

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
MANITOWOC COUNTY :
Involving Certain Employees of :
MANITOWOC COUNTY :

Case CLII
No. 32325 ME-2289
Decision No. 21506

Appearances:

Mr. Richard E. Garrow, Corporation Counsel, Manitowoc County, P. O. Box 383, Manitowoc, Wisconsin 54220, appearing on behalf of Manitowoc County.
Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 370, Manitowoc, Wisconsin 54220, appearing on behalf of Manitowoc County Courthouse Employees Local 986-A, AFSCME, AFL-CIO.

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

Manitowoc County, hereinafter referred to as the County, having, on October 24, 1983, filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission clarify an existing collective bargaining unit of courthouse employees by determining whether the Register in Probate should be excluded from said unit which is currently represented by Manitowoc County Courthouse Employees Local 986-A, AFSCME, AFL-CIO, hereinafter referred to as the Union; and hearing in the matter having been held in Manitowoc, Wisconsin, on December 6, 1983, before Examiner Mary Jo Schiavoni; and briefs having been received on February 6 and 27, 1984; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That the Union is a labor organization which represents certain courthouse employees employed by Manitowoc County, for purposes of collective bargaining over wages, hours and conditions of employment.

2. That the County is a municipal employer which operates and maintains a courthouse in Manitowoc, Wisconsin.

3. That the County and Union are parties to a collective bargaining agreement wherein the County recognizes the Union as the exclusive collective bargaining representative of certain courthouse employees in the employ of the County; that for a number of years the Register in Probate/Probate Registrar 1/ has been included in said unit; that the Register in Probate keeps office hours as required by the County Board under Section 59.14, Stats., performs the appropriate range of duties which are applicable in the County and spelled out in Sections 851.72 and 865.07-865.21, Stats., and has the powers enumerated in Sections 851.73 and 865.065, Stats.; that in particular the incumbent, Dorothy Brandt, assists in the administration of estates by performing various administrative duties such as processing petitions, publishing notices for hearing, processing claims against the estate, keeping inventory, maintaining

1/ The Register in Probate also serves as Probate Registrar and a Probate Court Commissioner. For purposes of this proceeding, the Commission shall refer to the incumbent as the Register in Probate, but shall consider all of the duties performed by her under these three titles.

final accounts, and, publishing final judgements; and that Brandt also handles summary assignments, termination of joint tenancies, summary settlements, guardianships, and, serves as a hearing officer in certain probate matters.

4. That on October 6, 1980 and again on September 21, 1981, the three Circuit Judges for the Circuit Court of the County, who appointed her pursuant to Sections 851.71 and 865.065, Stats., jointly signed an order formally delegating certain powers to Brandt, which order reads in relevant part as follows:

IT IS ORDERED that in addition to her other powers and duties, Dorothy Brandt, as Register in Probate, is assigned the powers and duties of a probate court commissioner. The Register in Probate shall have the authority to:

(A) Administer oaths, take depositions and testimony, and certify and report the depositions and testimony, take and certify acknowledgements, allow accounts and fix the amount and approve the sufficiency of bonds; and,

(B) Determine any probate matter over which the Circuit Judges of Manitowoc County have jurisdiction, and sign any order or certificate required in such determinations; except the following matters which the Circuit Judges hereby retain jurisdiction of:

- (A) Will contests;
- (B) Claims in dispute;
- (C) Other disputed matters requiring an evidentiary hearing.

(C) Affix the signature of Circuit Judges by means of a signature stamp to all documents referred to in paragraph (B).

5. That in April, 1980, the County prepared a job description for the position held by Brandt, which contains the following illustrative examples of work performed by her:

1. Checks all probate papers filed with the court to be sure they are properly executed; presents them to the court for signature and files them.
2. Supervises all files so that attorneys comply with statutory filing requirements and closing of estates.
3. Collects all fees in probate matters; keeps a receipt book and turns in money to County Treasurer at end of each month.
4. Takes over duties performed by a judge in informal court proceedings.
5. Keeps all court records regarding guardianships, protective placements; sets up court hearing dates.
6. Drafts and types all paperwork with regard to mental commitments, alcoholic and drug commitments; follows the case to either commitment or dismissal.
7. Keeps all adoption records; sets up court hearing dates; gets reports from investigative agencies; collects all fees; sends reports of the adoption to the State, and gets new birth certificate issued.
8. Orders all office supplies.
9. Makes out annual budget and annual reports.
10. Makes certified copies of all documents; replies to mail, answers telephone, and assists with microfilming of all court files.

11. Keeps daily statistical reports of Court administrative activities and reports same each week to State Court Administrator.
12. Administers oaths.
13. Takes depositions and testimony, and certifies and reports the depositions and testimony.
14. Takes and certifies acknowledgements.
15. Allows accounts and fixes the amount and approves the sufficiency of bonds.
16. Determines any probate matter over which the Circuit Judges of Manitowoc County have jurisdiction, and signs any order or certificate required in such determinations; except the following matters which the Circuit Judges hereby retain jurisdiction of: Will contests, Claims in dispute; other disputed matters requiring an evidentiary hearing.
17. Performs other duties as assigned.

6. That Brandt does not participate to a significant degree in the formulation or implementation of management policy on behalf of the County and does not have significant power to commit its resources; and that she does prepare the proposed budget figures for her office based on anticipated purchases of office supplies, equipment and anticipated costs for juror, reporter, and expert witness fees, and submits them first to the law judiciary committee and then to the County's finance committee as part of the overall court budget for approval by the County Board; that, with the exception of a small amount for anticipated office equipment and supplies, the remainder of the budgeted costs are for items not within the control of the Register of Probate such as juror fees, court costs, expert witness fees, etc; and that she also makes ministerial decisions with regard to the expenditure of sums from the budget previously established by requisitioning the purchase of necessary supplies.

7. That Brandt's salary is paid by the County and that her rate of pay at the time of the hearing herein, which was established by the collective bargaining agreement between the Union and the County, was \$8.80 per hour; that Brandt's hours and other working conditions have likewise been determined by the County and the Union under the terms of said agreement; and that Circuit Judge Allan Deehr, who is now Chief Judge, exercises de facto supervision over her work on behalf of all three Circuit Judges, approves her vacations and other leave requests, and supervises her in the performance of her duties.

8. That in performing her duties, Brandt is assisted by Jo Ann Manka, the Deputy Register in Probate, who earns \$6.60 per hour; that Brandt occasionally makes routine work assignments to Manka, but Manka primarily performs her duties, which consist of microfilming, filing, and clerical tasks, on her own; that Brandt recommended that Manka be hired after she was first interviewed by the then sitting judge; that, however, there is no indication that Brandt then exercised any independent judgement in Manka's hire, as Brandt interviewed her primarily because the judge at that time merely wanted Brandt's opinion on whether she could work with her as a prospective fellow employee.

9. That since 1981, Brandt and Manka have been relocated to a separate office pursuant to a general courthouse remodeling plan; that their new office is physically separated from the offices of the Judges; that the office of the Register in Probate is considered a separate subdivision of the court and judicial budgets; that Brandt has been told she possesses the authority to discipline Manka and to resolve grievances but that she has not exercised such authority to date; that she has been told by Judge Deehr that she is responsible for running her own office; and that Brandt does approve Manka's vacation and sick leave requests, but that the three Judges retain ultimate authority to discipline or remove Manka with respect to her work performance.

10. That circumstances with respect to the performance of Brandt's job have not changed sufficiently from the date of the Commission's previous decision 8152-E (7/81), so as to warrant different findings regarding Brandt's status as a supervisory, managerial or executive employee.

11. That the Register in Probate is employed by the County and does not perform or possess supervisory duties and responsibilities in sufficient combination and degree so as to render the position supervisory.

Based upon the foregoing Findings of Fact, the Commission makes the following

CONCLUSION OF LAW

1. That the Register in Probate is employed by Manitowoc County and is a municipal employee within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act and not a supervisory, managerial or executive employee, and is therefore properly included in the existing courthouse collective bargaining unit represented by Manitowoc County Courthouse Employees Local 968-A, AFSCME, AFL-CIO.

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

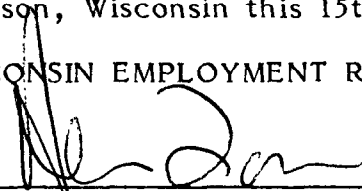
ORDER CLARIFYING BARGAINING UNIT 2/

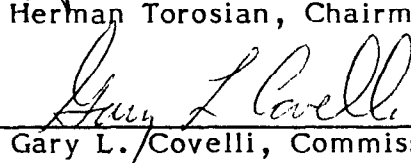
That the classification of Register in Probate employed in the Courthouse shall continue to be included in the established courthouse collective bargaining unit.

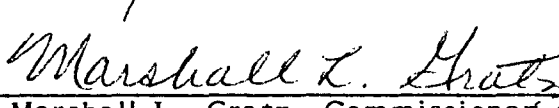
Given under our hands and seal at the City of
Madison, Wisconsin this 15th day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, 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.

(Continued on Page 5)

2/ (Footnote continued)

(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.

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.

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

The Commission, in Decision No. 8152-E (7/81), had previously found that the Register in Probate was neither a supervisory, managerial, nor executive employee.

The County argues that change in circumstance now establishes that the Register in Probate performs supervisory and managerial duties and that therefore she should be excluded from the courthouse unit. Contrary to the Union's contention, it maintains that the case does not involve a relitigation of the Commission's prior decision or an appeal of that decision but rather a new action resulting from a significant change in job duties and responsibilities.

The Union, on the other hand, contends that the Register in Probate is neither a supervisory nor managerial employee. It asserts that the County is merely trying to relitigate issues decided in the Commission's previous decision.

Discussion:

The Commission in Decision No. 8152-E (7/81), found that the Register in Probate lacked sufficient indicia of either supervisory or managerial status so as to warrant her exclusion from the existing courthouse collective bargaining unit. It found that any duties of a supervisory or managerial nature performed by the Register in Probate were de minimus at best, and as a result insufficient to warrant her exclusion from the unit. The County now argues that there has been a change of circumstances sufficient to warrant excluding this position from the unit at the present time. We disagree. The essential functions of the position have not changed significantly.

The County, in its brief, asserts that Brandt now acts in a quasi-judicial capacity, handling informal and uncontested formal probate proceedings, which responsibilities she did not possess prior to 1981. The record in this matter and our previous decision reveal that she did perform these duties as a probate court commissioner prior to 1981 as of the date of our original decision. Moreover, although it is true that Brandt's office has been physically removed from the Judges' offices, this fact alone, or in combination with her assumption of additional responsibility for approving the Deputy Register's leave and vacation, is insufficient to support the conclusion that the Register in Probate position has become supervisory in nature. While Brandt claims to possess additional supervisory authority over Manka, there is no evidence that she has ever exercised it.

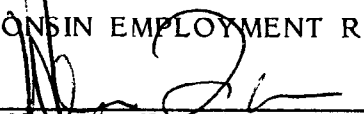
We also considered Brandt's preparation of the budget in our previous decision. While we are mindful that said budget has grown, we note that it is still submitted first to the law judiciary committee and then to the County's finance committee as part of the overall court budget. Moreover, with the exception of a small amount for anticipated office equipment and supplies, the remainder of the budgeted costs are for items not within the control of the Register in Probate such as juror fees, court costs, reporter fees, expert witness fees, etc.

In reviewing the Register in Probate position, we are unpersuaded that there has been a change in circumstances sufficiently significant to warrant the exclusion of the Register in Probate as either a supervisory or managerial employee.

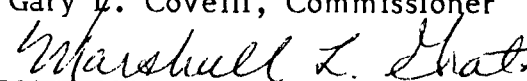
Dated at Madison, Wisconsin this 15th day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


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