

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of	:	
	:	
WAUPACA COUNTY COURTHOUSE	:	
EMPLOYEES	:	Case 18
	:	No. 31587 ME-2219
and	:	Decision No. 20854-C
	:	
WAUPACA COUNTY	:	
	:	
Involving Certain Employes of	:	
	:	
WAUPACA COUNTY (COURTHOUSE)	:	
	:	

Appearances:

Ms. Cindy S. Fenton, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 909 - 5th Avenue, Stevens Point, Wisconsin 54481, appearing on behalf of the Union.

Mr. Thomas A. Maroney, District Attorney, Waupaca County, Waupaca County Courthouse, P. O. Box 401, Waupaca, Wisconsin 54981, appearing on behalf of Waupaca County.

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

Waupaca County Courthouse Employees, and Waupaca County, having filed on October 12, 1984, and October 29, 1984, respectively, petitions requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit by determining whether the position of Victim/Witness Coordinator should be included 1/ and those of Confidential Legal Secretary - District Attorney's office, and Register in Probate/Probate Commissioner should be excluded from said unit, and a hearing in the matter having been held in Waupaca, Wisconsin on December 13, 1984, before Deborah A. Ford, an Examiner on the Commission's staff; and a stenographic transcript of the hearing having been prepared; and the parties having filed briefs by April 1, 1985; and the Commission having reviewed the record and briefs of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Waupaca County Courthouse Employees, hereinafter referred to as the Union, and Waupaca County Professional Employees, are labor organizations having their offices at 909 - 5th Avenue, Stevens Point, Wisconsin 54481.

2. That Waupaca County, hereinafter referred to as the County, is a municipal employer having its offices at Waupaca County Courthouse, Waupaca, Wisconsin 54981.

3. That in Waupaca County, Dec. No. 20854-B (WERC, 10/83), the Commission certified the Waupaca County Courthouse Employees as the exclusive collective bargaining representative of the following employes of the County:

All regular full-time and regular part-time employees of the Waupaca County Courthouse and Health Services Department, excluding other County employes, as well as managerial, supervisory, confidential, casual, seasonal, temporary and farm employees.

1/ At hearing, the Union amended its petition to reflect that the position of Victim/Witness Coordinator, if determined to be professional, should be appropriately included in the unit represented by the Waupaca County Professional Employees.

4. That the Waupaca County Professional Employees has been recognized as the exclusive collective bargaining representative of the following employees of the County:

All regular full-time and regular part-time professional employees of Waupaca County.

5. That on October 12, 1984, the Union filed a Petition to Clarify Bargaining Unit requesting that the newly created position of Victim/Witness Coordinator be included in the non-professional bargaining unit; that on December 13, 1984, the Union amended its petition to request, in the alternative, that said position be included in the professional unit represented by the Waupaca County Professional Employees; and that the County contends the position should be excluded from both units on the grounds that it is a managerial position.

6. That on October 29, 1984, the County filed two petitions requesting that the positions of Confidential Legal Secretary - District Attorney's office and Register of Probate be excluded from the non-professional unit on the grounds that the positions are confidential and managerial, respectively; and that the Union contends the positions should remain included in the non-professional bargaining unit.

7. That the position of Victim/Witness Coordinator is currently occupied by Margaret Ann Leischow; that Leischow has held the position since its creation in August, 1984; that Leischow was employed as a legal secretary in the District Attorney's office for six years prior to assuming the position of Victim/Witness Coordinator; that the Victim/Witness Coordinator is the sole employe of the County's Victim/Witness Program; that the Coordinator works closely with and under the auspices of the District Attorney's office and that her immediate supervisor is the District Attorney; that however, the position is not closely supervised; that Leischow's responsibilities include keeping victims and witnesses appraised of the status of their cases, informing victims of the services of various support agencies and the existence of the Crime Victim Compensation Program, assisting victims with property recovery and/or restitution and the filing of Crime Victim Compensation claims, providing moral support to victim/witnesses prior to and at hearing; assisting with travel arrangements for out of town witnesses; and assisting with any employment problems related to court appearances; that Leischow drafted and implemented the forms currently being used in the program; that Leischow determines if witness subpoenas should be mailed or served personally; that she also determines the time limits for the filing of restitution claims based on the status of the court case; that Leischow did not participate in the development of the original Victim/Witness Program plan or the initial six month budget; that Leischow prepared the 1985 budget for the Victim/Witness Program and submitted it to the District Attorney, who in turn presented it to the County Board; that Leischow was not present during the presentation of the budget before the Board; that the budget for 1985 totaled \$23,032 including \$16,122 for Leischow's salary; that Leischow included in the budget approximately \$900 in expenditures not present in the 1984 budget for items such as auto allowance, convention fees and printing costs; that the remainder of the budget reflected the doubling of items in the 1984 budget; that any request for non-budgeted items must be made to the County Board after discussion with the District Attorney; that as of the date of hearing the need for such a request had not arisen; that the Coordinator's job does not require a college degree but only that the occupant have some background in social work, criminal justice or law enforcement; and that Leischow had previously completed two years of college study in the area of social work.

8. That the County's labor relations have been handled primarily by a Personnel Coordinator position since that position was created in 1960, with a fixed renewable term of two years; that said position is currently vacant by reason of County's decision not to renew the former incumbent for a new term that would have begun in January of 1985; that the Personnel Coordinator functioned as chief spokesperson for the Personnel Committee during negotiations with the representatives of the County's four collective bargaining units, and had primary, day-to-day responsibilities in administering the agreements covering those units and in responding to (or advising management how to respond to) grievances arising under them.

9. That until recently, the County has relied upon outside labor relations counsel for advise and other labor relations services; but that, in recent months, the County's reliance on outside counsel has been reduced.

10. That as a result of a six-week absence due to personal injury and the subsequent non-reappointment of the former incumbent Personnel Coordinator, the labor relations functions previously performed by that position have been performed by the County's District Attorney, Thomas Maroney; that as a result of the above-noted reduction in the County's reliance upon outside labor relations counsel, the County has relied increasingly upon Maroney to provide labor relations legal advice and services; that because the County has no separate Corporation Counsel, Maroney, as the District Attorney is responsible for representing and advising the County with respect to a variety of matters potentially including additional sensitive labor relations problems and cases; and that the percentage of time spent on confidential labor relation matters by the District Attorney ranges from a low of 5 percent to a high of 20 percent during peak bargaining periods.

11. That the position of Confidential Legal Secretary - District Attorney's office is currently occupied by Karen Schaller; that Schaller has held the position since August, 1984; that the position is currently included in the bargaining unit and has been since at least 1981, though it may have been excluded from the unit at sometime prior to that time; that Schaller's responsibilities as legal secretary include greeting the public, answering the telephone, maintaining the District Attorney's calendar, maintaining civil and criminal case files, typing and transcribing all correspondence and legal documents and memoranda for the District Attorney and one Assistant District Attorney, and assisting in the preparation of the budget for the District Attorney's office; that as a result of the District Attorney's above-noted involvement in the County's labor relations, Schaller has occasion to perform the following confidential labor relations work: typing of management bargaining proposals for consideration by the County's bargaining representatives and possible presentation to the union(s) at the bargaining table, typing drafts and final copies of tentative agreements reached at the bargaining table, typing the results of District Attorney's legal research performed by the District Attorney, typing advice memoranda to County managers and elected officials concerning labor relations issues such as mandatory retirement and employe right to union representation, typing drafts and final copies of grievance responses and of declaratory ruling petitions which maybe but are not always eventually transmitted to the union(s) involved; but that Schaller has not attended bargaining or bargaining-related management strategy sessions.

12. That the position of secretary to the Personnel Coordinator is occupied by Katherine Pehlke and has been since August, 1981; that Pehlke's position has been and continues to be excluded from the collective bargaining unit; that Pehlke's responsibilities include processing the County payroll, taking employment applications, assisting in interviews, filing, recording vacation and sick leave totals for County employes, maintaining personnel files, typing correspondence, taking minutes and typing and distributing same to County Personnel Committee members as regards both bargaining sessions with the unions and closed management strategy sessions concerning bargaining; that Pehlke continues to take and distribute minutes of bargaining and strategy sessions and to type the County's bargaining proposals even though negotiations are now being handled by the District Attorney; that the preparation of payroll requires most of Pehlke's time during two weeks of each month; that Pehlke's office is located two floors below that of the District Attorney; that when the Personnel Coordinator position was filled, Pehlke typed his correspondence concerning grievances and contract administration matters and draft and final contract proposals and contracts; but that since the District Attorney has assumed the above-noted labor relations responsibilities Pehlke's workload has been lessened to a substantial extent, such that she estimates that she does 20 percent less work than when the Personnel Coordinator position was filled and active.

13. That the position of Register in Probate/Probate Commissioner is currently occupied by Nancy Virnig; that Virnig has held the position of Register in Probate since 1975 and that of Probate Commissioner since 1984; that the position of Probate Registrar is held by another employe; that as Probate Court Commissioner, Virnig has the authority to sign final judgments in all uncontested or informal probate matters; that in any uncontested probate matter, the Probate Commissioner has the same authority as the Probate Judge; that as Register in Probate, Virnig is responsible for filing and collecting the fees for all probate cases, adoptions, mental commitments, guardianships and trusts; that Virnig also checks the final accounting reports and inventories, schedules cases for the Probate Judge, advises new attorneys on probate procedures and advises the public on informal probate requirements and procedures; that she types any correspondence

needed by the Juvenile and Probate Judge; that she orders supplies for her department and substitutes for the court reporter when absent; that Virnig pays all witness fees, attorney's fees and subscription fees for various books and periodicals but only after approval of the vouchers by the Judge; that Virnig does not have any discretion with respect to these fees; that after discussions with the Judge, Virnig is responsible for drafting the budgets for the civil and juvenile courts prior to their submission to the Judge and County Board, respectively, for approval; that Virnig bases any proposed increases in budget items on the past year's experience and any anticipated increases in the levels or costs of services rather than on any discretionary authority of her own; that the Judge and the Board have always approved the budgets prepared by Virnig without significant changes; that Virnig is not present at Finance Committee meetings where the budget is discussed; that Virnig prepared the budget during the period between August, 1980 and June, 1981 when the County did not have a Judge, but that Virnig was not asked to appear before the Finance Committee; and that Virnig advises the Probate Registrar of new laws and changes in the law.

14. That there are three other bargaining units of County employes located in the Highway Department, Sheriff's Department and LaKemeu Manor.

15. That the Victim/Witness Coordinator does not significantly participate in the formulation, determination and implementation of managerial policy with respect to the Victim/Witness program; and that she does not have effective authority to commit the employer's resources.

16. That in the present operational circumstances, it would unreasonably interfere with the County's structuring of its internal organization and allocation of duties to expect the District Attorney to transfer to Pehlke all of the confidential labor relations work now being performed by his secretary to Pehlke; and that, therefore, the amount of confidential labor relations work performed by the Secretary - District Attorney's office position is more than a de minimus amount.

17. That the Register in Probate/Probate Commissioner does not participate in the formulation, determination and implementation of management policy to any significant degree or possess significant authority to commit the employer's resources; and that any authority possessed by her to make expenditures is essentially ministerial.

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

CONCLUSIONS OF LAW

1. That the occupant of the position of Victim/Witness Coordinator is not a managerial or professional employe but rather is a municipal employe within the meaning of Sec. 111.70(1)(i) of the Municipal Employment Relations Act (MERA).

2. That in the present operational circumstances, the position of Confidential Legal Secretary - District Attorney's office is a confidential employe and not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

3. That the position of Register in Probate/Probate Commissioner is not a managerial employe but rather is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 2/

1. That the position of Confidential Legal Secretary - District Attorney's office is hereby excluded from the bargaining unit described above in Finding of Fact 3.

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 (Footnote 2 Continued on Page 5)

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.

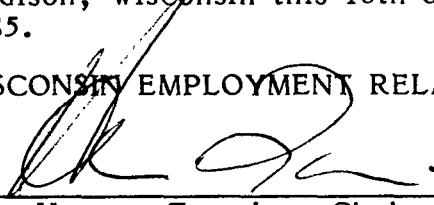
Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; 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.

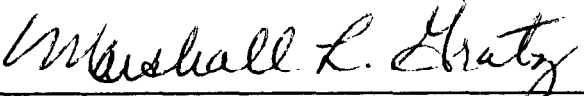
2. That the position of Register in Probate/Probate Commissioner shall remain included in said unit.
3. That the position of Victim/Witness Coordinator be, and the same hereby is, included in the bargaining unit described above in Finding of Fact 3.

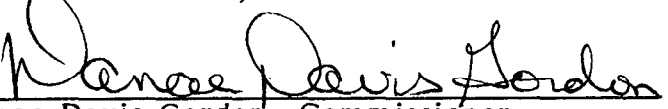
Given under our hands and seal at the City of Madison, Wisconsin this 16th day of September, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

WAUPACA COUNTY (COURTHOUSE)

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

POSITIONS OF THE PARTIES

County

The County contends that the occupant of the newly created position of Victim/Witness Coordinator should be excluded from the bargaining unit on the grounds that she is a managerial employe as demonstrated by the fact that she implemented various phases of the Victim/Witness Program and prepared the 1985 budget for the program.

With respect to the Confidential Legal Secretary - District Attorney's office, the County argues that the District Attorney's assumption of labor relations responsibilities formerly performed by the Personnel Coordinator and by outside labor relations counsel work have resulted and will increasingly result in his legal secretary performing a much more substantial amount of work of a confidential nature. The availability of the Personnel Office confidential should not affect the status of the disputed position because the Personnel Office confidential can handle the additional work load only due to the temporary absence of a Personnel Coordinator. Furthermore, it would be logistically impracticable for the County to attempt to transfer all of the confidential work to the Personnel Office confidential given the separation of the two offices by two floors. Even if the Personnel Coordinator position were eventually filled and the District Attorney relieved of chief negotiator responsibilities, the legal advising, opinion writing and employe relations litigation roles of the District Attorney in sensitive labor relations matters would continue to warrant the exclusion of his secretary as a confidential.

As to the Register in Probate/Probate Commissioner, the County contends that her preparation of the budgets for both the juvenile and civil courts is evidence of her ability to effectively commit the employer's resources, thus making her a managerial employe who should be excluded from the unit. In the alternative, the County contends that MERA should not apply to this employe because of an unreconcilable conflict between Sec. 111.70, Stats., and Secs. 851.71 and 865.065, Stats., and because of the constitutional doctrine of separation of powers. The County contends that application of MERA in this instance interferes with the judicial authority to hire and fire the Register in Probate and with the judges' ability to effectively carry out their judicial functions.

Union's Position

The Union, contrary to the County, contends that the Victim/Witness Coordinator is not a managerial employe and should be included in the unit. In support of this contention the Union argues that Leischow had no input into the plan under which she works and has not altered it. Also the Union argues that her preparation of the budget is essentially ministerial.

With respect to the Confidential Legal Secretary - District Attorney's office the Union argues that she does a de minimus amount of confidential labor relations work and that the Personnel Coordinator's secretary is available to do any confidential work that is generated. Therefore the position should remain in the bargaining unit.

Finally, with respect to the Register in Probate/Probate Commissioner position, the Union contends that the position is not managerial because Virnig's role in preparing the court budgets is essentially one consisting of data gathering without any significant input on budgetary policy.

DISCUSSION

Victim/Witness Coordinator

In determining whether an employe is a managerial employe, the Commission has consistently held that the employe must participate in the formulation, determination and implementation of policy to a significant degree or possess effective authority to commit the employer's resources. 3/ The Commission has interpreted the authority "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. 4/ Authority to establish an original budget, however, involves more than extending the current budget by adjusting for anticipated changes in costs of supplies or level of existing services. 5/

Although Leischow is responsible for implementing and operating the Victim/Witness Program, she did not participate in the creation and formulation of the original program plan. Moreover, the drafting of certain forms and the development of specific procedures designed to accomplish program objectives are tasks required by the program plan rather than evidence of the exercise of any significant discretion with respect to program policies. They simply reflect the application of policy decisions already made by others.

With respect to the second indicia of managerial status, the effective authority to commit the employer's resources, the evidence again falls short. Although Leischow prepared the 1985 budget for the Victim/Witness Program, once prepared, the budget is submitted to District Attorney Maroney for his approval and signature prior to submission to the County Board for its approval. We note that the biggest portion of the budget is attributable to Leischow's salary which is set by the County Board. Other figures in the 1985 budget represent the simple doubling of the corresponding amount in the previous six-month budget for 1984. Only a small portion of the budget represents items not in the previous year's budget. In the absence of a greater showing of input or control over the budget, Leischow's involvement with the budget is routine and ministerial and therefore, insufficient to confer managerial status.

Confidential Legal Secretary - District Attorney's Office

In order for an employe to be considered a confidential employe, and thereby excluded from the bargaining unit, the Commission has consistently held that such an employe must have access to, knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purpose it must be the type of information that deals with (1) the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between the bargaining representative and the employer and (2) is not available to the bargaining representative or its agents. 6/

Finding of Fact 8-12 detail the somewhat unusual fact situation surrounding the disputed status of the legal secretary position herein, and we do not need to repeat those facts here.

It is our opinion that as long as the District Attorney is serving as both the County's chief negotiator and its principal source of legal advice and services in contract administration and labor law, his legal secretary should properly be excluded from the unit as a confidential notwithstanding the availability of another confidential secretary elsewhere in the Courthouse.

3/ Waushara County, Dec. No. 21422 (WERC, 2/84).

4/ Manitowoc County (Highway Department), Dec. No. 20847 (WERC, 7/83); Shawano County (Sheriff's Department), Dec. No. 15257 (WERC, 3/77).

5/ Brown County (Mental Health Center), Dec. No. 7954-C (WERC, 11/84).

6/ Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).

While we have often rejected employer efforts to exclude multiple confidentials when the work could practicably and reasonably be concentrated in one confidential position, it is our opinion that the current roles being played by the District Attorney make it inappropriate to follow that approach in this case.

Pehlke works in a different department than the District Attorney's office, and her office is located two floors away. We are satisfied that given the amount of confidential labor relations work that the District Attorney's current combined roles noted above would generate, it would impose an undue burden to require the District Attorney to split his incoming and outgoing communications and filing between two offices and to split his confidential and non-confidential typing, document preparation and general case support between these two different secretaries in different departments and different locations in the Courthouse.

For those reasons it is our conclusion that the position at issue is properly excluded so long as the District Attorney continues to have all of the above-noted labor relations responsibilities. If and when the circumstances materially change, the Union would have the right to file a unit clarification petition seeking a determination of the status of the position(s) affected by the change.

We wish to make it clear that our decision herein does not necessarily adopt the County's contention that the instant position would remain confidential in the event that the District Attorney were no longer serving as the County's chief negotiator. We would analyze such a situation the way the Commission determined the status of the District Attorney's legal secretary in Portage County, Dec. No. 14946 (WERC, 9/76). 7/

For the foregoing reasons, then, we have excluded the District Attorney's secretary position on the basis of the situation as it currently exists.

Register in Probate/Probate Commissioner

The County contends that the Register in Probate/Probate Commissioner should be excluded from the bargaining unit on the grounds that the position is occupied by a managerial employe. In the alternative, the County argues that MERA is not applicable to this position due to statutory and constitutional conflicts.

With respect to the first argument, the standard for exclusion on the basis of managerial status is the same as that applied earlier to the position of Victim/Witness Coordinator. 8/ As to the first indicia, impact on management policy, we find that since most of the duties of the Register in Probate/Probate Commissioner are statutorily defined, there is little, if any, opportunity for Virnig to significantly affect the formulation, determination or implementation of management policy in this area.

However, with respect to the second indicia of managerial status, the effective authority to commit the employer's resources, Virnig's involvement with the court budgets requires closer examination. The Commission has stated that such authority includes the authority to establish an original budget. Analysis of the record reveals that the majority of the items in the two budgets that Virnig prepares are items over which she has no control or input such as salaries, which are set by the County Board, fees for legal or medical services, witnesses, conventions and seminars, and publications. Of the \$72,829 proposed for the 1985 circuit court budget, nearly \$64,000 of it was for items in these categories.

7/ In Portage County, supra, the District Attorney had an active role in labor relations litigation and advising and in contract administration but did not serve as the County's labor negotiator. There was a personnel technician position elsewhere in the courthouse whose position was already excluded from the unit. The Commission excluded the District Attorney's secretary in that situation because the District Attorney dictated his correspondence and memoranda, because the personnel technician did not possess the skill to take dictation, and because it was not clear from the record that the personnel technician had time to take on additional confidential duties.

8/ supra, p. 8.

The remaining items were for office supplies and equipment. Virnig testified that she based increases in budget items on the past year's experience and anticipated increases in the level of services. However, Virnig has no control or input into whether such services are in fact increased in the first instance. Once the budget is prepared, Virnig must then submit it to the Judge for his approval and he then presents it to the County Board. Virnig does not appear before the Finance Committee when the budget is presented. Once the budget is approved, Virnig's tasks are essentially ministerial in that payments are only made after the voucher has been approved by the Judge. While we agree that a certain amount of managerial discretion is exercised when a budget is drafted, particularly when the employee is an experienced one with a firm knowledge of the costs of operating the department, that factor standing alone, is not sufficient to confer managerial status when much of the preparation appears to be routine and the preparer does not make final decisions as to budgetary needs and allocations. 9/ Virnig does not determine either what kinds of items or services money is spent on or budget priorities. Rather she estimates what such services would cost if provided. Under these circumstances, we conclude that Virnig does not possess the effective authority to commit the Employer's resources and, therefore, we do not exclude the Register in Probate on managerial grounds. 10/

With respect to the County's arguments that MERA should not apply to Registers in Probate because of conflicts between MERA and Secs. 851.71 and 865.065, Stats., and because application of MERA violates the constitutional doctrine of separation of powers, we reaffirm our decision in Manitowoc County, 11/ wherein the Employer raised nearly identical issues. In Manitowoc County, supra, we concluded that while a collective bargaining agreement could not supercede the statutory authority of Judges to hire and fire Registers in Probate, the County Board, by statute, is also responsible for setting their terms and conditions of employment and that there was no evidence to suggest the two grants of authority were inherently conflicting and incapable of being harmonized.

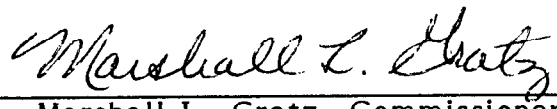
There was no showing that collective bargaining automatically interferes with the ability of such employees to carry out their statutory duties or the ability of the judiciary to effectively perform their functions. Moreover, we noted that any potential conflicts are susceptible to invalidation by the courts as an infringement on their judicial powers. There are no facts in the instant case 12/ which would warrant our departure from the analysis in Manitowoc. Therefore, for the reasons stated therein, we find the County's arguments unpersuasive, and the Register in Probate/Probate Commissioner appropriately included in the unit.

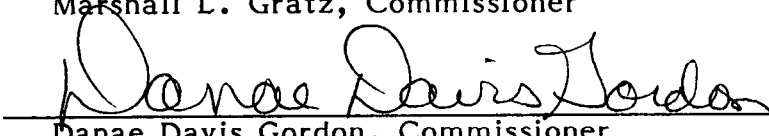
Dated at Madison, Wisconsin this 16th day of September, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

9/ Shawano County, Dec. No. 12310 (WERC, 12/73); Oneida County, Dec. No. 9134-D (WERC, 7/83).

10/ cf: Manitowoc County, Dec. No. 21506 (WERC, 3/84).

11/ Manitowoc County, Dec. No. 8152-E (WERC, 7/81); see also: St. Croix County, Dec. No. 12423-A (WERC, 4/74).

12/ Although the County cited the statute governing Probate Registrars, testimony at hearing revealed that Virnig is also a Probate Commissioner, not a Probate Registrar. However, we do not find this distinction significantly affects the County's argument or our response.