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MAR 27 1984

STATE OF WISCONSIN CIRCUIT COURT BRANCH I WISCONSIN EMPLOYMENT
EAU CLAIRE COUNTY RELATIONS COMMISSION

EAU CLAIRE COUNTY,
A Quasi-Municipal Corporation,

Petitioner,

and

THOMAS H. BARLAND, WILLIAM D.
O'BRIEN and KARL F. PEPLAU,
Circuit Court Judges for
Eau Claire County,

NOTICE OF ENTRY OF
JUDGMENT

Case No. 82CV521

Intervening Petitioners,

-vs-

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Decision No. 17488-C

and

WISCONSIN COUNCIL OF COUNTY
AND MUNICIPAL EMPLOYEES,
AFSCME, AFL-CIO,

Respondents.

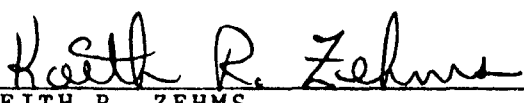
TO: David C. Rice
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Mr. Bruce F. Ehlke
Attorney at Law
110 E. Main Street
Madison, Wisconsin 53703

PLEASE TAKE NOTICE that on January 23, 1984, pursuant to the direction of the Honorable Warren Winton, Judgment was duly entered in this action in the office of the Clerk of said Court, granting the Petition and reversing the decision of the Wisconsin Employment Relations Commission that the position of the Register in Probate/Registrar of Eau Claire County accrete to the bargaining unit.

DATED this 23rd day of January, 1984.

EAU CLAIRE COUNTY BY:



KEITH R. ZEHMS
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EAU CLAIRE COUNTY COURTHOUSE
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STATE OF WISCONSIN

CIRCUIT COURT BRANCH I

EAU CLAIRE COUNTY

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FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND JUDGMENT

Case No. 82CV521

Decision No. 17488-C

APPEARANCES: Mr. Keith R. Zehms, Corporation Counsel, Eau Claire County appearing on behalf of the Petitioner Eau Claire County.

Mr. Robert G. Evans, Assistant Corporation Counsel, Eau Claire County, appearing on behalf of the Intervening Petitioners, the three Circuit Court Judges for Eau Claire County.

Mr. Bruce Ehlke of the Lawfirm of Lawton & Cates, appearing on behalf of Respondent Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO.

The Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, filed a petition on April 11, 1980, requesting the Wisconsin Employment Relations Commission to clarify an existing courthouse bargaining unit represented by the Union consisting of clerical employees in the employ of Eau Claire County. A hearing was conducted at Eau Claire, Wisconsin, on July 8 and 9, 1980, by Examiner Stephen Pieroni, a member of the Commission staff. On March 20, 1981, the Commission issued a decision, but held in abeyance the determination as to whether the position of Register in Probate and Probate Registrar should or should not be included in the bargaining unit. The case with reference to that position was designated Case LXXXIV, No. 26325-ME-1850, Decision No. 17488-B. On May 25, 1982, the

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

Wisconsin Employment Relations Commission by Gary L. Covelli, Morris Slavney, and Herman Torosian, Commissioners, entered their findings of fact, conclusions of law and decision that the position of Register in Probate and Probate Registrar, which is combined in Eau Claire County, should be included in the "courthouse" unit, the bargaining unit, on the basis that the position was not managerial. In its conclusions of law, the Commission held that the occupant of the position of Register in Probate/Probate Registrar in the employ of Eau Claire County possesses no significant managerial nor supervisory authority nor duties and that, therefore, said occupant is a municipal employee within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

On August 5, 1982, action was commenced in this Court under Sections 111.07(8) and 111.70(4)(a) and Chapter 227 Stats. to review the decision and order of the Wisconsin Employment Relations Commission. The parties submitted briefs to the Court and the matter was scheduled for hearing and oral argument on June 23, 1983.

NOW, THEREFORE, having reviewed the record herein, the written briefs and arguments of the parties, and being fully advised in the instant premises, I, Warren Winton, the Judge before whom the arguments were made, do make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. That the Petitioner is a quasi-municipal corporation, duly organized under the laws of Wisconsin, whose offices are located in the County Courthouse, Eau Claire, Wisconsin.

2. That the Intervening Petitioners, are Circuit Court Judges for Eau Claire County.

3. That the Respondent, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, constitutes a local collective bargaining organization, duly recognized by the

Wisconsin Employment Relations Commission to represent certain of the employees of the Petitioner through its Local No. 2223.

4. That the Respondent, Wisconsin Employment Relations Commission is an administrative agency, duly organized under the laws of Wisconsin, charged with the responsibility under Section 111.70, Stats. to certify the membership of bargaining units for the purpose of implementing Section 111.70, Stats., the Municipal Employment Relations Act.

5. That on April 11, 1980 the Respondent, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO filed a Petition with the Respondent Commission, requesting that it clarify the bargaining unit consisting of certain clerical employees in the employ of the Petitioner.

6. That, among other positions, the said Petitioner requested that the position of Eau Claire County Probate Register/Registrar be accreted to the bargaining unit.

7. That a hearing was conducted at Eau Claire, Wisconsin on July 8 and 9, 1980, by Examiner Stephen Pieroni, a member of the Commission staff.

8. That on March 20, 1981, the Commission issued a decision, but held in abeyance the determination as to whether the position of Register in Probate/Registrar should or should not be included in the bargaining unit. The case with reference to that position was designated Case LXXXIV, No. 26325-ME-1850, Decision No. 17488-B.

9. That on May 25, 1982, the Wisconsin Employment Relations Commission by Gary L. Covelli, Morris Slavney, and Herman Torosian, Commissioners, entered their findings of fact, conclusions of law and decision that the position of Register in Probate and Probate Registrar, which is combined in Eau Claire County, should be included in the "courthouse" bargaining unit, on the basis that the position was not managerial.

10. That in its conclusions of law, the Commission held that the occupant of the position of Register in Probate/Registrar in the employ of Eau Claire County possesses no significant managerial or supervisory authority nor duties and that, therefore, said occupant is a municipal employee within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

11. That on August 5, 1982, the instant action was commenced in this Court under Sections 111.07(8) and 111.70(4)(a) and Chapter 227 Stats. to review the decision and order of the Wisconsin Employment Relations Commission.

12. That the position of Register in Probate meets none of the indices requiring exclusion from the bargaining unit.

13. That the position of Register in Probate is combined with that of Probate Registrar in Eau Claire County.

14. That the classification of Register in Probate is dependent upon the classification of the position of Probate Registrar.

15. That prior decisions of the Wisconsin Employment Relations Commission holding that the position of Register in Probate is subject to being part of a bargaining unit are not applicable to this case and, therefore, should not be afforded unusual weight.

16. That the determination of the bargaining unit status of the position of Probate Registrar is one within the special competence of the Court.

17. That the Probate Registrar acts as a Judge of the Probate Court in most cases; is in charge of the case from the filing of the Petition until the case is closed and exercises all discretion necessary to be exercised without supervision by the Circuit Judge and effectively acts as "the Court" in informal probates.

18. That the discretion granted to the Probate Registrar by statute is very broad and includes the authority to approve or

disapprove the designation of any individual's personal representative; determines jurisdiction, whether notices were properly given, whether the decedent died testate or intestate, if testate whether the will is properly attested, determines whether a bond should be required and sets the amount; may admit or deny a will to probate; issues letters of trust; determines whether the amount of an attorneys' fees are just and reasonable; determines whether or not the estate has been properly or fully administered.

19. That the Probate Registrar formulates policies for carrying out the duties granted by statute.

20. That the Register in Probate/Registrar establishes an original budget for her office.

21. That the Register in Probate/Registrar commits the County's resources insofar as any individual may do so under our system of county government. That the Probate Registrar pursuant to Section 865.065(2), Stats. commits the resources of the county including the expertise of its officials and employees.

CONCLUSIONS OF LAW

1. That the Findings of Fact of the W.E.R.C. were not supported by substantial evidence.

2. That the W.E.R.C. could not reasonably determine that the Probate Registrar of Eau Claire County was not a managerial employee.

3. That the Probate Registrar participates in the fomulation, determination, and implementation of management policy.

4. That the Probate Registrar possesses effective authority to commit the county's resources.

5. That the W.E.R.C. made a material error of law in finding that such employee was not a managerial employee.

6. That the Probate Registrar of Eau Claire County is a managerial employee and that the position is not subject to inclusion in the collective bargaining unit.

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JUDGMENT

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Court makes and issues the following Judgment:

1. That the Petition is granted and the decision of the Wisconsin Employment Relations Commission that the position of the Register in Probate/Registrar of Eau Claire County accrete to the bargaining unit is reversed.

2. That Judgment is hereby rendered and the Clerk is ordered to enter this Judgment.

DATED at Eau Claire, Wisconsin, this 17th day of January, 198⁴.

BY THE COURT:

/s/