

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
WISCONSIN COUNCIL OF COUNTY	:	Case LXXXIV
AND MUNICIPAL EMPLOYEES,	:	No. 26325 ME-1850
AFSCME, AFL-CIO	:	Decision No. 17488-B
	:	
Involving Certain Employes of	:	
	:	
EAU CLAIRE COUNTY	:	
(COURTHOUSE)	:	
	:	

Appearances:

- Mr. Guido Cecchini, District Representative, 470 Garfield Street, Eau Claire, Wisconsin 54701 and Lawton and Cates, Attorneys at Law, by Mr. Bruce F. Ehke, Tenney Building, 110 East Main Street, Madison, Wisconsin 53703, appearing on behalf of the Union.
- Mr. Hugh McMillan, Personnel Director, Eau Claire County, and Mr. William G. Thiel, Corporation Counsel, Eau Claire County by Mr. Glenn E. Kelley, Assistant Corporation Counsel, Eau Claire County, ALL OF Eau Claire County Courthouse, 721 Oxford Avenue, Eau Claire, Wisconsin 54701, appearing on behalf of the County.

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

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having, on April 11, 1980, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing Courthouse bargaining unit represented by said Union consisting of certain clerical employes in the employ of Eau Claire County; and hearing in the matter having been conducted at Eau Claire, Wisconsin, on July 8 and 9, 1980 by Examiner Stephen Pieroni, a member of the Commission's staff; and the Commission, following a review of the evidence and arguments of Counsel, having on March 20, 1981 issued a decision wherein, among other things, it determined that twelve named positions were excluded from said unit on the basis of their managerial and/or supervisory functions, that twelve classifications were accreted to said unit, and that the Commission held in abeyance the determination as to whether the position of Register in Probate/Probate Registrar should or should not be included in said unit because at the time the Commission was considering an identical issue in two cases then pending before the Commission; and the Commission, on October 6, 1981, having issued its decision in said cases, and having reviewed the record herein and the arguments of the parties, and being fully advised in the instant premises, makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, Local 2223, hereinafter referred to as the Union, is a labor organization representing municipal employes for the purposes of collective bargaining; and that the Union maintains its offices at 470 Garfield Street, Eau Claire, Wisconsin 54701.
2. That Eau Claire County, hereinafter referred to as the County, is a municipal employer; and that among its functions the County operates and maintains a Courthouse, where it also has its principal offices, at 721 Osford Avenue, Eau Claire, Wisconsin, 54701.
3. That, following an election conducted by it, the Wisconsin Employment Relations Commission certified the Union as the exclusive collective bargaining representative of all clerical employes of the County, excluding clericals employed in the Department of Social Services, and also excluding supervisory and confidential employes, which unit is hereinafter identified as the Courthouse unit; that on April 11, 1980 the Union filed a petition with the Commission seeking, among other things, to accrete certain positions to said Courthouse unit,

including the position of Register in Probate/Probate Registrar; that following a hearing on said petition, conducted by one of its staff members, and the consideration of the record and the arguments of the parties, the Commission, in a decision issued on March 20, 1981, determined that certain positions were excluded from the Courthouse unit, that certain other positions were accreted to, and therefore included in said Courthouse unit, 1/ and that the determination as to unit status of the Register in Probate/Probate Registrar was held in abeyance pending consideration by the Commission of the identical issue in cases involving two other County employers; and that the Commission, having in the interim issued decisions in the latter matters, was asked by Counsel for the Union to issue its decision with respect to the Register in Probate/Probate Registrar, hereinafter referred to as the Registrar.

4. That, pursuant to the authority vested in them by Sections 851.71 and 865.065(1), Wis. Stats., the Circuit Judges of the County, by an order dated August 21, 1978, appointed Marjorie Rhodes as the Registrar, who performs her duties pursuant to the supervision of said Judges; that, however, her salary and hours of employment are established by the County, which also provides office space, pursuant to Section 59.14, Wis. Stats.; and that the Register performs the duty required of the position, as set forth in Sections 851.72, 865.07 through 865.21 Wis. Stats., and has the powers enumerated in Sections 851.73 and 865.05, Wis. Stats.

5. That the Registrar is assisted in performing the duties required of that position by a Deputy Register in Probate, who also works under the supervision of the Circuit Judges of the County.

6. That, while the incumbent of the position of Registrar prepares requests for supplies and equipment required by her office, said requests are ministerial in nature, since she, along with other County personnel, forwards such requests to the County Board for approval and authorization for the purchase of same; that the Registrar does not participate in the formulation, determination and/or implementation of management policy on behalf of the County, nor does she have the power to commit its resources; and that there was no evidence adduced that she possesses any supervisory authority or responsibility with respect to the Deputy Register in Probate, or any other employe of the County.

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

CONCLUSION OF LAW

1. That the occupant of the position of Register in Probate/Probate Registrar in the employ of Eau Claire County possesses no significant managerial and/or supervisory authority or duties, and that therefore said occupant is a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

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

ORDER CLARIFYING BARGAINING UNIT

That the position of Register in Probate/Probate Registrar, employed by Eau Claire County in its Courthouse, be, and the same hereby is, included in the "Courthouse" unit, more specifically described as

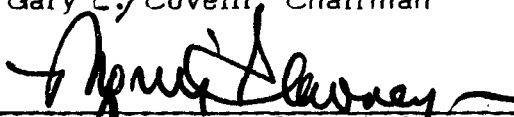
all clerical employes of the County, excluding clericals employed in the Department of Social Services, excluding

which appropriate collective bargaining unit is presently represented, for the purposes of collective bargaining, by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, Local 2223. 2/

Given under our hands and seal at the City of Madison, Wisconsin this 25th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

- 2/ 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.

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

The Union, which is the certified collective bargaining representative of clerical employes of the County with the exception of those employed in the Department of Social Service of the County, filed the instant petition, among other things, seeking to include the Register in Probate/Probate Registrar in said collective bargaining unit. The Commission has previously issued a decision with respect to other matter raised in said petition, however, it has held the instant matter in abeyance, pending determinations of a similar issue in other cases which were, at the time, pending before the Commission. Decisions have been issued in those cases, 3/ and therein the Commission determined that the Registers in Probate in those counties were employes of those counties (and not the courts thereof); and that the occupants of such positions were neither managerial nor supervisory employes, and therefore were included in the units involved.

In the instant matter the County contends that the incumbent of the position involved herein is a managerial employe. It does not claim that the incumbent has any supervisory responsibilities or authority, and no evidence was adduced relative thereto.

In November, 1979 the County prepared the following description of the duties and responsibilities of the position, which accurately reflects the nature and scope of the duties performed by the present incumbent thereof, as follows:

. . .

The Register in Probate/Probate Registrar functions as an official for the Probate Court. This involves the establishment and maintenance of a complex legal filing system and log book to record Probate cases filed with the Probate Court. The incumbent must ensure that a sufficient amount of legal forms are on supply for sale to the general public. The inventory of forms must be reviewed on a monthly basis, fees charged for the sales of legal forms are calculated and established by the incumbent, maintain an accurate record of legal forms used. The Register in Probate/Probate Registrar must be capable of communicating with attorneys and the public and to differentiate the difference between formal and informal probate. The Probate Registrar handles "Informal" which is an administrative position whereby estates are handled on an informal basis through the Probate Office without the supervision of the Courts. Informal can be initiated by lay people as well as attorneys. The Probate Registrar must instruct the public in the correctness of submitted forms and procedures. These procedures must comply with Chapter 865 of the Wisconsin Statutes.

Formal Probate is filed in the Probate Office. Formal hearings are heard before the Probate Judge with an attorney representing the client. All necessary papers must be filed with the Register in Probate and the incumbent must be able to detect errors in forms prepared by attorneys. These matters are scheduled on the Probate Calendar for a hearing before the Probate Judge and the Register in Probate must take minutes of the hearing and keep a "Minute Record." All guardianships are considered formal and must have a Court hearing. The guardian is instructed to file annual accounts and the Register in Probate must keep a follow-up system to see that this is complied with. These accountings are brought to the Probate Office annually for verification and filing. The Register in Probate must be able to keep accurate books consisting of

3/ Manitowoc County, (8152-E) 7/81; Sauk County, (15315-A) 10/81.

filing fees, forms, certifications and make a monthly deposit. The Court Administrator's Office requires a weekly statistical report with daily activities being reported. Requirements for Probate are governed by State Statutes.

The incumbent manages the Probate office by maintaining the Probate Calendar scheduling Probate cases, copy and certify copies of legal documents, answer questions from the public on matters concerning the legal procedures and requirements of Probate Court and prepare legal documents for the Judge's signature. The incumbent must also maintain a ledger recording Probate charge accounts, preparation and billing monthly charges to attorneys and make the deposits for the Probate Court.

The legal activities of the incumbent involves working with the public and attorneys submitting probates without the supervision of the Courts by instructing them on how to complete and file the required legal documents, advising them of the available alternatives and ensuring that the documents submitted are valid and meets (sic) the requirements of the Court. If documents are not legally valid, the incumbent requires valid replacements before the case if (sic) filed for Probate. Other responsibilities include a review of judgement on claims, comparing final accounts against inheritance tax notices and ensures (sic) that necessary and proper orders are filed.

. . .

The major challenge facing the incumbent is to maintain current Probate laws and their application. As this information must be communicated to the public, intimate knowledge must be maintained. The most complex problem facing the incumbent is the review of guardianships to ensure that the guardianships are being handled properly and individuals are not being taken advantage of by the legal guardian. Should such a situation occur, the incumbent may turn the matter over to the Courts for resolution of the problem. This is achieved by the incumbent issuing show cause orders. Typical among the problems faced by the incumbent are improperly filed probate cases, invalid documents which impede the progress of the case and the inability of the public to conform to statutory requirements.

The incumbent reports to the Circuit Court Judge who has final approval over all activities of the incumbent. The incumbent assists the public to resolve many of the informal administrative details involved with Probate filings. The incumbent is limited in alternatives by the State Statutes concerning Probate matters. The incumbent ensures that Probate filings conform to the established statutes and the procedures established by the Circuit Court Judge. The incumbent must ensure that the Probate Office operates smoothly and efficiently with service to the Court as the prime consideration. ...Through the careful review of documents submitted, the incumbent may accept or reject documents which conform or do not conform to the statutory or Circuit Court requirements.

The Registrar in Probate/Probate Register deals with the Circuit Court Judge and the State Statutes to establish methods and procedures to be used by the Probate Department. Major procedural changes are normally cleared with the Circuit Court Judge before such procedures are implemented. The incumbent deals with attorneys on a daily basis to communicate the legal procedures concerning probate matters. This involves informing the attorney of the procedures and requirements, providing the public of the alternatives available to them.

. . .

In previous cases the Commission has concluded that the Register in Probate or Probate Registrar, as separate or a combined position, will not be excluded from bargaining units solely on the basis of their statutorily defined duties. 4/ To be excluded, the incumbents of such positions must possess significant managerial and/or supervisory responsibilities, which would prevent a determination that said incumbents are "municipal employes" within the meaning of Section 111.70(1)(b) of MERA.

In this case, the County's sole argument for excluding the Register in Probate/Probate Registrar from the existing non professional courthouse bargaining unit is that the occupant of said position exercises significant managerial authority. In determining whether an individual is a managerial employe, the Commission has stated:

(M)anagerial employes participate in the formulation, determination, and implementation of management policy...In addition managerial status may be related to a position's effective authority to commit the Employer's resources. 5/

Specifically regarding the effective authority to commit the Employer's resources, the Commission has stated:

The power to commit the employer's resources involves the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 6/

This power must not be "ministerial" such as "the authority to spend money from a certain account for a specified purpose..." 7/

In this case, the occupant of the Register in Probate/Probate Registrar position does not participate in the formulation, determination or implementation of management policy. Her job duties are statutorily defined. The office procedures and policies by which said statutory duties are effected are established by or subject to the immediate scrutiny of the Circuit Judges. In addition, while the Register in Probate/Probate Registrar assists in establishing the specific items to be included in her office's budget, she does not "establish an original budget" for the office, but simply communicates her opinion to the County Board who establishes the budget which determines what items her office can purchase. Any resultant commitment of resources by th Register in Probate/Probate Registrar is ministerial, involving specific purchase orders executed through the County's Purchasing Department.


4/ Columbia County, (12210) 10/73, Oneida County, (9174 A., 12247) 11/73, St. Croix County, (12423-A) 4/74.

Thus, since the occupant of the Register in Probate/Probate Registrar position is a "municipal employe" as that term is defined by MERA, and since said occupant neither possesses nor exercises significant managerial authority, the Commission has concluded that the Register in Probate/Probate Registrar should be included in the existing non-professional courthouse bargaining unit.

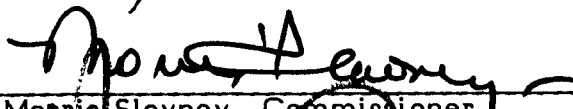
Dated at Madison, Wisconsin this 25th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION


By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



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