

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of Petition of  
DANE COUNTY ATTORNEYS ASSOCIATION

For Clarification of Bargaining Unit  
Involving Certain Employees of

DANE COUNTY

Case XXXII  
No. 16040 ME-841  
Decision No. 11482-C

Appearances:

Mr. Robert Mueller, Attorney at Law, appearing on behalf of  
the Association.

Mr. Robert Hesslink, Attorney at Law, appearing on behalf of the  
Municipal Employer.

ORDER CLARIFYING BARGAINING UNIT

Dane County Attorneys Association having requested the Wisconsin Employment Relations Commission to issue a clarification of a bargaining unit consisting of certain employees of Dane County, and hearing having been held in the matter at Madison, Wisconsin on June 7, 1974, Commissioner Morris Slavney, Chairman, being present; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and files the following

ORDER

That the collective bargaining unit, previously certified by the Wisconsin Employment Relations Commission on February 1, 1973, consisting of all regular full-time and regular part-time attorneys in the employ of Dane County, excluding supervisory, confidential and all other employees of Dane County, shall be, and the same hereby is, clarified to exclude the position of Attorney III-Legal Coordinator, Department of Social Services, and the position of Attorney III-Legal Coordinator, District Attorney's Office.

Given under our hands and seal at the  
City of Madison, Wisconsin this 29<sup>th</sup>  
day of August, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney  
Morris Slavney, Chairman

Zel S. Rice II  
Zel S. Rice II, Commissioner

Howard S. Bellman  
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING ORDER  
CLARIFYING BARGAINING UNIT

On February 1, 1973, following an election conducted by it, the Wisconsin Employment Relations Commission certified Dane County Attorneys Association as the exclusive representative of employes in a unit consisting of all regular full-time and regular part-time attorneys in the employ of Dane County, excluding supervisory, confidential and all other employes of Dane County. 1/ The Association and the Municipal Employer are parties to a collective bargaining agreement for the period December 24, 1972 through January 4, 1975, wherein the aforementioned unit description is incorporated.

On May 17, 1974, the Association filed a petition requesting clarification of the existing bargaining unit with respect to the appropriate inclusion or exclusion of the positions occupied by Attorney Robert Hessling employed by the office of Corporate Counsel, Attorney Frank Rentz of the Social Services Legal Staff, Attorney Robert De Chambeau of the District Attorney's Office and Attorney James A. Crandall of the Social Services Legal Staff. During the course of the hearing conducted in the matter on June 7, 1974, the parties stipulated to exclude Attorney Robert Hessling, on the basis of confidential status, and Attorney Frank Rentz, on the basis of temporary employment, from the aforementioned collective bargaining unit. The Municipal Employer, contrary to the Association, asserts that the positions occupied by Attorney Crandall and Attorney De Chambeau are supervisory and confidential, and thereby should be excluded from the existing collective bargaining unit.

Attorney James Crandall  
Department of Social Services  
Legal Coordinator

Attorney James Crandall is employed as the Assistant District Attorney III-Legal Coordinator within the Legal Section of the Dane County Social Services Department. The Legal Section provides legal services to the Department's administrators and staff. The funding and supervision of the Legal Section are provided by the Social Services Department. The Legal Section is physically separated from the other Department facilities. Attorney Crandall, as the highest ranking Attorney in the legal unit, visits the Social Services Department on Northport Drive almost daily. The Legal Section is located adjacent to the District Attorney's office in the City-County Building. Upon a complaint by a Social Services Case Aide or worker, the attorneys employed in the Legal Section investigate and prosecute matters involving fraud and child welfare in the areas of delinquency, neglect, non-support and parental rights.

Subsequent to the creation of the legal unit within the Social Services Department, the Deputy Director of Social Services recommended that Attorney Crandall's position be reclassified from Assistant District Attorney III to Assistant District Attorney IV. The County Board of Supervisors passed and subsequently rescinded a resolution providing for the same. On January 17, 1974, the Board passed a resolution which reclassified Attorney Crandall's position to Assistant District Attorney III-Legal Coordinator within the Department of Social Services. Although such action was accompanied by a potential increase in salary, such a change had not been effectuated at the time of hearing, in that the recommendations of a private consultant's salary and classification survey were pending.

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1/ Decision 11482-A.

Attorney Crandall is immediately supervised by Mr. Jerry McCartney, the Director of the Dane County Department of Social Services. The Deputy Director of Social Services, Mr. Gordon Fon, serves as liaison to the Legal Section. The Section consists of the Legal Coordinator, four Assistant District Attorney I's and II's (a fifth position has been authorized), four clerical employes and two law students. The Legal Section Staff, through Attorney Crandall, may require, or may solicit, the approval and/or opinion of the District Attorney's office with regard to the cases being considered by the legal unit for prosecution.

Attorney Crandall assigns the clerical employes to the various attorney's and is instrumental in determining the work flow stemming from legal proceedings and related clerical functions. The Stenographer III is responsible for overseeing the actual clerical work of the Stenographers. The Legal Coordinator prepares and submits employe ratings for use in the determination of merit pay.

Upon a Social Service worker's complaint of fraud, Attorney Crandall assigns the case to a section attorney for investigation and possible prosecution. In addition to handling his own caseload, Attorney Crandall spends approximately 50% of his working time assigning cases, consulting the attorneys on the appropriate methods of handling various cases and monitoring the progress and status of assigned cases. The Legal Coordinator participates in meetings with Mr. McCartney and Mr. Fon at which departmental policy and procedure are determined. The incumbent is responsible for the establishment of procedures to effectuate the efficient and orderly operation of the legal unit office.

Attorney Crandall has effectively participated in the interviewing and hiring of legal staff for the Social Service Department. Employment interviews of three certified Civil Service applicants have been conducted by Attorney Crandall and Mr. Fon with the District Attorney participating on occasion. The Legal Coordinator conducts an orientation for all newly hired employes within the Legal Section. He assigns employe days off, schedules vacations, is advised by employes of their use of sick leave, and relays employe requests for leave of absence to the Director of Social Services for his approval.

On one occasion, Attorney Crandall initiated, without recommendation, a discussion concerning possible disciplinary action against a section employe. The situation was apparently remedied prior to the commencement of any formal action. The Legal Coordinator has been involved in the oral first step of the grievance procedure available to the attorneys within the unit.

In light of Attorney Crandall's responsibility for office operation, participation in the hiring and grievance processes, and his authority to assign, direct and schedule employes, we are satisfied that the Legal Coordinator is a supervisory employe appropriately excluded from the existing collective bargaining unit.

Attorney Robert De Chambeau  
District Attorney's Office  
Legal Coordinator

Attorney Robert De Chambeau is employed as the Assistant District Attorney III-Legal Coordinator within the Dane County District Attorney's Office. The position was federally funded from 1971 through 1973. At the same time that the Social Services Legal Coordinator position was reclassified early in 1974, the position of Legal Coordinator within the District Attorney's Office was made permanent

and was placed under Civil Service. At the time of the hearing, the position was being reviewed by the private consultant concerning its appropriate classification and salary level.

Organizationally, the Legal Coordinator within the District Attorney's Office is directly supervised by the appointed Deputy District Attorney who in turn reports to the elected District Attorney. The Municipal Employer points out that the eventual turnover of the elected District Attorney and related change over in Deputy District Attorney renders the position of Legal Coordinator crucial to the continuity of the District Attorney's Office operation.

The duties of the Legal Coordinator include the prosecution of felony and serious misdemeanor cases, investigation of prosecution in John Doe proceedings, cooperation and coordination of efforts with the Metropolitan Narcotics Squad, instruction and legal guidance of approximately five full-time and seven part-time county and city law enforcement agencies. In addition, the incumbent oversees the work of the legal staff and investigator in the District Attorney's Office, criminal division. The division is staffed by ten staff Assistants (Assistant District Attorney I, II and III's), one investigator and three to ten law students. Attorney De Chambeau is responsible for "screening cases for prosecution; assigning cases to staff assistants; advising staff assistants on the law, trial strategy, and tactics; advising staff assistants on office policy decisions as they pertain to certain cases; examining criminal complaints; examining search warrants and approving the issuance of search warrants; and advising staff assistants on a daily basis as to any problems they encounter."

Although his participation is so envisioned, to date, Attorney De Chambeau has not been involved in either the grievance procedure or hiring process. 2/ The Legal Coordinator, along with District Attorney and Deputy, attends meetings in which office policies affecting work loads, work rules, methods and procedures and budgets are formulated. Attorney De Chambeau, in addition to handling his own case load, monitors and reviews case action taken by staff members. The incumbent also performs routine scheduling of employe vacations. On several occasions, Attorney De Chambeau has recommended the discipline of an employe for substandard job performance.

We are satisfied that Attorney De Chambeau's legal coordination of the District Attorney's Office and assignment of work to the District Attorney's staff warrants the exclusion of the Legal Coordinator's position from the existing collective bargaining unit on the basis of supervisory status.

We are aware that the occupants of every position perform considerable unit work, however, we are convinced that the supervisory

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2/ No employes have been hired in the District Attorney's office since De Chambeau assumed his duties in January, 1973.

functions assigned to them outweigh that factor in reaching our conclusions herein.

Dated at Madison, Wisconsin, this *29th* day of August, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Thomas Slavney*  
Morris Slavney, Chairman

*[Signature]*  
Le. S. Rice II, Commissioner

*Howard S. Bellman*  
Howard S. Bellman, Commissioner