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AUG 22 1988

STATE OF WISCONSIN

CIRCUIT COURT, WISCONSIN EMPLOYMENT RELATIONS COMMISSION
POLK COUNTY

POLK COUNTY,

Petitioner,

v.

Case No. 87-CV-740

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION and WISCONSIN COUNCIL
OF COUNTY AND MUNICIPAL EMPLOYEES,
AFSCME, AFL-CIO,

Decision Nos. 24952
24953
24954

Respondents.

NOTICE OF ENTRY OF MEMORANDUM OPINION

TO: John A. Lang
Assistant District Attorney
Polk County Courthouse
914 First Avenue North
Balsam Lake WI 54810

Bruce F. Ehlke
Lawton & Cates, S.C.
214 West Mifflin Street
Madison WI 53703-2594

PLEASE TAKE NOTICE that a memorandum opinion, of which a true and correct copy is hereto attached, was signed by the court on the 12th day of August, 1988, and duly entered in the Circuit Court for Polk County, Wisconsin on the 16th day of August, 1988.

Dated at Madison, Wisconsin this 19th day of August, 1988.

DONALD J. HANAWAY
Attorney General


DAVID C. RICE
Assistant Attorney General

Department of Justice
Post Office Box 7857
Madison WI 53707-7857
(608) 266-6823

Attorneys for the Wisconsin
Employment Relations Commission

POLK COUNTY,

Petitioner,

MEMORANDUM OPINION

Case No: 87CV740

vs.

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RELATIONS COMMISSION

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This is a proceeding commenced December 1, 1987, under ch. 227, Stats., to review a decision of the Wisconsin Employment Relations Commission under the Municipal Employment Relations Act, secs. 111.70-111.77, Stats. The Commission decided that the position of secretary to the Polk County Circuit Judge who performs duties as juvenile court clerk, scheduling clerk, and deputy clerk of circuit court was a "municipal employee" within the meaning of sec. 111.70(1)(i), Stats. The Commission ordered that the position be included in the bargaining unit represented by the Polk County Courthouse Employees Local 774-B, AFSCME, AFL-CIO (the "Union").

The petitioner challenges that decision contending that since the Circuit Court for Polk County had designated his secretary as a "confidential employee", the WERC was precluded from finding otherwise by the separation of the powers doctrine.

The facts are clear that the duties performed by the judge's secretary as of the date the hearing was held were not such that

any reasonable person could conclude that she was a "confidential employee" under any test previously used to make such a determination. Petitioner does not contend that the facts did meet any of the criteria that the Commission had set forth to decide whether or not an employee was a confidential employee. Petitioner instead argues that the whole inquiry by the Commission and the criteria for determining whether someone is a confidential employee are irrelevant, since the Circuit Judge of Polk County specifically designated his secretary as a confidential employee in a letter dated July 1st, 1987. Unless the petitioner is correct in asserting that the Commission is without power to look beyond the circuit court's designation of the secretary as a confidential employee, then it is clear that the secretary is not a confidential employee under the facts of this case.

The separation of powers doctrine does not preclude the Commission from determining that the judge's secretary is not a confidential employee. The legislature may exercise its legislative powers in areas that may in some way affect the judicial branch as long as it does not embarrass the courts or impair their constitutional function. Kewaunee County vs. WERC, 141 Wis.2nd 347 (Ct.App. 1987). The case just cited clearly demonstrates that a judicial appointee may be included in a union consisting of municipal employees.

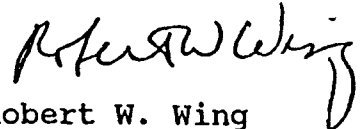
There has been no demonstration under the facts of this case that allowing the judge's secretary to become a part of

the municipal employee's union in any way impairs the functioning of the Polk County Circuit Court in the performance of its constitutional duties. If the judge's secretary meets the criteria for confidential employee status in the future, the petitioner may petition to have her removed from the municipal employee's union.

The decision of the Commission is hereby affirmed.

Dated this 12th day of August, 1988.

BY THE COURT:


Robert W. Wing
Circuit Judge

cc: John Lang
David C. Rice
Bruce F. Ehlke

Entered 8-16-88 per
Polk Co. Clerk of Courts