
In the Matter of the Petition of

MADISON CITY ATTORNEYS
ASSOCIATION

Involving Certain Employees of

CITY OF MADISON

Appearances:

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

FINDINGS OF FACT

Article III - Membership

3. That in the instant petition the Union requests the Commission to conduct an election among all employees of the City who are required to have a law degree or a license to practice law, excluding the City Attorney, managerial, supervisory, executive, and confidential employees; that the City contends: (1) that the instant petition should be dismissed because of supervisory and confidential employee participation in generating the election petition; (2) that, in the alternative, the petition should be dismissed because the Union is not qualified to be a labor organization because it is dominated by supervisory and/or confidential employees; (3) that if the petition is not dismissed, the unit petitioned for is inappropriate and the appropriate unit should be composed of all

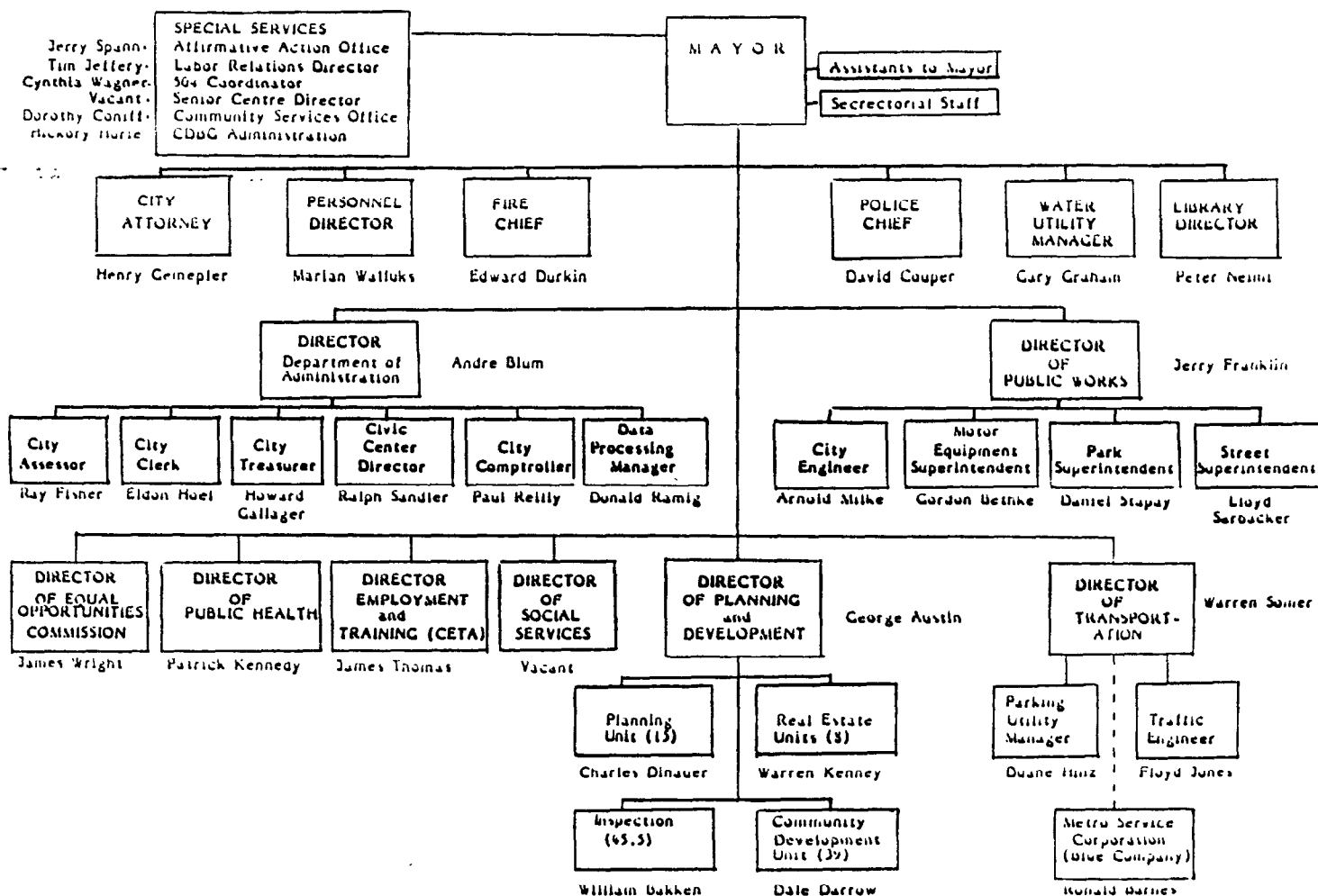
the remaining unrepresented professional employees of the City; (4) that James Martin is a supervisory employee and Eunice Gibson and Larry O'Brien are confidential employees; that the Union contests all of the City's said contentions; and that if the Commission finds that all remaining professional employees constitute the appropriate unit, the Union requests an election in said professional unit.

4. That the parties stipulated that Assistant City Attorney William A. Jansen is a confidential employee; that the parties stipulated that the following employees, hereinafter referred to as attorneys, are in positions which require a law degree or a license to practice law:

<u>NAME</u>	<u>JOB TITLE</u>	<u>PAY RANGE</u>
O'Brien, Larry W.	Assistant City Attorney 6	20
Olsen, Robert E.	Assistant City Attorney 6	20
Gibson, Helen E.	Assistant City Attorney 5	18
Rothschild, John	Assistant City Attorney 5	18
Voss, James M.	Asssitant City Attorney 5	18
Martin, James L.	Assistant City Attorney 3	14
Hogg, Carolyn	Assistant City Attorney 2	12
Petri, Marinus J.	Assistant City Attorney 2	12
Gast, Karen	Assistant City Attorney 1	10
Lawent, Allen	Hearing Examiner - EOC	11

and, that the parties stipulated Olsen, Rothschild, Voss, Hogg, Petrie, Gast and Lawent are municipal employees.

5. That the City is organized into fourteen (14) departments and has the following organizational structure:



that the City currently bargains with the following twelve (12) bargaining units: Library Unit, Professional Librarian Unit, Social Services Unit, Social Services Professional Unit, General and Clerical Unit, Laborers Unit, Mass Transit Unit, Elderly and Handicapped Drivers Unit, Firefighters Unit, Supervisory Firefighter Unit, Law Enforcement Unit, and Supervisory Police Unit; and that the City employs approximately 2300 employees.

6. That the City contends that the following unrepresented employees, hereinafter referred to as (but not determined herein to be) non-represented professionals, are professional employees:

LIST OF NON-REPRESENTED PROFESSIONAL EMPLOYEES
(Non-Confidential/Non-Supervisory)

<u>NAME</u>	<u>JOB TITLE</u>	<u>PAY RANGE</u>
Wagner, Cynthia	504 Coordinator	03
Banuelos, Sylvia	Pers. Anal. 2	08
Constans, Barbara	Grants Administrator	08
Oehler, Charles	Grants Administrator	08
Jones, Donna	Contract Compl. Off.	12
Kitson, Robyn	Adv. Coordinator	04
Coleman, Marilyn	Sr. Center Director	05
Aaronson, Lorna	Day Care Progr. Spec.	06
Strupp, Aurelia	Day Care Progr. Spec.	06
Preis, Julie	Day Care Progr. Spec.	06
Habich, Mark P.	Systems Proc. Anal. 2	07
Kleckner, Edward	Planner 1	06
Larson, David A.	Planner 2	08
Roberts, William G.	Planner 2	08
Brown, Percy	Planner 2	08
Nicolette, Jr., Archie J.	Planner 2	08
Gutzman, Robert E.	Planner 3	10
Naherny, Katherine	Planner 3	10
Rankin, Katherine	Planner 3	10
Waidelich, Michael W.	Planner 3	10
Stepnik, Joseph	Relocation Counselor	04
Robinson, Irene M.	Real Estate Agent 1	08
Reinhardt, William A.	Real Estate Agent 3	12
Pappas, Gus	Real Estate Agent 3	12
Goff, Elaine L.	Plan Tech. Sr.	07
Madar, John D.	Housing Rehab. Spec.	05
Knutson, Sheri	Safety Coordinator	05
Cole, Robert J.	Property Inv. Off.	08
Sweeney, Thomas V.	Computer Opr. 3	06
Beadles, Richard	Computer Opr. 3	06
Onshus, James R.	Computer Opr. 3	06
Karsten, Gary	Computer Opr. 3	06
Lange, Mark	Computer Opr. 3	06
Alburn, Walter	Computer Opr. 3	06
Sieger, Debra	Systems Proc. Anal. 4	13
Aldrich, Thomas C.	Programmer 3	09
Van Pelt, Cynthia	Programmer 3	09
Jensen, Terry H.	Programmer 3	09
Thompson, Darwin L.	Programmer 3	09
Vann, Karen	Programmer 3	09
Johnson, James N.	Programmer 3	09
Seguin, Richard	Programmer 3	09

Maryott-Walsh, Julie	Planner 1	06
Patronsky, Ross	Planner 2	08
Richard, James P.	Civil Engr. Senior	12
Martin, Katherine	Civil Engr. Senior	12
Sponem, James	Civil Engr. Senior	12
Hoffland, Ronald H.	Civil Engr. Senior	12
Benzschawel, David	Civil Engr. Senior	12
Fahrney, Donald L.	Civil Engr. Senior	12
Wendricks, Bernard J.	Civil Engr. Senior	12
Jackson, Jan W.	Engr. Tech. 2	08
Strobusch, Gene F.	Engr. Tech. 2	08
Thompson, Patrick	Transp. Opns. Anal.	10
Greuel, Mary	Traff. Engr. 1	10
Notbohm, Thomas	Traff. Engr. 2	12
Walsh, Thomas W., Jr.	Traff. Engr. 2	12
Klawitter, Thomas F.	Engr. Tech. 2	08
Burke, Kenneth J.	Program Mgt. Anal.	05
Ragland, Nancy	Landscape Archit. 1	08
Sundby, Jon W.	Landscape Archit. 1.	08
Glassen, Peter	Electron. Applic. Spec.	06
Lautzenhiser, Donald	Electronic Mtn. Tech.	06
Dukes, Marilyn J.	Water Supply Technl.	06
Shawkey, Curtis N.	Utility Analyst	08
Roeske, Robert	Accountant 3	10
Cawley, Dennis M.	Civil Engineer	10

7. That the pay ranges for Attorneys and the non-represented professionals are established by the City's Common Council; that said employees have the same benefits and working conditions as established by the City's Common Council in the City's Civil Service Ordinance; that Attorneys' work day and hours vary from those established by said Civil Service Ordinance and that City Attorney Henry Gempeler has established an informal compensatory time system; that the bi-weekly pay ranges for Attorneys and non-represented employees the City contends are professionals is as follows:

Pay Range

	0	1	2	3	4	5
02	766.89	792.77	818.65	847.06	870.36	
03	792.77	818.65	847.06	870.36	903.97	
04	818.65	847.06	870.36	903.97	944.08	
05	847.06	870.36	903.97	944.08	982.11	
06	870.36	903.97	944.08	982.11	1024.78	
07	903.97	944.08	982.11	1024.78	1070.84	
08	944.08	982.11	1024.78	1070.84	1120.27	
09	982.11	1024.78	1070.84	1120.27	1175.98	
10	1024.78	1070.84	1120.27	1175.98	1231.60	
11	1070.84	1120.27	1175.98	1231.60	1290.42	
12	1120.27	1175.98	1231.60	1290.42	1352.48	
13	1175.98	1231.60	1290.42	1352.48	1414.68	
14	1231.60	1290.42	1352.48	1414.68	1482.66	
15	1290.42	1352.48	1414.68	1482.66	1553.71	
16	1352.48	1414.68	1482.66	1553.71	1629.87	
17	1414.68	1482.66	1553.71	1629.87	1706.05	
18	1482.66	1553.71	1629.87	1706.05	1718.71	
19	1553.71	1629.87	1706.05	1718.71	1863.49	
20	1629.87	1706.05	1718.71	1863.49	1951.21	

that salary advancement in said pay ranges is made to the next higher rate upon completion of a year of service until the maximum rate of said salary range is received; that advancement from the Assistant City Attorney 1 (pay range 10) to Assistant City Attorney 6 (pay range 20) classification is based primarily on two-years service within the pay range and the City Attorney's recommendation; that there has been an informal dialogue over wages, hours and working conditions between the City and its unrepresented employees listed in Finding of Fact 6 through the Madison Professional and Supervisory Employee Association, hereinafter referred to as MPSEA; that MPSEA has not been formally recognized by the City as the bargaining representative for professional employees; that MPSEA did not move to intervene in the instant matter; that the Attorneys do not share any common supervision with the non-represented employees listed in Finding of Fact 6; that

there is no interchange of employees between the Attorneys and non-represented employees listed in Finding of Fact 6; that the duties and responsibilities of Attorneys require a law degree; that the City does not require a post-graduate degree of non-represented employees listed in Finding of Fact 6; that the duties and skills of Attorneys require fifteen (15) hours per year of continuing legal education coursework, primarily involve litigation where the City or its subunits are the client, and are distinctly different from the duties and skills of the non-represented employees listed in Finding of Fact 6; that Attorneys may attain Pay Range 20; that the maximum pay range attainable by other non-represented employees listed in Finding of Fact 6 is Pay Range 13; that the Attorneys work at offices located at Room 401, 210 Monona Avenue, Madison; that the City's Labor Relations Office is located in the same suite of offices as the attorneys; that the non-represented employees listed in Finding of Fact 6 are located at 210 Monona Avenue, 215 Monona Avenue, and 523 E. Main in Madison; that the non-represented employees listed in Finding of Fact 6 eligible for representation are located at 210 Monona Avenue and do not share offices with Attorneys and are not located on the same floor as the Attorneys; that Attorneys interact with the non-represented employees listed in Finding of Fact 6 infrequently--at most once a week; that Attorneys do not share a community of interest with the non-represented employees listed in Finding of Fact 6; that a bargaining unit consisting of all employees of the City required to have a law degree or a license to practice law, excluding the City Attorney, managerial, supervisory, confidential and executive employees consists of employees who share a community of interest sufficiently unique to justify the conclusion that it is an appropriate bargaining unit and that the establishment of said unit will not cause undue fragmentation of bargaining units of employees employed by the City.

8. That James Martin has been employed by the City for seven (7) years and occupies an Assistant City Attorney 3 position; that since May 11, 1983, Martin has been designated Supervisor of the prosecution staff; that at the time Martin was so designated he did not receive any increase in pay; that the prosecution staff consists of Martin, Petri, Hogg and Gast; that the City's 1984 Handbook specifies Martin's duties as follows:

General supervision of prosecution effort, including assignment of all cases and control of the workload of attorneys assigned to the Prosecution Division, and coordinating and setting standards and guidelines for ordinance prosecutions

Responsible for coordination with the Dane County District Attorney's Office and the Madison Police Department and the City Attorney's Office

Primary responsibility for opinion requests relating to the prosecution program; and providing the Madison Police Department with requested advice;

Responsibility for the prosecution of traffic cases and general ordinance violations, including animal control ordinances, poster and advertising violations, liquor license violations, garnishment actions, bankruptcy actions, smoking regulation prosecutions, Cable TV and other public safety regulations; handles appeals from his cases

Assist in the preparation of opinions and advice to City agencies and departments related to areas of prosecution

Advice and attendance before City Boards and Commissions; responding to citizen inquiries

Assist in the drafting of ordinances related to public safety regulations

Handles some collection actions on behalf of the City

Assist in the handling of Worker's Compensation cases and assist in handling small claims matters wherein the City is both plaintiff and defendant

Assist in the handling of City welfare claims before the State
Department of Health and Social Services

Assist non-prosecution attorneys when assigned

that Martin spends approximately twenty (20) minutes per week assigning approximately 100 cases to said prosecution staff; that after he assigns cases Martin neither monitors the workload nor does he review the work of the prosecution staff; that Martin does not have the effective authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline employees, or to adjust their grievances; that on August 19, 1983, along with a probation evaluation report, Martin sent the following memorandum to Gempeler:

TO: Henry A. Gempeler, City Atty.
FROM: James L. Martin, Assistant City Attorney
SUBJECT: INITIAL PROBATION EVALUATION

During the three months that Karen Gast has been in this office, she has been assigned primary responsibility in the building code enforcement area and backup responsibility in the traffic enforcement area. she (sic) has accepted these responsibilities and has shown a high degree of competence in each area to which she has been assigned. She is currently in the processing of building code cases since she has been on board and has done an excellent job in prosecuting traffic and other cases. Also, she has shown unusual ability in dealing with the public as it relates to telephone inquiries and face to face dealings as they have arisen. I believe the quality and quantity of work which she has tackled to be of the highest quality and performance.

With respect to motivation and initiative, Karen Gast has demonstrated independence, initiative and aggressiveness as it relates to the furthering of City policies and past practices. She has tackled each assignment that she has been given and has demonstrated unusual insight and determination in pursuit of each assignment. Further, as expected, Karen has followed the guidelines that exist in the Prosecution Division and has shown maturity and understanding in the art of compromise and plea negotiation.

The attendance record and observation to regulation of hours of work by Karen has been excellent, including the willingness to work the extra hours that are needed to perform the tasks at hand. She has shown an unusual compatibility with fellow employees and I believe has the respect and admiration of the Building Inspection Division, Court personnel, and everyone within the City Attorney's office.

It is my sincere belief that Karen Gast has been doing and will continue to do an outstanding job for the City of Madison and wish this recommendation to be construed only as a positive reinforcement and hope that she continues in her employment with the City of Madison.

that on October 27, 1983, Gempeler sent the following letter to the City's Personnel Director:

TO: Marian Walluks, Personnel Director
FROM: Henry A. Gempeler, City Attorney
SUBJECT: PROBATION EVALUATION REPORT

Attached hereto is a copy of a report from James L. Martin, Supervisor of the Prosecution Section, documenting the work performance of Karen Gast. Jim has concluded that she is doing an outstanding job for the City of Madison. I fully concur with that conclusion.

In addition to her prosecution duties, I have also assigned her to other tasks, in particular, the responsibility of staffing the Citizen/Aldermanic Committee Reviewing the Madison General Hospital Reorganization. In staffing the Committee, she responded in a most professional and timely manner to the various requests for legal advice. In so doing, she played an important role in assisting the Committee in making its final report to the Common Council and, in fact, the report commended her for her service. Further, the feedback I received from certain members of the Committee demonstrated to me that she was able to relate well to all the members of the Committee.

In conclusion, I find that Karen Gast has done an excellent job in representing the legal needs of the City and I would, therefore, without reservation recommend that she be continued in the service of the City.

that Gempeler did not base his decision to recommend that Gast pass her probationary period solely on Martin's recommendation; that Gempeler has not informed Martin whether Martin has the authority to effectively recommend that employees pass their probationary period; that Martin is the highest paid Attorney on the Prosecution Staff; that, however, Martin's level of pay is primarily based on his years of service rather than his authority to assign cases and coordinate the work of the prosecution staff; that Martin has the authority to release funds for service of subpoenas and witness fees and has released up to \$2500 per year for said purpose; that Martin does not have the authority to establish a budget nor to allocate funds from the City Attorneys Department's budget other than to release funds for said fees; that Martin can reassign work if Prosecution Staff Attorneys are sick or encounter scheduling conflicts; that Martin can assign night work, recommends training, and approves vacations for said Prosecution Staff Attorneys; that Martin has weekly staff meetings with said Prosecution Staff Attorneys; that Gempeler does not normally attend said meetings, and that Prosecution Staff policy and guidelines are discussed at said meetings; that Martin participated in the hiring process which led to the filling of the Attorney 1 position occupied by Gast; that along with Gempeler and John Rothschild, Martin participated in the interviews of all the candidates for Gast's position; that Gast was not Martin's first choice for selection for said position; that Martin therefore does not have the authority to effectively recommend hire; that Martin spends the majority of his time performing non-supervisory duties and primarily supervises activities; and that Martin occupies a position which does not possess supervisory duties and responsibilities in sufficient combination and degree to make him a supervisor.

9. That since 1974 Eunice Gibson has been employed by the City as an Assistant City Attorney; that the City's 1984 Handbook specifies Gibson's duties as follows:

EUNICE GIBSON, Assistant City Attorney

Equal Opportunities Commission

Defense of discrimination complaints against the City

Social Services Department, Community Services Commission
and Social Services Commission

Lakes

that since 1974 Gibson has been involved in the following matters:

1984-1985 - Sick Leave - Racial Discrimination

Gibson represented the City before the Equal Rights Division, Wisconsin Department of Industry, Labor and Human Relations. Police Officer Phillip Wilder filed complaint alleging racial discrimination in City's application of Sick Leave Control Program. Gibson discussed with Jeffery the application of said program to other City employees.

1984 - Maternity Leave - Discrimination

Gibson drafted an opinion for the City Attorney setting forth the City's obligation under Title VII to provide a male nurse maternity leave under the maternity leave provisions of the contract existing between the City and the Union.

1982-1984 - Age Discrimination Claim (Nurses)

Nurses filed an age discrimination claim in July, 1982, and a grievance alleging contract violation on August 22, 1982. Jeffery handled the grievance and Gibson represented the City in the Court case. After June 14, 1983, when an arbitrator ruled in the nurses favor and ordered a make whole remedy, Jeffery suggested the City also resolve the discrimination claim. At this point Jeffery and Gibson discussed settlement options. On April 24, 1984 Gibson drafted an ordinance resolving both the discrimination claim and grievance.

1981 - Sex Discrimination Claim (Detectives)

On November 10, 1981, sixteen (16) detectives filed a claim in Federal Court alleging the City had committed sex discrimination. The sixteen (16) detectives were represented by the Wisconsin Professional Police Association. Gibson represented the City in this matter and discussed options for settlement with Jeffery.

1981 - Handicap Discrimination

Charles Parks files grievance alleging he was demoted because of physical disabilities in violation of several provisions of labor contract. Gibson advised Jeffery of the Fair Employment aspects in regard thereto.

1978-1982 - Equal Pay Act Claim (Parking Monitors)

Evelyn Carroll, et al v City of Madison, U.S. District Court Case No. 78-C-77. Lawsuit filed in 1978 alleging violation of Equal Pay Act, Title VII and 42 U.S.C. Sec. 1983. Gibson represented the City and matter was resolved on November 17, 1982. Prior to 1978, Parking Monitors, represented by Local 60, AFSCME, has attempted to resolve the matter through bargaining. In 1978, when Gibson first became involved in representing the City in this matter, she discussed Jeffery's bargaining notes and discussed settlement options with Jeffery since Local 60 would have to agree to change its collective bargaining agreement before Gibson could settle the lawsuit. Ultimately Jeffery and Darold Lowe, (representing Local 60) agreed to a memorandum of understanding incorporating those aspects of the lawsuit settlement which pertained to the parties collective bargaining agreement.

1978-1982 - Sex Discrimination (Public Health Nurses)

On November 7, 1978, eighteen (18) Public Health Nurses filed a sex discrimination claim against the City.

Said Nurses bargaining representative periodically pressured the City to resolve this matter at the bargaining table. Gibson advised Jeffery to deny said nurses claim at the bargaining table. Gibson represented the City in Federal Court, which held, on April 1, 1982, that City had not violated the Fourteenth Amendment to the U. S. Constitution or Title VII of Civil Rights Act of 1964.

1978 - Declaratory Ruling

Prior to filing a Declaratory Ruling with the Commission on March 1, 1978, Jeffery sought Gibson's legal advice as to whether two provision included in Local 60, AFSCME's final offer were mandatory or permissive. City alleged that two of the seven provisions included in said petition were permissive because they circumvented and violated the City's Affirmative Action Ordinance and applicable Equal Employment Opportunity Laws. Jeffery represented the City before the Commission in this matter.

that Gibson is the City's lead attorney in discrimination cases and spends about 35 percent of her time on discrimination, affirmative action and equal opportunity cases; that the City's Labor Relations Director, Timothy Jeffery, on occasion has sought legal advice from Gibson concerning discrimination issues and their impact on labor agreement negotiations and administration; that Gibson and Jeffery drafted a sexual harassment work rule, and Gibson attended several meetings in the City's Fire Department where the rule was explained to Union officials and employees; that Gibson, representing the City, met with Local 60 officials to explain CETA's discrimination complaint procedure regulation in an attempt to settle a complaint filed by Local 60 alleging violations of said regulation; that Gibson advised the City's layoff committee on various alternatives to laying off employees and the impact of State and Federal anti-discrimination statutes on the alternatives; that Gibson, has advised Jeffery on promotional policies and clauses in various contracts and their impact on affirmative action; that Gibson is a member of a committee established to advise department heads on maintaining a harassment-free work environment; that Gibson has not been a member of the City's collective bargaining agreement negotiations committee, has not represented the City in the various grievance procedures the City has with the Unions identified in Finding of Fact 5, and has never represented the City in an appeal of an arbitrator's decision; and that Gibson's involvement in and exposure to confidential labor relations matters is de minimus and not sufficient to make her position confidential in nature.

10. That since 1967 Larry O'Brien has been employed by the City as an Assistant City Attorney; that the City's 1984 Handbook specified O'Brien's duties as follows:

LARRY W. O'BRIEN, Assistant City Attorney

Election Law

Construction and Professional Services contracts

Alcohol license administration advice and enforcement

Alcohol License Review Committee

Personnel disciplinary actions involving unrepresented employees

Personnel Board

Special consultation and litigation assignments

that in 1976 and 1977 O'Brien participated in the initial investigation, research and enforcement of the City's residency requirements; that O'Brien represents the City in all grievances and/or litigation which arise concerning the City's residency requirement; that O'Brien's duties concerning residency issues include conducting an investigation to determine if an employee has violated the City's residency requirement, advising the City's Mayor on what actions to take should an employee have violated said requirement, representing the City in grievance procedures and, if necessary, in arbitration should an employee grieve the City's actions, and representing the City should it appeal an arbitrator's decision; that O'Brien's workload concerning residency issues varies from year to year and in 1984 O'Brien spent approximately 25 percent of his time on residency cases; that O'Brien participated in the decision to appeal two (2) arbitration decisions in 1984; that O'Brien also is part of a committee which reviews employee requests for waivers of the residency requirement, that if an employee's request is denied the employee can grieve the denial, and that O'Brien has represented the City in the grievance process and arbitration when a waiver request has been denied; that as the City's representative in the grievance process, arbitration and appeal litigation, O'Brien is privy to the City's strategy in contract administration and litigation pertaining to grievances between bargaining representatives and the City; that O'Brien spends approximately 30 percent of his time on personnel matters involving non-represented employees; that O'Brien represents the City before the City's Personnel Board in cases involving non-represented employees; that said duties do not involve matters between bargaining representatives and the City; that O'Brien represents the City in all unemployment compensation claims filed before the State of Wisconsin; that should a grievance have an accompanying unemployment compensation claim O'Brien is aware of the City's strategy in the grievance process; that in 1982 when employee John Kelley was terminated by the City O'Brien was privy to information concerning the City's strategy in the disposition of the grievance filed by Local 60, AFSCME, on Kelley's behalf, and, O'Brien represented the City in Kelley's unemployment compensation claim; that O'Brien was privy to information that Kelley's bargaining representative was not; and that O'Brien occupies a position which has sufficient access to confidential matters relating to labor relations so as to constitute the occupant of said position a confidential employee.

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

CONCLUSIONS OF LAW

1. That the Madison City Attorney's Association is labor organization and a proper party petitioner herein.
2. That there is no basis herein upon which to dismiss the instant petition on the basis of the participation in the filing by alleged supervisory and confidential employees or to condition further processing of the instant petition on modification of the Association's membership or membership criteria.
3. That James Martin, the occupant of an Assistant City Attorney 3 position, is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.
4. That Eunice Gibson, the occupant of an Assistant City Attorney 5 position, is not a confidential employee and, therefore, is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.
5. That Larry O'Brien, the occupant of an Assistant City Attorney 6 position, is a confidential employee and, therefore, is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.
6. That a question concerning representation exists within the following collective bargaining unit deemed appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats.

All employees of the City of Madison required to have a law degree or a license to practice law, excluding the City Attorney, managerial, supervisory, confidential and executive employees.

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

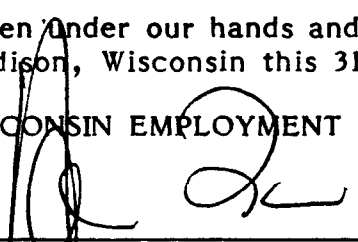
DIRECTION OF ELECTION

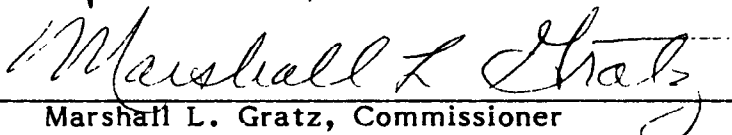
That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all employees of the City of Madison required to have a law degree or a license to practice law, excluding the City Attorney, managerial, supervisory, confidential and executive employees who were employed on January 31, 1986, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by the Madison City Attorneys Association for the purposes of collective bargaining with the City of Madison on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 31st day of January, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner

I dissent as to Gibson


Danae Davis Gordon, Commissioner

CITY OF MADISON

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

The Association herein seeks an election among all employees of the City required to have a law degree or a license to practice law to determine whether said employees desire to be represented by it for the purposes of collective bargaining. The City has argued that the petition should be dismissed because supervisory and confidential employees participated in the generation of the petition and because the Union is dominated by supervisory and/or confidential employees. The City also argues, contrary to the Association, that if the petition is not dismissed the appropriate unit should consist of all unrepresented professionals, rather than just attorneys, that James Martin, Supervisor of the Prosecution Staff, is a supervisor, and that Eunice Gibson and Larry O'Brien are confidential employees. However, should the Commission find that all remaining unrepresented professionals constitutes the appropriate unit, the Association would proceed to an election in said unit. The City submitted a list of all remaining unrepresented employees the City alleged were professional employees and the parties agreed to hold in abeyance the matter of the professional status of said employees pending the determination of the appropriate unit question. During the course of the hearing the parties agreed that employees Olson, Rothschild, Voss, Hogg, Petri, Gast and Lawent were required to have a law degree and/or a licence to practice law and were municipal employees who should be included in whatever unit is held appropriate herein and that employee Jansen is a confidential employee who should be excluded from said bargaining unit.

POSITIONS OF THE PARTIES CONCERNING STATUS OF THE ASSOCIATION AND PETITION

The City argues that the petition is tainted by supervisory and confidential employee participation in its filing. The City notes that Sec. 111.70(3)(a)2, Stats., prohibits supervisors from being members of the same labor organization of which their subordinates are members and argues that the same prohibition logically applies to confidential employees, as well. In response to the Association's suggestion that these contentions belong in a complaint proceeding rather than a representation case, the City notes that the examiner's and Commission's decisions in County of Milwaukee, Dec. Nos. 12534-B (12/74), 12534-C (WERC, 3/75) cast doubt on the employer's ability to pursue the question in a complaint forum, and that the Commission used a representation proceeding to address similar matters in Village of Pewaukee, Dec. Nos. 17374-C (WERC, 5/81) and 17374-D (WERC, 6/81). The City argues that the petition must be dismissed if petition signatories James Martin, Eunice Gibson or Larry O'Brien are excluded from the unit as supervisory (Martin) or confidential (Gibson and O'Brien). It also contends that, much as it did in Village of Pewaukee, the Commission should require--as a condition of certification of the results of the election--that the petitioning organization exclude individuals held herein to be supervisors or confidential employees and amend its by-laws to specifically exclude confidential and supervisory employees from Association membership.

The Association argues that the appropriate procedure for the issues raised by the City would be through the filing of a prohibited practice complaint.

DISCUSSION OF ISSUES CONCERNING STATUS OF THE ASSOCIATION AND PETITION

This agency has long recognized that the primary objective of representation proceedings is "to determine whether or not a question of representation exists, to take evidence with respect to the appropriate collective bargaining unit and with respect to the employees eligible to participate in the election if one is ordered by the Board." City of Milwaukee, Dec. No. 6960 (WERB, 12/64). The secret ballot election process permits the eligible employees to express their preference as to representation by the petitioner or other candidate for representative on the ballot. The agency's role should ordinarily be to provide the employees in the appropriate bargaining unit an expeditious opportunity to exercise that free choice without unduly burdening the representation case process with time-consuming hearing and decision-making concerning the membership criteria

of organizations seeking to represent employes for purposes of collective bargaining with municipal employers. For that reason, this agency has ordinarily been unwilling to entertain questions concerning the internal affairs of an organization, which we are otherwise satisfied exists for the purpose of representing municipal employes in collective bargaining with municipal employers and related labor relations matters. Id. Claims that an organization's membership criteria unlawfully interfere with employe rights can be pursued by employes or a rival organization in a prohibited practice complaint proceeding. Claims that a municipal employer is permitting its agents (e.g., supervisors) to participate in (be a member of, dominate, or assist, etc.) employe organizations can similarly be pursued by employes or a rival organization in a prohibited practice complaint proceeding. Moreover, a municipal employer can protect itself against complaints of the latter sort (or from conflicts of interest generally) by exercising self-help measures to require its supervisors or confidential employes to cease membership in or activities on behalf of labor organizations that it considers potentially unlawful or contrary to its interests, and can obtain a Commission determination of the non-municipal-employe status of any such individual before taking such action, either by the representation case eligibility determinations or in a subsequent unit clarification or ch. 227 declaratory ruling. See generally, Milwaukee County, supra, Dec. Nos. 12534-B, 12534-C.

The Village of Pewaukee case does not require or warrant that we make an exception to the foregoing principles herein. For, that case was highly unusual and materially different from the instant situation in several respects. It is true that the Commission took evidence in that case in a representation proceeding regarding the extent of managerial and executive employe participation in a state parent organization (WPPA) of a labor organization seeking to represent a bargaining unit of municipal employes, and that the Commission conditioned the local affiliate's right to seek exclusive representation status upon the state organization's changing its by-laws to exclude managerial and executive employes from active membership in the state organization.

However, as noted, the Commission took that approach in that case in unusual circumstances not present here. First, the parties to that representation proceeding had mutually agreed to impoundment of the ballots pending resolution of issues relating to WPPA membership criteria that were then pending in complaint proceedings initiated by rival labor organizations; there is no similar agreement in this case. Second, the managerial and executive personnel that WPPA was alleged to be permitting to maintain active WPPA were, in many instances, individuals who had long been authoritatively excluded on that basis from existing bargaining units (including several police chiefs and County sheriffs); whether the disputed individuals at issue herein are supervisory or confidential is being adjudicated herein for what appears to be the first time. And finally, the Commission appears to have chosen to adduce evidence on the issue of WPPA permitting active membership by managerial and executive personnel in the representation proceeding rather than in the pending complaint proceeding, 1/ because it permitted the Commission to resolve that issue more conveniently and expeditiously than would have been the case if the Commission had remanded the complaint case for the taking of further evidence on that point; no similar procedural advantage is present in the instant case.

The evidence of record satisfies us that the petitioning Association exists for the purpose of representing municipal employes in collective bargaining with a municipal employer on matters pertaining to wages, hours and conditions of employment. Indeed, the record contains affirmative evidence indicating that the Association's expressed resolve is to limit its membership to members of the collective bargaining unit as determined by the Commission (see by-law provision

For the foregoing reasons, then, we reject the City's contentions relating to the Association's status and to the participation of alleged non-municipal employees in the Association and in the filing of the instant petition. We are proceeding with the traditional functions that the representation proceeding primarily exists to perform. We leave it to the parties in the first instance to conform their conduct (and that of their agents) to the requirements of law, and if need be to the appropriate prohibited practice complaint forum or self-help remedies (as noted above) for protection from or prevention of prohibited practices.

POSITIONS OF THE PARTIES CONCERNING APPROPRIATE UNIT

The City contends that the only appropriate unit herein would be one composed of all unrepresented professional employees. The City acknowledges that the Commission has, in the past, held that a unit composed solely of attorneys is an appropriate unit. The City also acknowledges that the unit need not be the most appropriate. However, the City contends the previous decisions involving attorneys did not squarely deal with the undue fragmentation policy established in Sec. 111.70(4)(d)(2)(a), Stats., and further argues the anti-fragmentation policy can override other relevant considerations.

The City points out that it has historically maintained that the City's professionals should be organized into one unit due to the anti-fragmentation policy. The City also points out that the Commission has not done so in three (3) previous cases involving the City ^{2/} and argues that if the Commission does not apply said policy in the instant matter the anti-fragmentation policy will be emasculated. The City stresses that there are presently twelve (12) bargaining units and that the eighty (80) professional employees are the remaining residual group. The City argues these facts make application of the anti-fragmentation policy appropriate.

The City also argues that it is specious to contend that each subgroup of professionals has substantially unique interests since many diverse groups of employees end up with the same or similar provisions in their collective bargaining agreements. The City points out the Commission in City of Cudahy ^{3/} combined professionals in a city-wide unit and in Grant County ^{4/} included county attorneys in a county-wide unit of professionals. The City contends said decisions create a presumption that an all professional unit is appropriate.

The City further argues that there is a community of interest among all the unrepresented professionals. The City points out its Civil Service Ordinance covers wages, fringe benefits and grievance procedures for said employees. The City also stresses that there is a history of an informal dialogue between it and the Madison Professional and Supervisory Employee Association (MPSEA). The City, while acknowledging there has not been a history of formal collective bargaining with MPSEA, argues that there has been an interest among professional employees in working together as a unit in relation to wages, hours, and working conditions. The City contends said history and ordinance outweigh the differences in skills, training, and hours of work among the unrepresented professional employees. The City also argues that there is a substantial amount of contact and interaction between the Attorneys and the non-represented professional employees. The City points out that the non-represented professional employees request formal opinions from the Attorneys and work with them on joint projects. While this contact varies among the professionals, the City argues that there is sufficient contact to conclude that a community of interest exists between the Attorneys and non-represented professionals.

The Association contends the duties and skills of the Attorneys, their wages, hours of work, distinct supervision, the fact that Attorneys do not share a common office with other non-represented professionals, the necessary post-graduate

2/ City of Madison, Dec. No. 19772 (WERC, 7/82); Dec. No. 14463-A (WERC, 7/76); and Dec. No. 14440 (WERC, 3/76).

3/ Dec. No. 19507 (WERC, 3/82).

4/ Dec. No. 21063 (WERC, 10/83).

education required for their positions, and their requirement to attend continuing legal education courses of approximately fifteen (15) hours per year establish an overwhelming discrete community of interest. Therefore, the Association argues it would not constitute "undue" fragmentation of the City's workforce to segregate the Attorneys from the non-represented professionals.

DISCUSSION CONCERNING APPROPRIATE UNIT

In establishing appropriate collective bargaining units the Commission is required to consider and apply Sec. 111.70(4)(d)2.a., Stats., which reads as follows:

The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employees concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot.

Thus, we have held that a balance must be struck between an unreasonable number of bargaining units and a need for ensuring that the unique interests and aspirations of a given group of employees will not be subordinated to the interests of another bargaining group. 5/ Therefore, the Commission determines the appropriateness of collective bargaining units on a case by case basis and considers the following factors:

1. Whether the employees in the unit sought share a community of interest distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. 6/

5/ City of Madison, Dec. No. 19772 (WERC, 7/82).

6/ Mid State VTAE, Dec. No. 14526-A, (WERC, 5/85); City of Madison (Water Utility), Dec. No. 19584 (WERC, 5/82).

Here, the City argued that the bargaining history, the Civil Service Ordinance, the interaction of employees, and the anti-fragmentation policy warrant a conclusion that a city-wide unit of unrepresented professional employees is appropriate. We have found these arguments to be insufficient to overcome the unique community of interest exhibited among the City's Attorneys based on their distinct duties and skills, their separate supervision and work place, and the level of their salary compared to other non-represented professionals. Moreover, regarding bargaining history, while MPSEA has met with the City, the City has not voluntarily recognized the MPSEA and has never reduced any agreements to written form. Although all of the employees herein are covered by the Civil Service Ordinance, the Attorneys' wages are substantially greater, 7/ they have different hours of work, and have an informal compensatory time system. Furthermore, interaction between the Attorneys and non-represented professional employees is infrequent. Finally, the City of Cudahy and Grant County cases are distinguishable from the instant matter. Cudahy dealt with seven professional employees in three different professions who had the same fringe benefits. 8/ In Grant County there were only the two Assistant District Attorney positions involved both of whom worked closely with other county professionals and shared similar wage levels. Therefore, we have concluded the unit proposed by the Association is sufficiently large and distinct to be a viable grouping onto itself and an appropriate unit for bargaining.

POSITIONS OF THE PARTIES CONCERNING SUPERVISORY STATUS

The City contends that the Supervisor of the Prosecution Staff position occupied by James Martin is a supervisory position and therefore that Martin should be excluded from the bargaining unit. The City argues that the Commission's decision in Dane County 9/ has controlling application herein. There, the Commission found that the occupant of the Attorney III - Legal Coordinator position was a supervisor based upon said position's coordination of the District Attorneys' Office and assignment of work. The City argues that Martin's acknowledged status, policy-making role, authority to direct and assign work, and authority to effectively make employment decisions, and the number of employees supervised and need for supervision, demonstrate Martin's supervisory status.

The Association contends that Martin does not have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees or to adjust their grievances. The Association points out that Martin spends only twenty (20) minutes per week assigning cases. The rest of Martin's time is spent on bargaining unit work. The Association also points out that Martin did not receive any additional pay when he became the Supervisor of the Prosecution Staff. The Association argues that Martin, at most, supervises an activity and that the City Attorney, Gempeler, is the supervisory authority over the Prosecution Staff.

DISCUSSION CONCERNING SUPERVISORY STATUS

The Commission, in determining whether the statutory criteria of Sec. 111.70(o)1, Stats., are present in sufficient combination or degree to warrant the conclusion that a position is supervisory, considers the following criteria:

1. The authority to recommend effectively the hiring, promotion, transfer, discipline, or discharge of employees;

7/ Assistant City Attorney, Pay Range 20 (\$1951.21) earns approximately \$14,000 annually more than the highest non-represented professional, Pay Range 13 (\$1414.68).

8/ Four Public Health Nurses, two Engineers, and one Data Processing Analyst.

9/ Dec. No. 11482-C, (WERC, 8/74). The incumbent assigned work to 10 staff assistants, 1 investigator, and 3 to 10 law students. Incumbent also monitored and reviewed and had recommended the disciplining of employees for substandard job performance.

2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment and discretion exercised in the supervision of employees. 10/

Here the record demonstrates that Martin, although involved in the interview of Gast, does not have the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. Although Martin assigns cases to the prosecution staff, once assigned he neither monitors the work nor does he review the work of prosecuting staff. His role in establishing guidelines for the prosecuting staff is primarily the supervision of an activity rather than the supervision of employees. Martin's pay level is primarily based upon his years of service with the City; and notably he did not receive any wage increase when he became the supervisor of the prosecution staff. His judgment and discretion exercised over the prosecution staff is limited to assigning work and insuring there is adequate coverage to perform the prosecution work of the City. Significantly, Martin spends the vast majority of his time performing the same or similar duties as the other three (3) prosecuting staff attorneys. Based upon the above and foregoing, we are satisfied that Martin is a municipal employee and properly included in the collective bargaining unit.

POSITIONS OF THE PARTIES REGARDING CONFIDENTIAL STATUS

The City contends that Assistant City Attorneys Larry O'Brien and Eunice Gibson are confidential employees. The City argues that O'Brien spends 55 percent of his time on labor work and that Gibson spends 50 percent of her time on labor work which meets the traditional tests for confidentiality. The City argues both have been involved in collective bargaining strategy and in interpretation of collective bargaining agreements. The City contends their investigatory work and recommendations for discipline are sufficient to establish confidential status. The City also contends that both frequently participate in labor relations strategy. The City also asserts that the assignment of confidential matters to Gibson, O'Brien and Jansen has not been because the City is attempting to disperse confidential work. Here, the City argues that the number of employees performing confidential work is necessary because of the amount of labor law work. The City also argues that the specialized types of labor law necessitate a need to maintain three (3) confidential labor attorneys, and, that this specialization makes it unlikely that another attorney could smoothly assume the labor law cases of the other.

The Association contends that neither O'Brien nor Gibson are confidential employees. The Association argues that the record fails to establish that Gibson is privy to confidential matters. The Association, in acknowledging Gibson

The Association, in acknowledging O'Brien's role in residency issues, points out that O'Brien has not been involved or participated in employer strategy in collective bargaining. The Association asserts that O'Brien's involvement in this single issue can only be regarded as de minimus, and as such, does not warrant his exclusion from the bargaining unit.

DISCUSSION REGARDING CLAIMED CONFIDENTIAL STATUS OF O'BRIEN AND GIBSON

The Commission has held that employees are excluded as confidential by reason of their participation in the employer's labor relations function and their access to sensitive labor relations information which would not normally be available to the Union. Confidentiality in any other sense of the term is irrelevant to the determination of "confidential" status under the Municipal Employment Relations Act. 11/ Further, the confidential status of a position is determined by the incumbent's relationship to the employer, not to various collective bargaining units. 12/

The record demonstrates that O'Brien not only has conducted investigations to determine if employees have violated the City's residency ordinance, he has represented the City in the grievance procedure, including arbitration and litigation that has resulted from an arbitrator's award. Further, if an employee requests a waiver of the residency requirement, O'Brien participates in the decision-making process concerning the request. O'Brien also represents the City should the request be denied and the employee grieved the denial. Although O'Brien's workload in this area varies from year to year, the record demonstrates that O'Brien, in 1984, spent approximately 25 percent of his time on this issue. Therefore, although his workload may vary from year to year, we are satisfied that on the foregoing basis O'Brien is privy to information which deals with the City's strategy in grievance handling and litigation and that some of that information is not made available to the bargaining representative.

On the foregoing basis, alone, we are persuaded that O'Brien is a confidential employee, such that we find it unnecessary to reach the City's contention that O'Brien's unemployment compensation work brings him into significant contact with confidential labor relations information.

Accordingly, we have ordered that O'Brien's position be excluded as confidential, in addition to that of Jansen whose position was excluded on that basis by stipulation of the parties.

Turning, then to Gibson, we note that she does spend a portion of her work time defending the City in equal rights and other discrimination litigation relating to City employment and City employees, both represented and unrepresented. However, her work on that litigation does not directly involve her in collective bargaining or contract administration disputes between the City and the exclusive representatives of its various collective bargaining units and does not per se constitute confidential work. Thus, her litigation activities are unlike those of O'Brien which bring him into pre-disciplinary investigations, grievance disposition issuance and arbitrations which, in turn, directly involve him in the City's contract administration activities and strategies.

Gibson also occasionally advises management (principally Jeffrey) on collective bargaining and contract administration matters relating in some way to City compliance with anti-discrimination laws and regulations. However, she is not and has never been a member of a bargaining team or other group responsible for determining and implementing the City's negotiation or contract administration strategies with the labor organizations representing bargaining units of City employees. Similarly, her even more occasional role in disseminating information and advice at meetings with labor organization representatives and with various City management personnel has also been as a resource person with specialized knowledge regarding compliance with anti-discrimination and related laws and regulations, not as a City negotiator or as a City labor relations decision-maker.

11/ City of Greenfield, Dec. No. 18304-C (WERC, 3/82).

12/ Portage County, Dec. No. 14946 (WERC, 9/76).

While the questions put to Gibson by Jeffrey or others in management may to some degree reveal the alternative strategies under consideration by the City in negotiation or contract administration matters related to discrimination issues, those communications would not necessarily reveal the full range of the considerations bearing upon the City's ultimate choice of a course of action in negotiations or grievance handling, but rather only the implications for such decisions of the anti-discrimination statutes, rules and caselaw.

Similarly, while the occasional advice given by Gibson may have an influence on certain of the City's policies and positions regarding discrimination issues in negotiations and/or contract administration matters, the extent to which Gibson's advising role would put her in a position of choosing between the interest of labor organizations and of the City in formulating her opinions would be limited. For, she is called upon for reasoned opinions as to what the legal consequences of various courses of action would be rather than for the best course of action in terms of labor relations strategy.

For those reasons and because the occasions of record on which Gibson has been involved in or consulted on matters relating to collective bargaining and contract administration have been few and far between over her eleven years of employment as an Assistant City Attorney, 13/ we conclude that her role in and exposure to confidential labor relations matters is de minimus and that her inclusion in the bargaining unit would not significantly interfere with the City's labor relations function. Especially so when it is noted that two other non-supervisory attorneys are being excluded from this unit as confidential employees and that those individuals--particularly O'Brien--are spending substantially less than their full time on confidential labor relations matters.

Accordingly, Gibson is not a confidential employee and her position is to properly be included in the bargaining unit.

Dated at Madison, Wisconsin this 31st day of January, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Herman Torosian, Chairman

Marshall L. Gratz, Commissioner

SEPARATE OPINION OF COMMISSIONER DAVIS GORDON

I agree with my colleagues Findings, Conclusions and analysis in all respects except I dissent as to Gibson since I conclude Gibson should be excluded from the bargaining unit because she is a confidential employee. The record persuades me that Gibson has a significant role in labor relations matters for the City that involves participating in confidential labor relations decision making and requires that she have access to confidential labor relations information. Specifically, Gibson advises and assists Jeffery and other members of management on a variety of significant contract negotiation and contract administration matters affecting wage, hour and working condition issues such as promotion, discipline, sick and maternity leave, work rules, layoffs and job security, sexual harassment and classifications, relating in various ways to City compliance with equal employment opportunity, fair employment and affirmative action ordinances and laws. Gibson's above-noted role derives in part from her representation of the City in specific discrimination cases, especially those cases for which parallel grievances and/or bargaining table disputes are present, and in part from Gibson's general expertise in discrimination law issues. I do agree with the

13/ There were eight cases and four other occasions in eleven years where arguably Gibson's involvement was of a confidential nature.

Commission majority herein that Gibson's EEO defense litigation, in and of itself, does not involve her in sensitive labor relations decision making and does not alone provide her with access to sensitive labor relations information. I also acknowledge that Gibson has not been a member of the City's negotiating team and has not represented the City in grievance handling. However, Gibson is privy to decisions of the employer with respect to personnel and labor relations policies (e.g., Tr. 414, 606-607). Additionally, unlike my colleagues, I find that the record indicates Gibson's litigation has directly involved her in contract administration activities and strategies (e.g., Tr. 579, 591-592, 598-599, 610-612, 617-618). Furthermore, the substantial amount of Gibson's time spent on discrimination litigation coupled with the recurrent occasions on which she is called upon to confer with and advise City officials regarding labor relations consequences of the issues and results of that litigation and various other discrimination-related matters affecting contract negotiations and contract administration leads me to conclude that Gibson is a confidential employee who should be excluded from the bargaining unit. In my opinion, Gibson's role in confidential labor relations matters is more than de minimus. Thus, for the reasons stated above, I would find Gibson to be a confidential employee.

Dated at Madison, Wisconsin this 31st day of January, 1986.

By Danae Davis Gordon
Danae Davis Gordon, Commissioner