTIES: Those specifically enumerated in sec. 851.72, Stats., as follows:

(1) File and keep all papers properly deposited with him or her unless required to transmit such papers.

(2) Keep a court record of every proceeding in the court under chs. 851 to 880 under its proper title, a brief statement of the nature of the proceeding and of all papers filed therein, with the date of filing and a reference to where minute records can be found or to the microfilm file where papers have been recorded so that the court record is a complete index or brief history of each proceeding from beginning to final disposition.

(3) Keep a minute record and enter therein a brief statement of all proceedings of the court under chs. 851 to 880 during its sessions, all motions made and by whom, all orders granted in open court or otherwise, and the names of all witnesses sworn or examined. If this information is all included in the court record, the judge may direct that the minute record be no longer kept.

(4) Keep a record in full of all wills admitted to probate with the certificate of probate, all letters and all judgments rendered. The judge may require any other documents to be recorded therein. Any documents may be recorded on microfilm. These records shall be kept irrespective of s. 59.715(20)(c) unless recorded on microfilm

(5) Keep an alphabetical index to the court record and file containing the original documents or microfilm copies thereof.

(6) Perform any other administrative duties as the judge directs.

(7) Perform the duties of clerk of the court assigned to exercise jurisdiction under ch. 48 unless these duties are performed by a person appointed under sec. 48.04.

(8) When appointed deputy clerk under s. 851.75, perform such duties as the clerk of circuit court directs.

(9) Under sec. 851.72(6), Stats., and sec. 851.75, as appointed deputy clerk of the Circuit Court of Lafayette County, said register in probate shall prepare the annual budget for the offices of the Lafayette County Circuit Court and the Lafayette County Clerk of Courts offices.

(10) To receive fees in probate matters pursuant to sec. 851.74, Stats., and to make disbursements as directed by the Clerk of Circuit Court or as the Circuit Court directs under sec. 851.72(6), Stats.

(11) To supervise the law library maintained in the Lafayette County Courthouse. Supervision to include receiving and filing library additions or supplements, identifying the materials in the library and their location, and to monitor the use of the materials in the library by members of the public. To maintain a record system showing library expenses by month, and library category.

(12) Pursuant to sec. 865.065, the register in probate shall be appointed probate registrar. As such, he/she shall have the duties and powers vested in the position by ch. 865 generally and specifically in sec. 865.07 and 865.08, Stats.

POWERS:

The register in probate shall have the powers enumerated in sec. 851.73, Stats., as follows;

(1) The register in probate:

(a) May make orders for hearings when the judge is away from the county seat or unable to discharge duties or when given authority in writing by the judge and an application is made to the court in a proceeding under chs. 851 to 880 requiring notice of hearing. The order and notice when signed "by the court . . . , register in probate" has the same effect as if signed by the judge.

(b) Has the same powers as clerks of court to certify copies of papers, records and judicial proceedings. Copies certified by registers in probate are receivable in evidence as if certified by clerks of court.

(c) Has the power to administer any oath required by law.

(d) Has, when appointed for this purpose, the powers of deputy clerks as provided in s. 59.38.

(e) Has, when appointed for this purpose, the powers and duties of court reporters and assistant reporters specified in SCR 71.01.

(f) May refuse to accept any paper for filing or recording until the fee prescribed by s. 814.66 or other applicable statute is paid.

(2) Subsection (1) applies to duly authorized registers in probate.

**TERM OF
OFFICE:**

Pursuant to sec. 851.71(1), the register in probate shall serve at the pleasure of the Lafayette County Circuit Court Judge, who may appoint and remove said register in probate only with the approval of the Chief Judge of the judicial district of which Lafayette County is a part.

COMPENSATION:

The salary of the register in probate shall be fixed by the county board and paid by Lafayette County pursuant to sec. 751.71(3), Stats.

QUALIFICATIONS:

High School degree or equivalent. Experienced in management position(s) involving bookkeeping, budgeting, clerking, file and docket control and supervision. Must be able to work well with others and independently. Must have typing and shorthand or transcription skills. Prefer computer literacy and word processing experience. Must be able to handle management responsibilities as this is a management position.

and that Lade works under the direction and supervision of Johnston and Clerk of Court Verlene E. McGowan.

6. That in the fall of 1985, Johnston and Lade reviewed the previous budget which had been formulated by Judge McDonald and determined that it was not as specific or comprehensive as necessary; that pursuant to Johnston's direction, Lade then broke down the 1986 budget by specific items which included anticipated expenditures for: postage (\$2,000.00), telephone (\$2,400.00), Library (\$5,800.00), seminars and dues (\$1,020.00), office supplies (\$4,500.00), witness fees (\$539.00), Bureau of Financial Management (\$252.00), Department of Administration (\$276.00), court reporter transcripts (\$900.00), clerk of court salary (\$19,323.20), a deputy clerk of court's salary (\$14,102.40), a second deputy of clerk of court's salary (\$13,728.00), register in probate/probate registrar/deputy clerk of court's salary (\$14,830.40), fringe benefits (\$23,709.60), outlay account (\$1,000.00), jury fees and costs (\$10,000.00), family court commissioner (\$3,600.00), jury commissioners (\$1,500.00), and special court commissioners (\$1,200.00); that the total requested budget for 1986 was approximately \$118,000.00; that in arriving at most of the anticipated items of the 1986 budget, Lade collected information on items from various years and then extrapolated budgeted amounts for the items from previous years' expenditures; that County Clerk Steve Pickett calculated employee salaries and fringe benefit costs and informed Lade of the total amounts; that the salary amount for the second Deputy Clerk of Court represents Clerk of Court McGowan's decision that the position should be full-time instead of its current one-half time status; that after Lade compiled the items into a rough draft, County Clerk Pickett reviewed it and informed Lade as to the proper form for the budget, and Lade then redrafted it in accordance with said advice; that Johnston and McGowan then reviewed and signed the budget and Lade then signed it; that the budget was then submitted to the County Board which then referred it as an item for consideration by the Finance Committee; that at time of hearing in this matter, the 1986 budget was still being processed; that Johnston anticipates that Lade will solely prepare and submit future budgets to the County Board; that Lade is responsible for acquisitions and has made acquisitions of various supplies and equipment for the Circuit Court (e.g., books for the library, records and dictating equipment, the latter upon

approval of expenditure by Pickett); that according to Johnston, if he and Lade were to disagree on a budgetary item, such proposal would be presented to the County Board or the Finance Committee for it to make a final determination; that when the Court receives a bill for supplies or services, it is routed to Lade whose responsibility it is to determine whether and when the goods/services involved were in fact received and whether they were budgeted for; that Lade then takes the bill or voucher to Johnston with her recommendation on whether he should approve it, answering or obtaining answers to any questions Johnston may raise; that Lade has the authority, on her own, to transfer funds among categories within the overall budget so long as the amount of any such transfer does not exceed \$100.00; that before Court expenditures can be made that are otherwise in excess of amounts budgeted in each category of its expenditures, Lade must obtain approval from Pickett and/or the County Board, but the occasion for such a request has not arisen to date.

7. That Lade does not direct the activities of or supervise any employees; that Johnston told Lade how he wanted to reorganize the circuit court library; that Lade's responsibilities regarding reorganizing the library include inventory, and gathering information on upkeep services; that Johnston and Lade met with the County Bar Association and received additional input as to how to make the library more serviceable; that Lade has drawn up various procedures with respect to the functioning of the Circuit Court library and has drawn up procedures required by statute regarding the flow and handling of probate, guardianships, and juvenile cases; that she has set up and administered the docket for such cases; and that she met with Johnston and McGowan to develop procedures regarding her above-described responsibilities.

8. That Lade does not participate in the formulation, determination, and implementation of policy to a significant degree, nor does she possess significant authority to commit the County's resources.

9. That Lade does not have overall responsibility and authority for the management of an agency or major department of the County.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That Lade, the individual occupying the positions of Register in Probate/ Probate Registrar, and Deputy Clerk of Court, is not a managerial employee within the meaning of Sec. 111.70(1)(i) of the Municipal Employment Relations Act.

2. That Lade, the individual occupying the positions of Register in Probate/ Probate Registrar, and Deputy Clerk of Court, is not an executive employee within the meaning of Sec. 111.70(1)(i) of the Municipal Employment Relations Act.

3. That Lade, the individual occupying the positions of Register in Probate/ Probate Registrar, and Deputy Clerk of Court, is a municipal employee within the meaning of the Municipal Employment Relations Act and is appropriately included in the collective bargaining unit represented by the Union.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

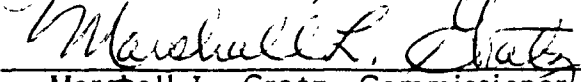
ORDER CLARIFYING BARGAINING UNIT 1/

That the positions of Register in Probate/Probate Registrar and Deputy Clerk of Court are included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 29th day of August, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman

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Marshall L. Gratz, Commissioner

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Danae Davis Gordon, Commissioner

(See Footnote 1 on Page 6)

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- 1/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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. 227.20 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.

LAFAYETTE COUNTY

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

POSITIONS OF THE PARTIES:

The County:

The County argues that the Register in Probate/Probate Registrar herein is a managerial employee. In that regard, the County cites Eau Claire County v. WERC, 122 Wis.2d 363 (CtApp, 1984) in which the Commission's basic test for managerial employee status was affirmed but the Commission's conclusion that the Register in Probate/Probate Registrar therein was not a managerial employee was reversed. The County argues that Lade not only has effective authority to commit the County's resources but also participates in the determination and implementation of management policy.

With respect to the budget, it argues that Lade has the authority to allocate and expend County funds and seek additional funds for items not included in the budget. Lade was given responsibility by Judge Johnston to prepare the original 1986 budget and future budgets. While Judge Johnston and Clerk of Court McGowan signed the budget along with Lade, such signatures were only to approve the documents; Lade actually formulated the 1986 budget with only minimal reliance on the previous budgets. According to the County, the Commission's decision in Kewaunee County, Dec. No. 13185-D (WERC, 1/86) 2/, is easily distinguishable. Here, the degree of budget-making and policy-making authority held by Lade is far greater than the Register in Probate in Kewaunee County.

The County further argues that Lade is also an executive employee. In that regard, the County argues that Lade has the authority to operate the various departments.

Should the Commission conclude the Register in Probate/Probate Registrar is not excluded as a managerial employee or executive, the County points out that Secs. 851.71(1), and 865.065(1) Stats., give Circuit Court Judges authority to appoint and remove Register in Probates and Probate Registrar and that several provisions of the collective bargaining agreement herein conflict with such judicial authority to fill and terminate employees in those positions. At hearing the County contended that Lade as Deputy Clerk of Court should also be excluded because Sec. 59.38(1), Stats., authorizes the Clerk of Court to appoint deputies subject to the judge's approval. In addition, the County maintains that inclusion of the Register in Probate/Probate Registrar positions in the bargaining unit would conflict with the separation of powers provisions of Article 7, Secs. 2 and 7, of the State's Constitution, citing In re Janitor of Supreme Court, 35 Wis. 410 (1874); Stevenson vs. Milwaukee County, 140 Wis. 14 (1909); and In re Courtroom, 148 Wis.109 (1912).

The Union:

At the outset, the Union notes that the Commission has consistently found positions of Register in Probate, Probate Registrar or Probate Court Commissioner to be municipal employees within the meaning of Sec. 111.70(1)(b), Stats. Citing, Manitowoc County, Dec. No. 8152-E, (WERC, 7/81); Kewaunee County, Dec. No. 13185 (11/74); St. Croix County, Dec. No. 12423-A (WERC, 4/74); Oneida County, Dec. Nos. 9134-A, 12247 (WERC, 11/73); and Columbia County, Dec. No. 12218 (WERC, 10/73). The Union argues Lade's responsibilities are no greater than those of Registers in Probate/Probate Registrars that the Commission has previously held to be non-managerial. In that regard the Union cites Manitowoc County, Dec. No. 21506 (WERC, 3/84); Waupaca County

2/ Kewaunee County, Dec. No. 13185-D (WERC, 1/86) rev'd. Kewaunee County v. WERC, Dec. No. 86-CV-022 (CirCt, Kewaunee, 8/86), appeal period pending.

(Courthouse), Dec. No. 20854-C (WERC, 9/85) 3/; and Kewaunee County, (1986), supra. The Union contends Lade's job description mainly tracks the statutory duties for such positions. The Judge and Clerk of Courts directly supervise Lade's work activities and she in turn does not supervise any other employees. Most of her claimed managerial responsibilities simply consist of controlling dockets and files and maintaining the law library. Moreover, the Union argues, contrary to the County, that she does not attend department head meetings. The claimed policies she is involved with are simply implementations of her statutory responsibilities. As to budgetary preparation Johnston directed her activities, and much of such preparation was simply derived from extrapolating from the previous year's budget. Johnston and the Clerk of Courts both approved the budget before its presentation to the Board. With respect to acquisitions she is limited to her budget; otherwise, she must seek the County Clerk's approval. Given the foregoing, the Union asserts that the County has not demonstrated by "great weight and clear preponderance of the evidence" that Lade's duties and responsibilities differ in some significant respect from other similar positions found by the Commission to be municipal employees. Rather, the Union argues that Lade functions as a good legal secretary and bookkeeper.

The Union, citing City of Oak Creek, Dec. No. 17633 (WERC, 3/80), further contends that Lade is not an executive employee, because she does not have overall responsibility for an agency or a major department. Any statutory conflict with respect to appointing Register in Probates/Probate Registrars can easily be harmonized. Moreover, there is no constitutional conflict, the Union argues, citing, Sitzman v. Pacquette, 13 Wis. 291 (1860).

DISCUSSION

Managerial Status

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 possesses the effective authority to commit the employer's resources. 4/ In Eau Claire County v. WERC, 122 Wis.2d 363, 367 (1984) the Court of Appeals found this standard to be reasonable and consistent with the purposes of MERA. In determining if Lade is a managerial employee, we first address the issue of whether she participates in the formulation, determination and implementation of policy to a significant degree.

With respect to Lade's participation in the County's policies, the majority of her duties are statutorily defined. While she has developed procedures for performing such statutory duties (e.g., docket and file control procedures) and for performing certain other assigned duties (e.g., Circuit Court library control procedures), those responsibilities do not represent significant authority to determine, implement or formulate policies. Evidencing further limitation on her authority as regards the library is Judge Johnston's own testimony that based on information gathered by Lade, "I was able then to sit down and pare out quite a number of volumes and reorganize the library" (Tr. 29.) As we recently stated in materially similar circumstances in Kewaunee County, supra:

To be sure, Riemer's work involves a degree of responsibility in that she is entrusted to perform her work with minimal supervision. Further, failure to perform her work properly could have an adverse effect upon judicial processes. The record, however, fails to establish that Riemer's work as probate registrar/register in probate, probate in court commissioner involves significant participation in the formulation, determination and implementation of management policy. 5/

3/ Waupaca County (Courthouse), Dec. No. 20854-C (WERC, 9/85) rev'd, No. 85-CV-698 (CirCt, Waupaca, 4/86), appeal pending.

4/ Manitowoc County, Dec. No. 21506 (WERC, 3/84); St. Croix County, Dec. No. 12423-A (WERC, 4/74); Kewaunee County, supra, N. 2; and Kenosha County (Sheriff's Department), Dec. No. 21909 (WERC, 8/84).

5/ Id., at p. 10.

Similarly, Lade's policy-making authority does not involve significant participation in the formulation, determination and implementation of management policy necessary to confer managerial status to her positions.

The second criterion for determining managerial status is the effective authority to commit the County's resources. In Kewaunee County, (1986), supra, we reviewed our cases applying this criterion and described it in greater detail as follows:

The Commission has interpreted the power "to commit the employer's resources" to mean the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. However, preparation of a budget, per se, does not establish effective authority to commit the employer's resources. The Commission will not confer managerial status on an employee whose budget preparation duties primarily involve projecting the cost of implementing the policy decisions of another. Rather, to be considered managerial, an individual's budget preparation duties must involve authority to allocate resources in a manner which significantly affects the nature and direction of the employer's operations. Authority to significantly affect the nature and direction of the municipal employer's operations includes, inter alia, authority to determine the following: the kind and level of services to be provided; the kind and number of employees to be utilized in providing services; the kind and number of capital improvements to be made; and the systems by which the services will be provided, including use of outside contractors. (Footnotes omitted). 6/

In the instant case the Court's 1983-85 budget was prepared solely by Judge Johnston's predecessor, Judge McDonald. Judge Johnston subsequently succeeded Judge McDonald and Lade was appointed to the Register in Probate, Probate Registrar and Deputy Clerk of Court positions by Judge Johnston. The 1983-85 budget, in large part, contained a lump sum amount for expenses for the circuit court and clerk of court's office. Judge Johnston instructed Lade to break down and itemize the budgetary entries in order to be more informative for the County's Finance Committee. (Tr. 10). The record reveals that Johnston and Lade worked closely together on the Court's first, and thus far only, budget since Judge McDonald's tenure. For each of them, it represented their first time preparing such a budget. Lade did much of the "leg work" in its preparation. The record also reveals that Lade received considerable input from Clerk of Court Verlene McGowan and County Clerk Steve Pickett. (Tr. 39-43). For example, McGowan, who is in charge of Deputy Clerks of Court, determined that the one-half time Deputy should be upgraded to a full-time position. Thus, the Court's proposed budget provides for a full-time salary for that position. (Tr. 81). In addition, when asked for the source of information contained in various items listed in the budget, Lade stated at Tr. 78-79:

- A. Okay. The bulk of the information came from -- came from the County Clerk, Steve Pickett. I got a computer read out sheet from him which sets forth all the checks that had been drawn from the -- from January of '85 until I think July 15th, '85, and I went from there for a lot of the information. Some of the information came -- came from the prior budget. I'm talking about things like jury fees, and costs, and there is an outlay account, and I talked to Ms. McGowan, who is the Clerk of Court, about those items because I felt she would know more about those in her position as Clerk of Courts.

6/ While our conclusions in Kewaunee County that the Register in Probate, Probate Registrar, and Probate Court Commissioner positions were not managerial were reversed by Judge Stephan (and remain the subject of an appeal), the Judge did not comment on the details of our above-quoted analysis.

Q Did you just copy the numbers that she had for last year? Are they the same numbers?

A Yes, they are the same numbers, but I also made reference to -- there is -- there is a lot of jury trials, and that ten thousand dollar figure isn't going to be enough if there is a lot of jury trials, and -- and I think the reason I stayed with the ten thousand dollars was it was my understanding that was just something to be -- they like to see -- what the County Board likes to see in there.

With certain items in the budget, Lade simply filled in the figures provided by County Clerk Pickett (e.g., Retirement and Social Security increases, fringe benefits, and salaries) while others were developed by estimating projections (e.g., postage and jury fees). Pickett also reviewed three or four drafts of Lade's 1986 budget before she submitted it to Johnston and McGowan for their approval. (Tr. 45). The 1986 budget was signed by Lade, Johnston and McGowan and, at the time of hearing, was pending before the County Board. According to Johnston, he anticipates Lade will have the authority to change figures contained in the 1986 budget in future budgets. By way of clarification, he stated that "in the future . . . she can prepare it and submit it and work with (County Clerk Pickett) as to the process because she should have all the records, and she will know." (Tr. 67). Lade and Johnston will be responsible for answering questions about the budget (Tr. 99). Although Lade has authority to make expenditures within the budget, her authority to transfer funds within the budget is limited to amounts under \$100 (Tr. 106). Judge Johnston's signature is needed on all vouchers for acquisitions made by Lade. Lade would not spend money outside the budget without prior approval from County Clerk Pickett and/or the County Board (Tr. 63-64, 90).

In view of the foregoing, we conclude Lade's current demonstrated responsibilities with respect to the budget do not establish that she has authority to allocate resources in a manner which significantly affects the nature and direction of the County's operations. Rather, Lade performed essentially a ministerial act of compiling and projecting figures. While in the future, given more experience in her positions, she may effectively demonstrate authority to allocate County resources, we are not persuaded that she currently possesses such authority. Therefore, we conclude Lade is not a managerial employee within the meaning of Sec. 111.70(1)(i), Stats.

Executive Status

The County further asserts that Lade is an executive employee. We have defined an executive employer as follows:

. . . an individual possessing managerial authority who has the overall responsibility for the management of an agency or major department of the employer. Thus an executive employee also has managerial and/or supervisory responsibilities, but is distinguishable by reason of his or her possession of the overall responsibility and authority for an agency or major department. 7/

Having concluded that Lade is not a managerial employee and there being no evidence in the record establishing that Lade has overall responsibility for her department - in light of the roles played by Johnston and McGowan - we conclude that she is not an executive employee.

Circuit Court's Statutory and Constitutional Authority

Finally, the County contends that a finding that Lade's positions should remain in the unit, would violate the Circuit Court's statutory and constitutional authority to appoint and remove employees in Register and Probate, Probate

7/ Kewaunee County, supra and City of Oak Creek, Dec. No. 17633 (WERC, 3/80).

Registrar and Deputy Clerk of Court positions as officers of the Court. The County also asserts that certain provisions of the collective bargaining agreement conflict with the Circuit Court Judge's authority in this regard.

We addressed nearly identical arguments as regards the Register in Probate position raised by the Employer in Manitowoc County, Dec. No. 8152-E (WERC, 7/81) wherein we concluded that:

. . . the broad definition of "municipal employee" set forth in Section 111.70(1)(b) of MERA, which reads the same as the Commission's interpretation of old Section 111.70(1)(b) which was affirmed by the Court in Milwaukee, supra, (Milwaukee v. WERC, 43 Wis.2d 596, (1969)) encompasses Registers in Probate and that it is possible to harmonize Section 851.71 Stats. with this interpretation of Section 111.70 of MERA. For, as noted above, Section 851.71 Stats. is limited only to the question of who can hire and remove Registers in Probate. That provision, however, does not contemplate that judges shall set the wages for the Registers in Probate. To the contrary, Section 851.71(3) provides that it is the county which shall fix the salary of the Register in Probate. By the same token, Section 59.15(2) also provides that the county board shall establish the compensation of all county employes, excluding only certain elective officers, supervisors, and circuit judges. It is entirely possible, therefore, for judges to hire and terminate Registers in Probate and to supervise their work, while at the same time a union bargains with the county over wages, hours, and other conditions of employment for said employes consistent with the limitations in Chapter 59 of the Statutes. Indeed, the Supreme Court in Glendale, supra, (Glendale Professional Policeman's Association v. Glendale, 83 Wis.2d 90 (1978)) was confronted with this very same issue when it ruled that a police chief's appointive powers under Section 62.13(4)(a) Stats. could be reconciled with MERA.

Lastly, we reject the County's claim that Registers in Probate should be excluded from MERA because they are "officers of the court." For, as noted above, the Supreme Court in Milwaukee, supra, has countenanced a broad definition of the term "municipal employee". Since the legislature has failed to exclude Registers in Probate from under its coverage, there simply is no basis for excluding Registers in Probate from under MERA's coverage on the grounds that they are "officers of the court" when performing quasi-judicial and judicial tasks. The mere fact that someone is an "officer of the court," does not automatically mean that they are to be excluded from under MERA. To the contrary, the Supreme Court has ruled that attorneys, who are also "officers of the court," are covered under MERA. (Citing, Milwaukee v. WERC, 71 Wis.2d 709 (1976)).

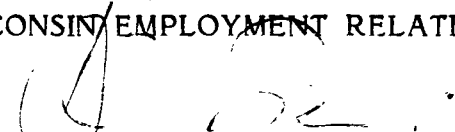
There is no basis on the record herein for departing from the analysis in Manitowoc County. We find that while a judge may well have statutory or constitutional authority to determine who will be the Register in Probate or Probate Registrar, such can be harmonized with the County's responsibility for, and municipal employes' rights regarding, bargaining over other terms and conditions of employment. Therefore, for the reasons stated above, we find the


County's arguments unpersuasive, and the Register in Probate, Probate Registrar, and Deputy Clerk of Court positions jointly held by Lade shall remain included in the bargaining unit. .


Dated at Madison, Wisconsin this 29th day of August, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner