

STATE OF WISCONSIN  
CIRCUIT COURT  
CRAWFORD COUNTY

CRAWFORD COUNTY, A municipal corporation,  
Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION, A state agency,  
Respondent,

Case No. 91-CV-57  
Decision No. 26863

JUDGMENT

This action having come on for judicial review before the Court, Honorable Michael Kirchman, Circuit Court Judge, presiding, and the Court having made its Findings of Fact and Conclusions of Law, and having entered an Order that Respondent's Declaratory Ruling be affirmed in part and reversed in part,

NOW, THEREFORE, IT IS ADJUDGED

that Petitioner, Crawford County, a municipal corporation established pursuant to law and whose address is 220 N. Beaumont Road, Prairie du Chien, Wisconsin, 53821, shall not be required to bargain with the Union on matters affecting the statutory rights of elected officials as set forth in the aforesaid Conclusions of Law

AND IT IS FURTHER ADJUDGED

that Petitioner shall be required to bargain over matters affecting the statutory rights of elected officials as set forth in the aforesaid Conclusions of Law.

Dated this 19th day of March, 1992.

BY THE COURT:

/s/ Michael Kirchman  
Michael Kirchman  
Circuit Court Judge  
Crawford County

STATE OF WISCONSIN  
CIRCUIT COURT  
CRAWFORD COUNTY

CRAWFORD COUNTY, A municipal corporation,  
Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION, A state agency,  
Respondent,

Case No. 91-CV-57

This matter has come on for a hearing on the 6th day of March, 1992, at the Courthouse in the City of Prairie du Chien, Wisconsin, Circuit Judge Michael Kirchman presiding. Petitioner was represented at the hearing by Attorney Dennis M. White. Respondent was represented at the hearing by Attorney David Rice. AFSCME Local 3108 appeared by Attorney Bruce Ehlke. All attorneys appeared at the hearing by telephone conference, as permitted by the Court.

This Court, having reviewed the administrative record and having heard the arguments of counsel and being fully apprised in the matter now makes the following:

FINDINGS OF FACT

1. On April 17, 1991, Respondent issued a Declaratory Ruling holding that the following proposal made by 3108, AFSCME, AFL-CIO was a mandatory subject of bargaining within the meaning of Sec. 111.70, Wis. Stats.:

Deputies, included accreted deputies, to be included in all terms and conditions of the collective bargaining agreement.

2. Petitioner has timely filed a petition for review of Respondent's Declaratory Ruling, pursuant to Sec. 227.52, Wis. Stats.

3. Local 3108, AFSCME, AFL-CIO has filed a Notice of Appearance and has participated in the proceeding pursuant to Sec. 227-53(2), Wis. Stats.

4. Judicial review has been conducted pursuant to the provisions of Sec. 227-57, Wis. Stats.

CONCLUSIONS OF LAW

1. The requirement in Sec. 59.38, Wis. Stats., that the appointment of deputy 'clerks of court shall be approved by the majority of circuit judges for the county does not involve or relate to an inherent constitutional power of the court. The Legislature is therefore not prohibited by the separation of powers doctrine from legislating on matters pertaining to the deputy clerk of court and

collective bargaining.

2. Respondent has erroneously interpreted a provision of law in holding that the aforesaid Union proposal is a mandatory subject of bargaining insofar as the proposal:

A. pursuant to Sec. 10.02 and 510-03 of the collective bargaining agreement, compels the Clerk of Courts, Register of Deeds or District Attorney to forego their statutory right to appoint their Chief Deputy from persons outside the collective bargaining unit or requires that first preference for the Chief Deputy position be given to members of the collective bargaining unit or requires that the position to be filled on the basis of seniority.

B. pursuant to Sec. 8.05 of the collective bargaining agreement, compels the aforesaid elected officials to forego their right to appoint a Chief Deputy from outside the collective bargaining unit by requiring that no new hires be made while unit employees are on layoff.

C. pursuant to Sec. 8.03 of the collective bargaining agreement, compels the aforesaid elected officials to forego their right to maintain their appointed Chief Deputy by forcing the Chief Deputy to be bumped out of the position by seniority during a layoff.

3. Respondent did not err as a matter of law in holding that the aforesaid bargaining proposal is a mandatory subject of bargaining even though it infringes upon the statutory right of the aforesaid elected officials to terminate their Chief Deputies at pleasure.

Based upon the foregoing findings of fact and conclusions of law, this Court now therefore

#### ORDERS

that the Declaratory Ruling of Respondent be, and it hereby is, set aside, pursuant to Sec. 227.57(5), Wis. Stats., insofar as Respondent has incorrectly interpreted the law as described above in Conclusion Of Law No. 2. The Court further orders pursuant to Sec. 227.57(2), Wis. Stats., that the Declaratory Ruling of the Respondent be, and it hereby is, affirmed in all other respects. Neither party shall be entitled to costs, pursuant to the exercise of the court's discretion under Sec. 814.036, Wis. Stats.

Dated this 19th day of March, 1992.

BY THE COURT:

/s/ Michael Kirchman

Michael Kirchman

Circuit Court Judge Crawford County

STATE OF WISCONSIN  
CIRCUIT COURT  
CRAWFORD COUNTY

Crawford County  
Petitioner,

vs.

WERC,  
Respondent.

Case No. 91-CF-57

JUDGE'S DECISION

Pursuant to notice the above-entitled matter came on for hearing on the 6th day of March, 1992, at the Courthouse in the City of Prairie du Chien., Wisconsin, with the Honorable Michael Kirchman presiding.

APPEARANCES:

Attorney Dennis White appeared on behalf of the Petitioner.

Attorney David Rice appeared on behalf of the Respondent.

Attorney Bruce Ehlke appeared on behalf of the Local Union.

Whereupon, the following proceedings were held in part:

THE COURT: Counsel, I think first thing that I want to take up is maybe the last thing that was argued in your briefs and that is the constitutional issue; whether the county can bargain for something, whether these issues in regarding to, say, the appointment or what do you call that --the approval by the majority of the judges of the circuit court of the appointment of the chief deputy clerk of court. I don't think that that is a constitutional issue. I agree with the union that this statute is not from a constitutional derivation but it is purely statutory and these powers and duties of the offices can be modified through legislative action. So, I don't believe it's inherent in the judicial branch's independence that a judge must be able to approve a chief deputy clerk of court's position - - appointment. So, I agree that it's legislative rather than constitutional.

Of course, there's one more statute that applies to the clerk of court than applies to the others and that is the reference to the judge approving the appointment. But, basically it's harmonization or accommodation issue between the statutes which allow the county to modify certain employment issues, let's call it, and bargain certain issues. Chapter 111, which is what can be bargained as a subject matter. I believe that if you read the -- oh, let's see -- the language of the -- the language that was interpreted Wisconsin Employment Relations Commission. Where is that. Do you have that handy? it's rather short.

MR. RICE: Claim fourteen you mean?

THE COURT: The language of the union --

MR. EHLKE: Oh, the contract language.

THE COURT: The contract language. I'm sorry. I think it was in the brief of the union. I don't remember at the moment where it was. Anyway, the proposal would really eliminate certain statutory rights of elected officials of the county. I'm specifically referring to the articles of the labor contract. I believe that's 10.02 and 10.03 that require first preference for vacancies be given to union members. 8.05 of the labor agreement about hiring a new employee if a union member was on a lay off and 8.03, I guess that's the bumping rule. Also, the contract would prohibit an elected official from discharging a deputy at pleasure.

Of course, the WERC held that the union's proposal was a mandatory subject of bargaining and that the county could bargain for such an agreement. So, counsel have discussed in their briefs the various statutory sections, most importantly section 59.15, the county's general authority, and we talk of regulations of employment and in other statutory sections we refer to 59.15, refers to terms of employment, 111.70, conditions of employment. What we -- I think what the problem is here is that the terms of employment and the conditions of employment are and the authority, if there's a conflict with other statutes of Chapter 111 to prevail. I'm sorry I'm so scrambled here but I'm trying to give a decision and get this over with today.

I believe that these statutory sections can be harmonized and should be -- attempt to be harmonized. There doesn't necessarily have to be a conflict if the terms of employment or the conditions of employment do not include the elected officials authority to hire and to fire. I do believe that these terms of employment, conditions of employments and where there's a conflict the priority of Chapter 111 can be interpreted to mean that firing can not be without cause. In other words, it can't be at pleasure. I think that the elected officials have lost that authority under -- if the County should contract for that because that would be a condition of employment or a term of employment. But, the hiring, the bumping, I don't believe that that has been affected by 59.15 or 111.70. So, that means that I disagree with the Commission's ruling as it affects the bargaining in regard to the three positions in question.

In that respect their decision must be reversed. So, I'll ask that Mr. White as the prevailing party prepare an appropriate order.

MR. WHITE: May I ask for one clarification right at the end there?

THE COURT: Yes.

MR. WHITE: As I understood it you felt that the authority to hire was adversely impacted and that the -- by the proposal by the contract. That the bumping rights of the contract adversely affected the elected officials authority. But, as far as firing for cause, I guess I'm not sure on what you meant on that. That is something that is bargainable?

THE COURT: No, firing at pleasure I think is bargainable. Firing for cause is permitted but firing at pleasure I think is bargainable. Okay. I'm sorry I didn't have that smooth for you but I did want to get this over with.

MR. RICE: Your Honor, could we obtain a copy of the decision portion of the transcript of the proceedings today.

THE COURT: Well, you sure can but it's going to look like a mess. We'll send each of you a copy. Okay. Thank you, gentlemen.

(WHICH CONCLUDED THIS PORTION OF THE PROCEEDINGS)

STATE OF WISCONSIN  
COUNTY OF CRAWFORD

I, Carol Dettman, do hereby certify that I am the official court reporter for the Circuit Court of Crawford County, Wisconsin and that the foregoing was taken by me and transcribed by me and contains a portion thereof.

/s/ Carol Dettman  
Carol Dettman, Court Reporter