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STATE OF WISCONSIN

CIRCUIT COURT WAUPACA COUNTY  
BRANCH I WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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COUNTY OF WAUPACA,

Petitioner,

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND JUDGMENT

vs.

85 CV 698

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION,

Respondent.

Decision No. 20854-C

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James H. Fassbender, Assistant District Attorney,  
appearing on behalf of Waupaca County; John D. Niemisto, Assistant  
Attorney for the State of Wisconsin, appearing on behalf of the  
Respondent, Wisconsin Employment Relations Commission; Bruce Ehlke,  
Lawton and Cates of Madison, Wisconsin, appearing on behalf of the  
Respondent, Waupaca County Courthouse Employees, AFSCME, AFL-CIO.

On October 12, 1984, the respondent, Waupaca County  
Courthouse Employees, filed a petition with the Wisconsin Employment  
Relations Commission (WERC) requesting a determination as to whether  
the position of Victim/Witness Assistance Coordinator should be  
included in the bargaining unit for the Courthouse Employees. On  
October 29, 1984, the petitioner, Waupaca County, filed a petition  
requesting a determination as to whether the position of Register  
in Probate/Probate Court Commissioner should be excluded from the  
same unit. A hearing was held on December 13, 1984, at which time  
testimony and exhibits were produced as evidence for both parties.  
That case was designated by the WERC as Case 18. Number 31587 ME-2219.  
The decision is Number 20854-C.

In its decision on that matter, the Commission ruled that

both positions should be included in the appropriate bargaining unit. It is decision, the WERC found that the tasks carried out by both positions were primarily ministerial in nature. Neither employee was responsible for the exercise of any substantial amount of discretion. It further found that neither employee was responsible in any substantial way for preparing an original budget. As a result, both employees were found to be municipal employees within the meaning of Wisconsin Statutes, §111.70(1)(b).

On October 15, 1985, this action was commenced under Wisconsin Statutes, §111.07(8) and §111.70(4)(a) and Chapter 227. In their petition filed in this matter, the petitioners requested that this court review the decision and order of the WERC.

NOW, THEREFORE, the matter having been heard by the Court, and the Court having reviewed the briefs provided by counsel, the Court makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. The petitioner is a corporation duly organized under Chapter 59 of the Wisconsin Statutes, whose offices are located in the County Courthouse, Waupaca, Wisconsin.

2. The respondent, Waupaca County Courthouse Employees Union, AFSCME, AFL-CIO, is a local collective bargaining unit, duly recognized by the Wisconsin Employment Relations Commission to represent the employees of the petitioner.

3. The respondent, Wisconsin Employment Relations Commission, is an administrative agency, duly organized under the laws of Wisconsin and charged with the responsibility of certifying

the membership of bargaining units under the Municipal Employment Relations Act.

4. On October 12, 1984, the Waupaca County Courthouse Employees filed a petition requesting determination as to whether the position of Victim/Witness Assistance Coordinator should be included within that bargaining unit.

5. On October 29, 1984, Waupaca County filed a petition requesting a determination as to whether the position of Register in Probate/Probate Court Commissioner should be excluded from that bargaining unit.

6. A hearing was held on both petitions on December 13, 1984, before Hearing Examiner Deborah A. Ford.

7. On December 16, 1985, the Commission, through Commissioners Herman Torosian, Marshall L. Gratz, and Danae Davis Gordon, entered its decision, findings of fact and conclusions of law holding that both positions in question should be included in the bargaining units on the basis that neither position was a managerial position.

8. In its findings of fact, the WERC, after citing the various duties and responsibilities of both positions, found that neither position participates in the formulation, determination or implementation of management policy and that neither position had effective authority to commit the employer's resources.

9. This action was commenced on October 15, 1985, pursuant to Wisconsin Statutes, §111.07(8) and §111.70(4)(a) and Chapter 227

of the Wisconsin Statutes, in order to review the decision and order of the WERC.

10. The position of Register in Probate/Probate Court Commissioner are combined in Waupaca County.

11. Prior decisions of the WERC pertaining to the Register in Probate/Probate Court Commissioner are applicable to this case, and therefore the decision of the WERC should be sustained so long as that decision has any rational basis in the evidence produced.

12. The position of Victim/Witness Assistance Coordinator is not of such a unique nature that the prior decisions of the WERC pertaining to an employee's status should not pertain to that decision and, therefore, the decision of the WERC pertaining to that position should be sustained so long as it has a rational basis in the evidence produced at the hearing.

13. The question of the determination of the bargaining unit status is one in which the WERC has a special expertise, or confidence, and therefore, that decision should be afforded great weight in reviewing that question.

14. Both positions in question are responsible for numerous duties and responsibilities within the scope of their employment. These duties are primarily ministerial in nature, and do not involve the exercise of sufficient discretion to hold that they are managerial employees. Neither position is actively involved in the creation or implementation of employment policy.

15. The employee holding the position of Register in Probate/

Probate Court Commissioner is responsible for accumulating figures and planning for purchases and expenditures for the purpose of establishing the budget for the probate court. That individual then prepares the budget and submits it to the probate judge for approval. The probate judge then submits it to the county board for final approval.

16. The employee holding the position of Victim/Witness Assistance Coordinator is responsible for maintaining records and planning expenditures for the purpose of establishing a budget for that program. The incumbent then prepares that budget and submits it for approval to the district attorney. The district attorney then submits it to the county board of supervisors for final approval.

17. In the case of both positions, both employees do more than merely gather information for the budget. Both actually prepare that budget and plan for future expenditures. Theirs is the responsibility of actually preparing the budget.

18. Both the Register in Probate/Probate Court Commissioner and the Victim/Witness Assistance Coordinator have effective authority to commit their employer's resources due to their responsibilities in the budgetary process.

#### CONCLUSIONS OF LAW

1. The findings of fact of the WERC do not have a reasonable basis in the evidence.
2. The conclusions of the WERC have no rational basis in the facts.
3. The WERC could reasonably conclude that neither the

Victim/Witness Assistance Coordinator nor the Register in Probate/ Probate Court Commissioner were involved in the formulation of the implementation of management policy.

4. The finding that the Register in Probate/Probate Court Commissioner has no authority to commit the employer's resources has no basis in the evidence.

5. The conclusion that the Victim/Witness Assistance Coordinator lacks the ability to commit its employer's resources has no basis in the evidence.

6. Both the Victim/Witness Assistance Coordinator and the Register in Probate/Probate Court Commissioner have effective authority to commit their employer's resources through their budgetary authority.

7. The WERC made a material error of law in the finding that neither employee was a managerial employee.

8. Both the Register in Probate/Probate Court Commissioner and the Victim/Witness Assistance Coordinator are managerial employees and are therefore not subject to inclusion in the collective bargaining units.

#### JUDGMENT

THEREFORE, upon the foregoing findings of facts and conclusions of law, the Court does order that judgment be entered as follows:

1. The petition of Waupaca County is granted and the decision of the Wisconsin Employment Relations Commission placing both the Register in Probate/Probate Court Commissioner and Victim/

Witness Assistance Coordinator within the bargaining unit is reversed.

2. Judgment is hereby rendered and the Clerk of Court is ordered to enter this judgment.

DATED this 2nd day of <sup>June</sup> ~~May~~, 1986.

BY THE COURT:



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Hon. Dennis C. Luebke  
Circuit Court Judge