STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

BRANCH COUNTY BOARD OF COMMISSIONERS,
BRANCH COUNTY CLERK,
BRANCH COUNTY REGISTER OF DEEDS,
AND BRANCH COUNTY TREASURER,
Respondent-Public Employers,

Case No. C00 A-10

-and-

INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Lange & Cholack, P.C., by Eric W. Cholack, Esq., for Respondent Branch County Board of Commissioners

Miller, Canfield, Paddock and Stone, P.L.C., by Louis B. Reinwasser, Esq., for Respondents Branch County Clerk, Branch County Register Of Deeds, and Branch County Treasurer

Office of the General Counsel, International Union, UAW, by Dan Sherrick, Esq., and Georgi-Ann Bargamian, Esq., for Charging Party

Michael R. Kluck & Associates, by Michael R. Kluck, Esq., for Amici Curiae United County Officer's Association and Michigan Association of County Clerks

White, Schneider, Baird, Young & Chiodini, P.C., by Thomas A. Baird, Esq., and Michael M. Shoudy, Esq., for Amicus Curiae Michigan Association of Registers of Deeds

Dykema Gossett, P.L.L.C., by Bruce G. Davis, Esq., Phyllis G. Donaldson-Adams, Esq., and Steven C. Liedel, Esq., for Amicus Curiae Michigan Association of County Treasurers

DECISION AND ORDER

On April 17, 2001, Administrative Law Judge (ALJ) Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondent Branch County Board of Commissioners (Commissioners), and Respondents Branch County Clerk, Branch County

Register Of Deeds, and Branch County Treasurer (Elected Officials) violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by attempting to require the Charging Party International Union, United Automobile Aerospace & Agricultural Implement Workers Of America, UAW, to bargain with the Elected Officials over all of the employees in their offices, rather than just their respective chief deputies. The ALJ also found that Respondent Commissioners violated their duty to bargain in good faith when two of the Commissioners, who had participated in negotiations and signed a tentative agreement, voted against its ratification. In the light of the fact that the collective bargaining agreement would have been ratified but for the conduct of those two Commissioners, the ALJ recommended that Respondent Commissioners be ordered to execute the agreement found to have been accepted by the negotiators for both parties.

On June 7, 2001, Respondents Elected Officials filed timely exceptions and a brief objecting to the ALJ's findings that they are not co-employers with Branch County of all of the deputies working in their respective offices and that their insistence on negotiating as co-employers was an unfair labor practice. Respondents Elected Officials seek oral argument in this matter. After reviewing the exceptions and briefs filed by the parties, we find that oral argument would not materially assist us in deciding this case. Therefore, Respondent's request for oral argument is denied.

An Amici Curiae brief was filed on June 5, 2001, on behalf of the United County Officer's Association and the Association of County Clerks. On June 7, 2001, Amicus Curiae briefs were filed on behalf of the Michigan Association of County Treasurers and the Michigan Association of Registers of Deeds. Charging Party filed a response brief in support of the Decision and Recommended Order of the ALJ on June 20, 2001. Respondent Branch County Board of Commissioners did not file exceptions to the Decision and Recommended Order of the ALJ.

No exceptions have been filed with respect to the ALJ's finding that Respondent Commissioners violated their duty to bargain in good faith and her finding that the collective bargaining agreement would have been ratified but for the conduct of the two Commissioners who participated in negotiations and signed a tentative agreement, but voted against its ratification. Thus, we adopt, without further discussion, the ALJ's Decision and Recommended Order to the extent it applies to Respondent Commissioners.

Discussion and Conclusions of Law

The facts in this case were set forth fully in the ALJ's Decision and Recommended Order and will not be repeated in detail here. The parties do not dispute the material facts. In May of 1998, Charging Party was certified as the collective bargaining representative of three bargaining units of Branch County employees: a general unit; a supervisory unit; and a prosecuting attorney unit. Bargaining for an initial contract began in January of 1999. The chief deputies of the Elected Officials are in the supervisory unit. All other employees working in the Elected Officials' offices are in the general unit. During the course of the contract negotiations, the Elected Officials asserted co-employer status for their chief deputies and all of the employees in

their respective offices and demanded that Charging Party bargain with them in addition to Respondent Board of Commissioners.

It is the Charging Party's contention that the Elected Officials are co-employers with Branch County only with regard to their respective chief deputies. The ALJ agreed, interpreting each of the statutes delineating the Elected Officials' respective powers to make and revoke appointments as limiting each of the Elected Officials to co-employer status with respect to a single deputy. In arriving at this conclusion the ALJ relies upon *Genesee County Social Services v Genesee County*, 199 Mich App 717 (1993), as support for the premise that the powers of an elected official to appoint and revoke the appointment of a particular classification of employees must be specifically delineated by statute. We disagree with the ALJ's interpretation of the appointive powers of the elected officials under their respective statutes, and her application of *Genesee County* in this case.

In *Genessee County*, 199 Mich App 717, 720, the Court of Appeals followed the test for co-employer status pronounced in *St Clair Prosecutor* v *AFSCME*, 425 Mich 204, 233 (1986) and in *Berrien County*, 1987 MERC Lab Op 306, 317 stating:

> [O]ur Supreme Court held that, for purposes of collective bargaining under the PERA, prosecutors could be held to be coemployers, along with the counties, of assistant prosecutors where prosecutors "are given statutory authority to hire, manage, and terminate the employment of their assistants." *Id.*, p 233. In *Berrien Co v Teamsters, Local 214*, 1987 MERC Lab Op 306, 314, the MERC restated this test: "[W]here [a] statute gives an elected official the power *both* to appoint an employee and to revoke that appointment at pleasure, or at any time, under *St Clair County Prosecutor* that official becomes the coemployer of that employee."

Although the facts of this case are distinguishable from those of *Genesee County,* the test for co-employer status is equally applicable to this matter. The issue in *Genesee County* was whether the county prosecutor was a co-employer, with the county, of social workers assigned to work as victim-witness assistants in the prosecutor's office. Inasmuch as the social workers did not come within the categories of employees that the prosecutor was authorized to appoint, the social workers reported to a casework supervisor instead of the prosecutor, and the social workers did not serve at the pleasure of the prosecutor, the court held the prosecutor was not a co-employer of the social workers.

In this case, the employees in question are all deputies of the respective county officials. Each of the respective Elected Officials is required by statute to appoint a deputy or deputies. The County Clerk is specifically mandated by MCL 50.63 to appoint "one or more deputies." The County Treasurer is required, under MCL 48.37, to appoint a deputy. Similarly, MCL 53.91 provides that the Register of Deeds "shall" appoint a deputy. Thus, unlike the employees at issue in *Genessee County*, the appointment of this class of employees is specifically authorized by statute. Moreover, the Elected Officials' relationship with their respective deputies differs from the role of the prosecutor in *Genessee County* in relation to the social workers in his office as each of the Elected Officials is responsible for hiring, supervising and disciplining each of their respective deputies.

Charging Party contends that the Branch County Clerk is a co-employer of only her chief deputy. A careful reading of the statute does not support that conclusion. MCL 50.63 states:

> Each county clerk **shall appoint 1 or more deputies, to be approved by the circuit judge**, 1 of whom shall be designated in the appointment as successor of such clerk in case of vacancy from any cause, **and may revoke such appointment at his pleasure, which appointment and revocation shall be in writing**, under his hand, and filed in the officer of the county treasurer, and the deputy or deputies, may perform the duties of such clerks.
> (Emphasis added.)

Nothing in this language suggests that a county clerk is limited to appointing one deputy. In *Lapeer County*, 1995 MERC Lab Op 181, this Commission cited *Berrien County* in holding that the county clerk is the co-employer with the county of his or her appointed **deputies**. Charging Party argues that the statute allows a county clerk to appoint one or more deputies, but that it specifically limits the clerk's revocation power to a single "such appointment," suggesting that such reference goes to the appointment of her successor only.

It seems clear that one of the deputies must be **designated** as the clerk's successor. That **designation** may be removed at the pleasure of the clerk but such designation or removal thereof does not require the revocation of the appointment of such person as a deputy. However, it is equally evident that the appointment of a deputy who has not been designated as the clerk's successor may also be revoked. To suggest that once deputies have been appointed, they may not be removed by revocation of the appointment by the clerk would seem to run contrary to the whole appointment scheme of the statute. Such a holding would consequently render the appointment power meaningless, since under Charging Party's interpretation, once the appointment has been made it would be irrevocable. We believe that such interpretation is contrary to law.

In *Lockwood v Stoll*, 264 Mich 598, 250 NW 321 (1933), the court ruled that the appointment or employment of the clerks and deputies in the register of deeds office did not extend beyond the term of the elected official who appointed or employed them and permitted the successor register to terminate the employment of his predecessor's deputies. We hold that the power to appoint deputies and to revoke such appointment applies to all of the deputies who serve at the pleasure of the county clerk.

The statute authorizing the appointment of a county treasurer's deputies, MCL 48.37, differs from that authorizing the appointment of deputies by a county clerk in that it merely mandates the appointment of "a deputy", stating:

> The county treasurer shall appoint a deputy, who, in the absence of the treasurer from the office, or in case of a vacancy in the office, or a disability of the treasurer to perform the duties of the office, may perform all the duties of the office of treasurer, until the vacancy is filled or the disability is removed. The county treasurer may revoke those appointments at any time. The deputy shall qualify by taking the constitutional oath of office and filing a bond, if the county

> board of commissioners determines that an individual bond is necessary. The treasurer may employ personnel necessary and approved by the county board of commissioners. In a county having a civil service, employment of personnel shall be in accordance with Act No. 370 of the Public Acts of 1941, as amended, being sections 38.401 to 38.428 of the Michigan Compiled Laws. All appointments and revocations of appointments shall be in writing. A treasurer shall not be responsible for the acts, defaults, and misconduct in office of a deputy or any other employee in the treasurer's office accruing without the knowledge or negligence of the treasurer. Each employee, before entering upon the duties of office, shall execute and file an individual bond, for the faithful performance of duties in the amount, form, and manner prescribed by the county board of commissioners, if the county board of commissioners determines that an individual bond is necessary. The deputy or other employee shall be liable for the deputy's or employee's acts, defaults, and misconduct in office in the same manner as the treasurer or the treasurer's executors and administrators would otherwise be liable, and actions for those acts, defaults, and misconduct shall be prosecuted directly against the deputy or other employee, and the appropriate surety.

The language of MCL 48.37 is replete with the use of plural phrases indicating an expectation that a county treasurer might make multiple appointments. It states: "those appointments" may be revoked at any time; that the treasurer shall not be responsible for the misconduct of "a deputy" and not "the deputy," and finally, "all appointments and revocations of appointments" shall be in writing. All of these plural phrases lead one to the reasonable conclusion that the county treasurer is authorized to appoint and revoke the appointments of multiple deputies at his or her pleasure.[1] Moreover, in *Berrien County*, 1987 MERC Lab Op 306, 314, we interpreted the same statute as "giving the treasurer the right to appoint **deputies** whose appointments may be revoked at any time." (Emphasis added.)

As with the statute authorizing the appointment of a county treasurer's deputies, MCL 48.37, the statute authorizing the appointment of deputies by a county register of deeds, MCL 53.91, merely mandates the appointment of "a deputy", stating:

> The register of deeds shall appoint a deputy, to hold his office during the pleasure of the register; such appointment and the revocation thereof to be in writing, and filed in the office of the county clerk; and before such deputy shall enter upon the duties of his office, he shall take the oath prescribed by the twelfth article of the constitution, and for the faithful performance of his duties by such deputy the register and his sureties shall be responsible.

[1] As to the issue of the employment of other personnel by the Branch County Treasurer as approved by the county board, we are not persuaded that the language of the statute is so precise so as to cause this Commission to overturn our decision in *Berrien County*, with respect to employees not appointed as deputies. The statute does not establish a county treasurer as the co-employer of employees other than his or her appointed deputies under *St. Clair County Prosecutor*.

Charging Party supports the finding of the ALJ that the Branch County Register of Deeds is restricted by statute to the appointment of one deputy by virtue of the language of the statute. On the other hand, Respondent argues that the ALJ's finding that the Branch County Register of Deeds was a co-employer of only one employee is contrary to the Supreme Court's construction of MCL 49.41 in *St. Clair County Prosecutor*. According to Respondent, the Court held that a prosecutor was a co-employer of all of the assistant prosecuting attorneys in his or her office based in part on the language of MCL 49.41, which states:

> The prosecuting attorney of any county is hereby authorized and empowered to appoint **an** assistant prosecuting attorney…. (Emphasis added.)

Respondent argues that although the statute indicates that the prosecuting attorney can appoint **an** assistant prosecuting attorney, the court found that the prosecutor had the authority to appoint, supervise, and terminate all of the assistant prosecuting attorneys who work in the prosecutor's office. Charging Party correctly points out that MCL 49.31, and 49.35 provide that the prosecutor may appoint: "As many assistant prosecuting attorneys" as the County Board deems necessary and assistant prosecuting attorneys so appointed and hired "shall hold office during the pleasure of the prosecuting attorney." Additionally, the Court was examining "appointment" and "tenure," not numbers of assistant prosecuting attorneys that may be appointed or terminated at will by a prosecuting attorney. In *St. Clair County Prosecutor* the Court noted:

> No party or tribunal in this case has questioned that the statute, standing alone, gives the prosecutor the authority to appoint, supervise, and terminate APAS. Nor has there been any questioning of the authority of the county, through its board of supervisors, to control the number and remuneration of assistant prosecuting attorneys.

Therefore, we question whether the Court's finding that the prosecutor was a co-employer of the assistant prosecuting attorneys should be regarded as disposing of the question of whether language authorizing "an" appointment, can be read to authorize multiple appointments of the same category of employees.

However, we note that the language of the statute authorizing the Register of Deeds to appoint a deputy is mandatory language, stating that the "register of deeds shall appoint a deputy". The statute does not say the register of deeds "may appoint a deputy," as such language would clearly imply a limitation on the register of deeds's authority to appoint deputies. The mandatory language **requiring** the register of deeds to appoint a deputy implies no such limitation. Instead, it appears likely that the language was designed to be consistent with the language of MCL 45.41, which **permits** the treasurers, clerks and registers of deeds in counties of populations in excess of 50,000 to each appoint one or more deputies.[2] Moreover, we are persuaded by *Lockwood v Stoll,* that the statutory language was not intended to be a limitation on the number of deputies that could be appointed, but was intended to confer the power of appointment and revocation with regard to the office, not a particular holder of such office. In

[2] We do not apply MCL 45.41 to this matter as the record lacks evidence establishing that Branch County has a population of 50,000 or more.

Lockwood v Stoll, in rejecting the plaintiffs' argument that they were employees of the county and not subject to termination by the newly elected register of deeds, the court held that the appointment or employment of the register of deeds's clerks and deputies expired with the term of the register of deeds. The court did not limit the register of deeds's power to make or revoke appointments to a single deputy, but instead spoke of "deputies". Therefore, we disagree with the ALJ that the language of the statute is intended to limit the register of deeds to the appointment and removal of just one deputy.

Accordingly, we conclude that the Elected Officials are co-employers of all of their respective deputies and therefore did not violate Section 10(1)(e) of PERA. Thus, the unfair labor practice charges must be dismissed as to the Elected Officials. Since no exception was taken to the findings of the ALJ concerning the bad faith bargaining charge against the County, we adopt those findings and the recommended remedial action that Respondent Branch County Board of Commissioners be directed to execute the agreement found to have been accepted by the negotiators of both parties.

ORDER

The charges against the Elected Officials are dismissed.

It is hereby ordered that Branch County, it officers, agents, and assigns, shall:

1. Cease and desist from:

    a) Failing to bargain in good faith with International Union, United Automobile Aerospace & Agricultural Implement Workers of America, UAW, by the conduct of its Commissioners in voting against the tentative agreement reached on January 11, 2000.

2. Take the following affirmative action designed to effectuate the policies of the Act:

    a) Upon request of the aforesaid Union, execute a document incorporating the agreement reached on January 11, 2000, retroactive to January 1, 1999.
    b) Make whole all employees covered by the aforesaid agreement for the loss of any benefits that would have accrued to them under the contract.
    c) Post copies of the attached Notice to Employees in conspicuous places on Respondent's premises, including all locations where notices to employees are customarily posted. Copies of this notice shall remain posted for 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated:_____

NOTICE TO EMPLOYEES

PURSUANT TO AN UNFAIR LABOR PRACTICE PROCEEDING BEFORE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION, AFTER A PUBLIC HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE IN WHICH BRANCH COUNTY WAS FOUND TO HAVE VIOLATED THE PUBLIC EMPLOYMENT RELATIONS ACT OF THE STATE OF MICHIGAN, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to bargain in good faith with the International Union, United Automobile Aerospace & Agricultural Implement Workers of America, UAW, by the conduct of County Commissioners in voting against the tentative agreement reached on January 11, 2000.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 9 of the Act.

WE WILL upon request of the Union, execute a document incorporating the agreement reached on January 11, 2000, retroactive to January 1, 1999.

WE WILL make whole all employees covered by the aforesaid agreement for the loss of any benefits that would have accrued to them under the contract.

BRANCH COUNTY

By:_____

Dated:_____

(This notice shall remain posted for a period of thirty (30) consecutive days and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Boulevard, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202-2988, (313) 256-3540.)