

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CRAWFORD COUNTY COURTHOUSE AND
HUMAN SERVICES EMPLOYEES, LOCAL 3108,
AFSCME, AFL-CIO

Involving Certain Employes of

CRAWFORD COUNTY

Case 10
No. 50785 ME-702
Decision No. 27828-C

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, Wisconsin 54656, for the Union.

Brennan, Steil, Basting & MacDougall, S.C., Attorneys at Law, 433 West Washington Avenue, Suite 100, Madison, Wisconsin 53701-0990, by Mr. Dennis M. White, for the County.

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

Crawford County Courthouse and Human Services Employees, Local 3108, AFSCME, AFL-CIO, on April 1, 1994, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of certain employes of Crawford County to determine whether the Register in Probate/Probate Registrar and the Judicial Assistant should be included in said unit. Hearing in the matter was held on August 18, 1994, in Prairie du Chien, Wisconsin, before Examiner Jane B. Buffett, a member of the Commission's staff. A transcript of the proceedings was received on September 21, 1994. The parties submitted briefs, the last of which was received November 17, 1994. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Crawford County Courthouse and Human Services Employees, Local 3108,

No. 27828-C

AFSCME, AFL-CIO, herein the Union, is a labor organization and has its offices at Route 1, Sparta, Wisconsin.

2. Crawford County, herein the County, is a municipal employer and has its offices at 220 North Beaumont Road, Prairie du Chien, Wisconsin.

3. The Union is the certified exclusive bargaining representative of County employees in the following unit:

all regular full-time and regular part-time employees of the Crawford County Courthouse and related departments, including Highway Department clericals employed in the Courthouse and professional social workers, excluding managerial, supervisory, confidential, craft, law enforcement employees and blue collar Highway Department employees; 1/

4. The position of Judicial Assistant was created by the Crawford County Board of Supervisors on December 21, 1993, and Joan Hurda, who had previously been Register in Probate/Probate Registrar, was appointed to the position.

5. The Judicial Assistant provides secretarial and administrative support for the Circuit Court. The Judicial Assistant performs scheduling duties for the Court, occasionally by holding telephone conferences with attorneys and granting continuances pursuant the Judge's guidelines. The Judicial Assistant has developed forms for filing certain pro se motions. She monitors the timeliness of attorneys' filing of documents pursuant to the Judge's orders. She is the network administrator for the computer network for the Circuit Court.

6. The Judicial Assistant keeps time sheets and oversees accounting for compensatory time, sick leave, and vacation for the Juvenile Court Worker who is also employed by the D.A.R.E. program and who is supervised in her D.A.R.E. capacity by the Sheriff's Department. The Judicial Assistant also exercises some direction over the work of the Security Bailiff who is a part-time employe working about 600 hours a year. Based on the number and type of cases scheduled for hearing, she determines the hours when the Security Bailiff is needed and assigns him to work those hours. 2/ She keeps track of the hours he has worked and approves his timesheet for payment. She has never denied a leave but on one occasion she discovered that the Security Bailiff had entered

1/ Crawford County, Dec. No. 16931 (WERC, 5/79).

2/ If the Judge believes the Security Bailiff is necessary even though the Judicial Assistant had concluded otherwise, he directs the Judicial Assistant to call the Security Bailiff.

the same hours worked in two different pay periods. She concluded it was an inadvertent error and corrected it administratively.

7. The Judicial Assistant has responsibility for independently preparing and administering the Court Services portion of the Circuit Court budget which includes monies for the Family Court Commissioner, the Juvenile Court Worker, the Security Bailiff, the law library, Court supplies and the court reporter. At the time of the hearing, the Judicial Assistant had not yet prepared a budget. The Judicial Assistant will rely on past experience and projected future needs to anticipate the necessary changes in the budget from the previous year. She will meet with the Juvenile Court Worker, Family Court Commissioner, and Clerk of Courts to determine their needs for the next year. She will present and defend the proposed budget to the County Finance Committee. After the budget is approved, she will administer it and monitor the expenditures from it.

8. The Register in Probate/Probate Registrar, hereafter Register in Probate, provides secretarial and administrative support for the Probate and Juvenile branches of the Crawford County Circuit Court. Marilyn Seymour was appointed to the position of Register in Probate by order of Circuit Judge Michael Kirchman and Chief Judge Peter G. Pappas on May 3, 1994. In pertinent part, the Order included the following:

NOW, THEREFORE, IT IS ORDERED that Marilyn Seymour is appointed Register in Probate pursuant to Sec. 851.71, Wis. Stats. and Probate Registrar pursuant to Sec. 865.065, Wis. Stats. and Deputy Clerk of Court pursuant to Sec. 851.75, Wis. Stats.

IT IS FURTHER ORDERED that the Register in Probate shall have all the duties listed in Sec. 851.72, Wis. Stats. and the powers listed in Sec. 851.73, Wis. Stats. As Probate Registrar, the appointee shall have the powers and duties enumerated in Sec. 865.065 and 865.07, Wis. Stats.

IT IS FURTHER ORDERED that in addition to the duties specified in the Wisconsin Statutes that the Register in Probate shall 1) Act as department head in all dealings with the Crawford County Board and its [sic] Committees; 2) Prepare and administer the annual budget for the Office of Register in Probate and Probate Registrar 3) Supervise all Deputy Registers in Probate and Probate Registrars, including part-time or temporary employees of the office, in the performance of their duties, work schedules and discipline and 4) Supervise persons performing part time supervision of community service work for juveniles.

IT IS FURTHER ORDERED that the attached job

description shall govern the Register in Probate/Probate Registrar in the performance of her duties.

IT IS FURTHER ORDERED that pursuant to the holding of Eau Claire County v. WERC, 122 Wis. 2d, 363, and a doctrine of separation of powers that the Register in Probate and Probate Registrar not be considered a municipal employee as defined by Sec. 111.70(1)(i), Wis. Stats. for collective bargaining purposes.

9. The position description of the Register in Probate states that she will supervise her Deputy. In the absence of the Register in Probate, the Judicial Assistant acts as Deputy by receiving documents in the Probate Office. There is no other Deputy Register in Probate and the Register in Probate does not supervise the Judicial Assistant.

10. The Register in Probate directs the work of the Community Service Worker, who works approximately 20 hours a week in the summer and fewer hours during the school year. The Community Service Worker supervises citizens, usually juveniles, who have been assigned community service as part of the disposition of their cases. Based on court orders, the Register in Probate prepares assignments for the Community Service Worker. After picking up his assignment at his office in the Courthouse, the Community Service Worker works mainly in the field and the Register in Probate does not exercise any further supervision over his work. The Register in Probate reviews the timesheets of the Community Service Worker to determine that they reflect the number of cases assigned to the Community Service Worker and submits them for payment.

11. The Register in Probate is responsible for independently preparing and administering her office's budget which includes salary and fringe benefits of herself and the Community Service Worker, as well as travel expenses, new equipment and guardian ad litem fees. Based on her review of the previous year and her knowledge of the cases for the coming year, she must estimate the guardian ad litem fees. She must make application for state reimbursement of the fees that are actually disbursed. She has developed forms and a schedule for guardian ad litem fees consistent with fees charged by a corporate guardian ad litem service and after consultation with the Judge. She reviews the guardian ad litem fees submitted, and on occasions has returned them for correction. The Register in Probate collects probate fees and ordinance forfeitures and remits them to the County Treasurer. She independently purchased office furnishings and equipment for approximately \$1300 from a budget established prior to her appointment.

12. The Judicial Assistant and the Register in Probate/Probate Registrar possess sufficient authority to commit the County's resources to be deemed managerial employees.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The occupant of the position of Judicial Assistant of Crawford County is a managerial employe within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. The occupant of the position of the Register in Probate/Probate Registrar of Crawford County is a managerial employe within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 3/

1. The position of Judicial Assistant is excluded from the bargaining unit set forth in Finding of Fact 3.

2. The position of Register in Probate/Probate Registrar is excluded from the bargaining unit set forth in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin,
this 11th day of August, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

William K. Strycker /s/
William K. Strycker, Commissioner

I dissent: Herman Torosian /s/
Herman Torosian, Commissioner

3/ See footnote on Pages 6 and 7.

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- 3/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(footnote continued on page 7)

3/ (footnote continued from page 6)

(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. 227.57 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.

CRAWFORD COUNTY

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

POSITIONS OF THE PARTIES

The Union

The Union asserts the Register in Probate position could be included in the bargaining unit even if, under the decision in Iowa County, 4/ the Judge retains the right to appoint and dismiss. Furthermore, it believes the Commission has jurisdiction to decide this matter because the courts will defer to the administrative expertise of the Commission. The Union asserts neither of the positions have any employees to supervise. As to managerial functions, it argues that neither create original budgets, but rather merely reduce numbers to paper.

The County

The County argues that the Commission lacks jurisdiction to decide the status of the Register in Probate. It argues the Court's Order assigning administrative duties to the Register in Probate and removing the position from the bargaining unit is pursuant to statutory power. That statutory power is in direct conflict with the collective bargaining statute and cannot be harmonized. Even if the statutes could be harmonized, the doctrine of the separation of powers as well as the Court's power to control its personnel, free from interference from other branches of government, preclude the Commission's jurisdiction in this matter. In the alternative, the County argues that the Register in Probate possesses a combination of managerial and supervisory powers that exclude her from the bargaining unit.

The County points to the Judicial Assistant's budgetary responsibilities and supervisory responsibilities to argue that the position must be excluded from the unit. Alternatively, the County argues that the Judicial Assistant should be excluded from the bargaining unit because it shares no community of interest with the other employees. The County argues the position is covered by the mantle of the Court and cannot be encumbered by collective bargaining.

4/ Iowa County v. Iowa County Courthouse, 166 Wis.2d 614 (1992).

DISCUSSION

I. The Judicial Assistant

A. Managerial Status

The Legislature has excluded "managerial employees" from the definition of "municipal employees," but it has not provided a statutory definition of the former term. Section 111.70(1)(i), Stats. Instead, it has left to the Commission the case-by-case development of precise meaning to define those individuals whose relationship to management imbues them with interests significantly at variance with those of other employees.

There are two analytical paths to assess claimed managerial status. One considers the degree to which individuals participate in the formulation, determination and implementation of management policy; the other considers whether the individuals possess the authority to commit the employer's resources, either by exercising significant authority in the establishment of an original budget or by allocating funds for different program purposes within an original budget. 5/

For an individual to assume managerial status based on participation in program and policy, such involvement must be "at a relatively high level of responsibility." 6/ Managerial status based on allocation of the employer's resources necessarily entails significantly affecting the nature and direction of the employer's operations, such as the kind and level of services to be provided, or the kind and number of employees to be used in providing services. 7/

Although the Judicial Assistant, having been appointed after the budget process for 1994 was completed, had not prepared a budget prior to the hearing, the record indicates that she will independently prepare, defend and administer a budget which reflects the needs of the Family Court Commissioner, Juvenile Court Worker, and Security Bailiff as well as supplies, equipment and expenses for the County law library, the Circuit Court, and the court reporter. The record establishes that to the extent limited resources requires that choices be made as to which budgetary needs are to be met, she will decide, for instance, whether the needs of the Court

5/ Milwaukee v. WERC, 71 Wis.2d 709 (1976); Eau Claire County v. WERC, 122 Wis.2d 363 (CtApp, 1984).

6/ Village of Jackson, Dec. No. 25098 (WERC, 1/88); Portage County, Dec. No. 6478-C (WERC, 10/87); Door County (Courthouse), Dec. No. 24016-B (WERC, 8/88).

7/ Village of Jackson, *supra*; Forest County, Dec. No. 17528-B (WERC, 6/85); Jackson County, Dec. No. 17828-B (WERC, 10/86); City of Whitewater, Dec. No. 24354 (WERC, 3/87).

Commissioner should take precedent over those of the Juvenile Court Worker. We are satisfied this level of budgetary authority is sufficient to warrant the Judicial Assistant's exclusion from the unit as a managerial employe.

Should the Judicial Assistant's budgetary authority prove to be less than that reflected in this record, the Union is free to ask us to revisit the status of this position.

II. Register in Probate/Probate Registrar

A. Managerial Status

Citing Manitowoc County v. Local 96A, 170 Wis.2d 692 (1992), the County initially argues that we lack jurisdiction to overturn Judge Kirchman's exclusion of the Register in Probate/Probate Registrar from the bargaining unit. We disagree.

As we read Manitowoc, the validity of a court order excluding the Register in Probate/Probate Registrar ultimately rests upon the validity of the Court's conclusion that the Register is a managerial employe. See, Manitowoc at 698. Thus, if Judge Kirchman incorrectly concluded that the Register is a managerial employe, the Order would be invalid and we can properly return the position to the bargaining unit.

The County correctly places substantial emphasis on the binding published decisions of the Wisconsin Court of Appeals in Kewaunee County v. WERC, 141 Wis.2d 347 (1987) and Manitowoc which deal specifically with the question of whether the Register in Probate/Probate Registrar is a managerial employe who thus cannot be included in a bargaining unit.

These two decisions establish the following as the operative law in this case:

1. The question of whether a Register in Probate/Probate Registrar is or is not a managerial employe turns on the facts in the record as to the duties, responsibilities and powers of the individual in question. Kewaunee, at 353; Manitowoc, at 697-698.
2. Where the claim of managerial employe status is based upon an assertion that the employe's budgetary responsibilities give the employe effective authority to commit an employer's resources

. . . the employe must possess the

discretionary power to determine the type

and level of services to be provided and the manner and means by which those services will be delivered.

Formulating a budget, as opposed to merely submitting a budget, involves determining the services required, the number of persons necessary to deliver those services, and the quantity and type of equipment and supplies required to provide those services. Consequently, to possess effective authority to commit an employer's resources, an employee preparing a budget must possess the authority to effectively recommend the amount and the manner in which funds will be expended in support of each of the services provided.

Kewaunee, at 355-356.

. . . budgetary duties involving the ministerial act of reducing numbers to paper and submitting them to the board fails to meet the test of submitting an original budget. This test focuses on the power to determine the manner and method by which the office discharges its responsibility. Submitting last year's budget if it reflects the affirmative decisions of the person preparing the budget is sufficient to meet this test. Submitting a budget that does not reflect the decisions of its preparer is not an original budget and fails this test.

Kewaunee, at 356.

Because the duties and responsibilities of the Register in Probate/Probate Registrar are statutorily established, an individual holding these positions has little discretion to exercise in the determination of the type and level of services to be provided. Thus, the focal point of analysis must be on the discretion exercised to determine the manner and means by which the services will be provided.

Here, the record evidence as to her discretion in budget preparation and administration

establishes that Seymour will independently determine the manner and means by which her office will function. Under Kewaunee, the fact that her discretion is reflected by expenditure levels for the seemingly mundane matters of postage and office supplies and equipment ultimately does not detract from the independence of her authority. While her budget is reasonably small and may ultimately reflect a continuance of her predecessor's "manner and means" choices, we are satisfied that she can make different choices if she wishes to have the office function in a different manner. Thus, under Kewaunee, her independent power and authority as to how her office will function (as also reflected by her status as a department head) warrants a conclusion that she is a managerial employe.

Thus, Seymour is properly excluded from the bargaining unit. Should her actual budgetary independence from Judge Kirchman turn out to be more limited than the testimony of Judge Kirchman and Seymour indicates it will be, the Union is free to ask us to revisit the status of this position.

Dated at Madison, Wisconsin, this 11th of August, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

William K. Strycker /s/
William K. Strycker, Commissioner

CRAWFORD COUNTY

DISSENT OF COMMISSIONER TOROSIAN

I have carefully reviewed the language of Kewaunee and Manitowoc and the facts of this case. From my review, I am satisfied that the Court's decisions do not warrant conferring managerial status on the instant Register in Probate/Probate Registrar. I reach this conclusion because the discretion she exercises (as outlined and relied upon by the majority) regarding the manner and means by which the office will function does not entail managerial decisions of sufficient substance to warrant exclusion of the position from the bargaining unit.

Similarly, I do not find the Judicial Assistant's anticipated budgetary responsibilities and/or her involvement with the work of the Juvenile Court worker and Security Bailiff sufficient to warrant her exclusion from the unit.

Dated at Madison, Wisconsin, this 11th day of August, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Commissioner