

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LINDA GASPER, Complainant,

vs.

**MILWAUKEE COUNTY AND AFSCME,
DISTRICT COUNCIL 48, LOCAL 1654**, Respondents.

Case 538
No. 63108
MP-4000

Decision No. 31222-A

Appearances:

Linda Gasper, 4720 South 21st Street, Milwaukee, Wisconsin 53221, appearing on her own behalf.

Gene Holt, Law Offices of Mark A. Sweet, 705 East Silver Spring Drive, Milwaukee, Wisconsin 53217, appearing on behalf of AFSCME District Council 48 and Local 1654.

Timothy R. Schoewe, Assistant Corporation Counsel, Milwaukee County, Milwaukee County Courthouse, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DISMISSING COMPLAINTS**

On December 16, 2003, Linda Gasper filed a complaint with the Wisconsin Employment Relations Commission alleging that Milwaukee County had committed prohibited practices within the meaning of Sections 111.70(3)(A) 3 and 1, Wis. Stats., by retaliating against her for filing grievances and seeking enforcement of the county's policies against harassment. Gasper amended her complaint on February 11, 2004, to allege that District Council 48 and Local 1654, AFSCME, had committed prohibited practices within the meaning of Section 111.70(3)(B) 1, Wis. Stats. The Respondents denied they had committed prohibited practices. Hearings in the matter were held in Milwaukee, Wisconsin on September 20, 2005 and October 18, 2005, with transcripts being made available to the parties on October 12 and December 13, respectively. Gasper filed an additional amendment on October 3, 2005,

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alleging additional instances of retaliation by respondent Milwaukee County. Subsequent to the hearing, Gasper sought to submit by mail additional testimonial and documentary evidence, which was not accepted. Gasper filed briefs on November 1, 2005, January 6, 2006 and January 20, 2006; Respondent AFSCME District Council 48 filed briefs on November 15, 2005 and January 9, 2006; Respondent Milwaukee County filed a brief on January 12, 2006, and waived its right to file a reply brief on January 31, 2006.

FINDINGS OF FACT

1. Linda Gasper was, at all times relevant, an employee of Milwaukee County. The record is not explicit as to her job history, other than to indicate she first worked for the Milwaukee County Sheriff's office from February 1990 to September 1999, receiving excellent evaluations and even some commendations for her work as a receptionist, teller and cashier. Gasper returned to county employment in May 2000, and at all times relevant to this proceeding had been a Clerical Assistant I in the office of the Clerk of Courts. She went leave under the Family and Medical Leave Act in January 2004; when she had exhausted her FMLA leave and failed to return by April 5, 2004, Clerk of Courts John Barrett on April 23, 2004 filed charges seeking to have her found to have resigned in absentia. Thomas C. Simon, Gasper's attorney at the time, and Timothy Schoewe, Milwaukee County Deputy Corporation Counsel, thereafter reached an agreement by which Gasper was placed on medical leave of absence for a period of a year and a day, and agreed not to initiate any further action, legal or otherwise, against the county relating to this situation. The Personnel Review Board ratified this agreement on September 14, 2004. On October 12, 2005, the Human Resources Manager in the office of the Clerk of Courts informed Gasper that her additional medical leave had expired on September 15, and that if she did not return to work by October 20, she would be considered to have resigned in absentia. Gasper did not report, and was terminated.

2. AFSCME District Council 48 and Local 1654 are labor organizations within the meaning of Sec. 111.70(1)(h), Wis. Stats., representing municipal employees of the Milwaukee County, including in the Clerk of Courts office. At all times relevant, Ron Hart has been the union chief steward and Gerty Purifoy a staff representative. At no time has Hart worked in the office of the Clerk of Courts. Hart worked at the Milwaukee County Medical Complex from 1989 to 1995, and since 1995 has worked at the Mental Health Division as a financial specialist. The constitution of Local 1654 includes the following provision:

Section 7. The chief steward shall be the officer recommended to handle along with two other representatives picked up (sic) by the employee, all grievance matters brought by any union member. He/she shall be responsible for representing the membership through the vehicle of the grievance procedure. He/she shall consult with the department steward and shall have to resolve disputes between stewards. He/she shall be responsible for recommending the creation of new steward positions when necessary and shall give a report of his/her activities to the executive board of the local at each monthly meeting. He/she shall be responsible for arranging for training of stewards with the

approval of the executive board of the local. He/she shall provide a copy of the local steward code to the membership.

3. Milwaukee County is a municipal employer within the meaning of Sec. 111.70(1)(j), Wis. Stats. During the period of Gasper's employment in office of the Milwaukee County Clerk of Circuit Court, Jean Gmeindl has been Human Resources Manager and Judy Allcott a supervisor. Allcott worked on the Doyne Hospital Transition, 1992-1995; Gmeindl worked at the Mental Health Division 1967-1991.

4. Section 4.02 of the collective bargaining agreement between Local 1654 and the County provides as follows:

The County recognizes the right of an employee to file a grievance, and will not discriminate against any employee for having exercised their rights under this section.

5. Pursuant to a "Workplace Violence Prevention Policy" adopted by the Milwaukee County Board of Supervisors, Milwaukee County Clerk of Circuit Court John Barrett on September 20, 2001 distributed a "Non-Aggression and Zero Threat Tolerance Policy," which included the following statement of policy:

As it is the policy of Milwaukee County and the Offices of the Clerk of Circuit Court to supply a safe and healthy environment for employees and visitors, threats, harassment, aggressive and/or violent behavior are prohibited within Milwaukee County facilities and operations, on Milwaukee County premises and in the Offices of the Clerk of Circuit Court and will not be tolerated.

Individual employees not adhering to this policy or engaging in the activities prohibited by this policy are subject to disciplinary action, up to and including termination as per Civil Service Rule VII Section 4.

6. On April 9, 2001, officials of the county Department of Human Resources and Local 1654 distributed a memo to clerical employees in Locals 594 and 1654 regarding a classification study then about to commence. The memo requested the employees to complete a position questionnaire and return it no later than May 18, 2001. At the time, Gasper was a Clerk Typist III in the Clerk of Courts customer service area, and submitted a timely response. She later moved to a different position, for which she submitted her completed survey on January 28, 2002. The County included Gasper with a group of employees who did not submit surveys at all. Hart declined Gasper's request to be included in an initial group grievance challenging aspects of the reclassification process. Following a critical letter from Gasper to Council 48 Executive Director Richard Abelson, Hart did submit a grievance on Gasper's behalf, and she was given a reclassification. Neither Gasper nor another employee whose reclassification took a long time, Bayu Gebre, received back pay.

7. On or about October 3, 2002, Gasper prepared a Grievance Fact Sheet, relating what she felt to be harassment from a payroll clerk, which she believed constituted a violation of the policy against harassment. As remedy, Gasper sought, “a handful of employees need to be taught to respect others and because you may be friends with John Barrett or Jackie Bly, it’s not a license to target another employee.” On or about October 30, 2002, Gasper prepared another Grievance Fact Sheet; as the incident which gave rise to the grievance, Gasper wrote, “With 2 written policies against harassment, management selectively attempts to resolve some cases, turns blind eye to others, + handles cases differently. With their weekly managers meeting they can’t claim ignorance when whole office knows.” She alleged the incidents occurred on several dates within the office, and explained that this constituted a grievance because “when management allows a handful of coworkers to harass other coworkers – turning blind eye to some, dealing with others.” As adjustment, Gasper sought, “Don’t hand out two meaningless policies but one that will be enforced + in weekly meetings address problems at onset – deal with aggressors while easy to allow passive ones to keep tolerating abuses under supervisors nose. Teach respect.” On another grievance fact sheet, dated March 18, 2003, but obviously completed after that date, Gasper gave with the following narrative:

Jean Gmeindl not in office this week. 4/1 Sarah Blair told me she wasn’t aware that I was coming back this week from my FMLA. I told her I faxed paperwork to Jean G. 4/2 I saw Sarah in bathroom + I asked her if she needed me to provide any paperwork to her. Sarah said “No. We’re fine.” 500 pm at the bus shelter - 3 employees from Clerk of Courts criminal division were in bus shelter. After I spoke to Cheryl Flourance (sp?) one coworker, Kathy Markowski called me over to her in the shelter by coworkers Mary Lueck + Ada McAdams. Kathy earlier in the week asked me where I was + I said on a family leave. She said 4/2/0 “Did you have the flu?” I told her I lost weight. Then she questioned that saying weren’t you on a diet? The other two ladies said nothing but were right there. I felt uncomfortable about this conversation because I told NOBODY in the office of my physical condition. Wording appearing only on my FMLA paperwork gastrointestinal malaise etc. may elude to the flue – this information should be confidential. [4/3] The following day while passing Kathy Markowski while getting my water bottle filled – I asked Kathy Markowski why, since we really didn’t have conversations for six months, that she felt the need to all of a sudden ask me personal information? I told her sarcastically/joking that since we were new best friends, “Did she want to come over for dinner this weekend. I’d make a ham or pea soup. She said no to the pea soup.

Ron, this is the 2nd time this week coming back from leave I felt once during the day like just almost passing out, feeling like my knees were going to collapse. The day before I also felt this way after my key card, locksmith, Sarah Blair incident. The anxiety caused by continued harassment is overwhelming.

By her grievance, Gasper sought to have management “enforce confidentiality, cease and desist by management failing to enforce their zero tolerance policy on harassment,

workplace violence.” She also described the incident as “harassment, breach of confidentiality, misuse of authority to intimidate.”

Hart did not submit these matters as grievances.

8. On February 12, 2003, a memorandum was prepared, as follows:

In the past several months, meeting (sic) were requested in the Criminal Division of the Clerk of Courts located in the Safety Building Room 117, with Sarah Blair our Administrator, Judy Allcott our supervisor – all with the same complaint – problems with our co-worker Judy Linck (harassment).

Meetings with the above-mentioned personnel were requested by:

- 1) Judy Brillowski the week of December 20, 2002
- 2) Janet Goodoff in January 2003
- 3) Linda Gasper on February 7, 2003
- 4) Lea Klyes-Lewis on February 10, 2003 (met only with supervisor Judy Allcott but when asked if she wanted a meeting with Sarah, Lea said “Let’s bring it on.”

Other than our co-worker being a smoking/break buddy with our supervisor Judy Allcott, there is no understanding why one employee, creating a hostile work environment, is consistently overlooked because there has been no resolution and our department has a Milwaukee County Clerk of Circuit Court Non-Aggression and Zero Threat Policy in place, but apparently only on paper. Three out of the four of us have asked for help and intervention in this matter from members of upper Management in Room 104 of the Milwaukee County Courthouse, Mr. Barrett’s office, but keep getting send back to our Administrator Sarah Blair with no resolution. **If this matter were resolved with the first employee coming* forth then three other employees would have been spared. (emphasis in original).**

It would be appreciated if this matter could be resolved once and for all since it has been a continuing problem for far too long.

(This was shown to Georgia Scott Union Steward on 02/10/03 in the morning and she said this is a Management issue because Union employees can’t be against other Union employees)

9. On March 7, 2003, Gasper sent the following note to Chief Steward Ron Hart, Staff Representative Gerty Purifoy and Steward Georgia Scott:

I am updating you and then you will know why I am asking for a written request of work procedures on the job I am doing for about 13 months of issuing Fine and Cost commitments specifically notification on today's date that commitments need to be issued no sooner than 10 days after due date and some newly created logging forms, because of **retaliation** from supervisor Judy Allcott on the following events dated and documented from 05/15/02 until present:

Ron – Judy Allcott will only need the top and the rest is for the grievance since apparently management doesn't have to treat employees equitably and respectfully. Please decide if you think Jean Gmeindl needs one and get her a copy.

05/5/02 I wrote out and time stamped a conversation with my supervisor Judy Allcott being the 4th request she speak to her friend and my co-worker Judy Linck and Barb Finnegan (Marcum) unappreciated, snide comments directed towards me to stop and/or that we can set up a meeting with Sarah Blair our Administrator. Judy Linck's sister and our co worker Debbie H told me that she asked her sister to stop and leave me alone, quit the comments and that I had done nothing to her, while they were on their way to Barb Finnegan's mom's funeral. Judy Allcott responded that she heard about that but things change like the wind after I shared my conversation with Debbie to her.

05/17/02 I went to speak to our Human Resources Manager Jean Gmeindl about the above mentioned issues and that supervisor Judy Allcott and Judy Linck are smoking buddies, which shouldn't affect this situation. Jean could see that I was upset and I told her that I did not retaliate to the two of these ladies harassment other than one time to Judy Linck on this past Monday. After all of us Case Prep employees were offered overtime for the weekend after our CCAP server was down for 11 days and I phoned on Saturday morning and spoke to Janet once and Judy Linck's sister Debbie once to see if the computers were up. I came down to do some case prep work and a huge stack of files which were completely finished except for labels from my desk was missing. I was going to work on these and someone had done a lot of unnecessary work starting the process from scratch so I left without doing or logging any overtime. Monday morning in the office Judy Linck was at the back of the office ranting and raving at the top of her lungs about her not needing anyone to check up on us and other nonsense. I told my supervisor who was standing there that she best not be talking about me and that I sure don't answer to "that." Judy Linck started going off again about some nonsense and I told her she should go to AA to which she responded to me, you should go to church. Jean asked me if I wanted her to speak to Judy Allcott but I told her to hold off.

05/18/02 Saturday, Judy Allcott yelled at me at the top of her lungs when I asked her why she allowed the continuance of harassment, of her smoking buddy and my co-worker, Judy Linck which had been ongoing for months. Judy Allcott said she spoke to them. (Judy Linck and her then friend and smoking buddy Barb Finnegan now they don't speak). The whole office and most importantly our Case Prep were aware of it. I showed Allcott a copy of the harassment policy and asked her if management was ever handed copies since we employees were. I told Judy Allcott that management should be the safe place to go for resolution of problems not the cause.

05/19/02 After supervisor Judy Allcott's outburst on Saturday, I left a message for Jean Gmeindl on her voice mail telling her of Saturday's incident and asking that if she speak to my supervisor Judy Allcott and that she do it after I left for the day in case she started yelling again.

05/21/02 Paul Kenny spoke to both Judy Linck and me in Sarah's office about Judy Linck's conflict with me. Mr. Kenny **conveniently** did not include Barb Finnegan in this meeting and she was included in the unprovoked harassment towards me. I did nothing to those women and don't hate them, just avoid them. I later phoned from home and apologized to Judy Linck about my AA comment.

06/11/02 Paul Kenny Administrator from Room 104 of the Courthouse came into the Case Prep Area to speak to only our area and told us be understood that we would have pressures and stress in our jobs, if we needed to walk away from our desk it is ok buy we are to treat co-workers with respect and he told us to make our calendars that "the CRAP STOPS HERE" Barb Finnegan (Marcum) sits on the other side of the office and was not included in this pep talk. Why?

01/2003 I called for a meeting with Sarah Blair, our Administrator, and Judy Allcott, again to have my supervisor Judy Allcott to stop yelling at me in the office.

01/2003 On an incident in the office at our desks, Judy Linck started yelling targeting Janet with some type of comment about how could Janet be taking care of her mother while Janet was drinking. Judy Linck, while yelling, made it seem like she was speaking to me. Several ladies in the office said Janet was on the other side of the office crying. All evening it bothered me that Judy Linck did that as if she was including me in her verbal attack on Janet. First thing in the morning I spoke to Judy Linck privately and told her that it was wrong what she did and I, of all people, would be the biggest of hypocrites to have any involvement with her previous days comments to Janet, especially after what Judy Linck had done to me and I did nothing to her. On another occasion

I told Janet the same thing I had just told Judy Linck that Judy not involve me in her outbursts.

02/06/03 After co-worker Coraga, after answering supervisor Judy Allcott's phone, asked Judy Linck to issue a fine and cost commitment. With my desk being next to Judy Linck's and my main job function being the issuance of same, I asked Coraga if she was aware of what happened the previous week with a duplicate commitment she had printed and brought over to the warrant desk for entry? The commitment was given to the warrant desk and was reentered on their live screen BUT was already satisfied. We could get sued and after I brought that to the supervisor's attention that it was satisfied, the supervisor Judy Allcott filled out a withdrawal form which I brought to the Warrant desk to have second commitment cancelled. Judy Linck went off on me in the office yelling that I shouldn't be dipping without a chip.

02/07/03 I called for a meeting with Sarah, Judy Allcott and Judy Linck because of Judy Linck going off on me in the office. Supervisor was there but does nothing. In the past I had told both Sarah and Judy Allcott that in the work environment they both allowed the harassment to go on for months with no action. Sarah claims not to have know but with weekly management meetings on Thursday, a lot of think in the office are pretty much common knowledge. Since that behavior is not acceptable (to walk back and forth past a co-workers desk and make cutting comments and laugh just as you pass the desk) then I told Sarah and Judy since they didn't do anything to stop it, I would not tolerate it anymore.

I think each employee has the right to walk into a safe, hostile free environment to simply earn a living for their families.

02/12/03 11:00 a.m. I am asked by my supervisor Judy Allcott to go to Tom Oelstrum Accountant IV to be provided with a computer-generated list via a yellow large sized Post it Note. This is a Wednesday and Thursday and Friday Tom is scheduled off. I need this list in order to perform my major job duty which is the issuance of Fine and Cost commitments.

02/13/03 2:00 p.m. My supervisor, Judy Allcott was standing by Coraga and Debbie's desk and I asked her if she would print me a commitment list since Tom was off. She flatly and loudly said, "NO"

Earlier this week in an incident in which after Lea asked Judy Allcott questions about clarification of her job duties and training and Judy Linck was sitting there smirking which Judy Allcott yelled at Lea. Lea's whole countenance became so downcast and sad and was quiet for the remainder of the day.

02/13/03 This week I had copied from my bible the parable of the Good Samaritan following the story where Jesus told a man we are to love our neighbor's as ourselves and followed by who is my neighbor? God dealt with my heart on this Scripture and I sent a copy to Paul Kenny.

02/17/03 I had a scheduled off day for a holiday but left a message on Paul Kenney's voice mail first thing in the a.m. to see if he would help. On May 21st after he spoke to Judy Linck and Me, he left his business card in case I needed to phone him or help. In the message I had said that the week of Dec 20th a co-worker in our Case Prep area, Judy Brillowski called for a meeting with Sarah Blair and Judy Allcott about complaints with our co-worker Judy Linck. January 2003, another co-worker in our area Janet Goodoff also called for a meeting with Sarah Blair and Judy Allcott with same complaint about Judy Linck. I had my meeting 02/07/03 and the 4th co-worker Lea Kyles-Lewis had issue with Judy Allcott about Judy Linck. I asked Paul if he was waiting until Judy Linck snapped and physically harmed someone since apparently the verbal and emotional abuse is all right and how long was he going to bury his head in the sand?

02/17/03 (same day as above incident) At 4:45 PM that evening, while finishing painting an area of my kitchen, I got a phone call from Chris who is the nurse for one of my doctor's (Dr. Weber). Chris had said that she had received an unusual phone call at 10:15 a.m. this date requesting that two medications (Darvasit and Promethegan 25m) be prescribed and called in the the Walgreen's on 91st and Beloit. The person stated that they were me, giving my date of birth, my home phone number but for the work phone number gave 604-7300 which if called is the Academy of Accelerated Learning. I called the pharmacy and spoke to Emily the pharmacist, who had a strong accent, to try to find out what this is all about. She said they had another person with my name and another date of birth there but show that I had never had a prescription filled there. I told Emily that if someone came in to pick up these drugs, that it was not me with my date of birth and that I wanted her to phone the police and that I would prosecute. Chris had told me that the person claiming to be purposely misspelled the drugs and this is serious as they are controlled substances and someone trying to obtain drugs like this would be guilty of a felony.

None of this made any sense or reason especially since this doctor was the one that did my colonoscopy a year prior and I would have had no need to contact him for another four years. I know once in the office I was talking to a few of the ladies about him since his name was Jeff Weber and that was the name of the guy – now who plays MacGyver – who used to be a doctor on General Hospital and the one I named my third son after.

I had since added a restriction to my Walgreen's account that I only am able to pick up prescriptions with my valid identification.

02/18/03 At 9:40 a.m. the phone at my desk was ringing and it was Sarah asking why I wasn't at the meeting? What meeting I asked? She said that Paul and Jean and she and Judy Allcott and Judy Linck were there. I told her I was getting Georgia and she said I didn't need her and just to please come and I should be reading my e-mails, which I maybe check every few weeks. This meeting was again not about resolution but attempts to discredit me and the other three complainants of the past three months against co-worker Judy Linck, were not present. Management doesn't want to enforce their own Zero Tolerance for Aggression and Harassment Policy so let's shoot the messenger.

02/18/03 I get a commitment list from Tom Oelstrum Accountant IV at about 2:00 p.m. The list was only 5 pages, which I will go through quickly. (Six days after my request)

02/20/03 Gerty Purifoy met with me in Mr. Sanfello's office about part of this ongoing situation but only from the perspective of Management's side Four employees working in one area out of 12 employees all had the same complaint and I told Gerty that after interviewing all four of the complainants, we could talk again and she would have a clearer picture. Jean Gmeindl/Paul Kenney are so out of line using my Union Staff Rep who works for me in a guise to try to help me because of their neglect and lack of success in enforcing their own policies.

02/26/03 Upon completion of the statistics for the Fine and Cost commitments that are issued, in the past I have received a copy from Judy Linck. To date I have not received one. So my lists provided to Judy Linck stayed by my desk. This is the first day after updated versions of CCAP installed over the weekend with CCAP staff on hand.

03/06/03 I had gone to speak to my co-worker Tammy Bachtel whose desk is across the aisle from my desk about a printer problem she was having which sounded exactly like one I had on Monday. Out of no where comes our supervisor Judy Allcott ranting and raving towards Tammy's desk that her problem was different from mine and making a scene about it. All of a sudden I can't speak to my co-worker when it is commonplace in this area. I later asked the CCAP person who helped me if our problems were identical and person said it was. We co-workers have helped one another in our similar job duties and through this transition we were our own best teachers. With citations Romeka, Julie and I learned more from each other as we each learned something the other hadn't so there was no need for supervisor to react so irrationally.

03/07/03 First thing in a.m. when Judy Allcott asked me where my lists were I asked her which silly games of my fellow employees did she want to talk about. Tom Oelstrum Accountant IV's not getting me my lists in a timely fashion They take minutes to generate Or Judy Linck's not giving me a copy of the statistics. I told Judy Allcott that apparently their silly games are acceptable to which she replied well they you shouldn't be part of them. I reminded Judy Allcott that she has 12 employees and not just the one she caters to. Judy Allcott stated that 10 of them were not involved in this project. Judy Allcott said that she would check into what I said and get back to me. To date I have heard absolutely nothing.

Same day in the p.m. about 2:00 p.m., Gretchen brought a commitment to me due date of 03/03/03 but I issued it on the 5th and wanted it cancelled because she got a check in the mail for it. Gretchen then said that Judy Allcott said that commitments should not be issued until 10 days after the due date. In 13 months of doing the job this is the first I have heard of this new rule. Judy Allcott gave me some blank forms created by Judy Linck that all of a sudden I have to use these instead of the generic ones I had been using providing all info needed to put statistics into Excel. Knowing Judy Allcott looks for reasons to retaliate I will be asking for this new rule in writing. I have been on her "hit list" since I dare ask her not to yell at me and ask that her smoking buddy be held to the same behaviors the rest of us are and because she smokes with the supervisor apparently that gives her license to do near anything without reprisal.

03/10/03 I faxed a copy of this documentation to Ron Hart, Chief Steward and leaving only the top portion of this containing only the top two paragraphs on my supervisor Judy Allcott's desk with the word retaliation highlighted in yellow.

03/10/03 At 7:30 am while on the phone with my Chief Steward Ron Hart, my supervisor Judy Allcott stormed towards my desk and slammed down the sheet I had left for her yelling that she didn't want that without all of the attachments. While having Ron on the phone I asked my supervisor Judy Allcott if she was going to do what she did to Coraga and start pitting Union employees against one another, disappearing with fellow Union employees to try to alienate them against me or was she going to start documenting my every move on her Word Perfect like she did to Coraga. Ron Hart heard all of this plus Lea Kyles-Lewis and Marilyn Fourston were sitting at their desks.

03/10/03 About 9:30 a.m. while walking from front past supervisor Judy Allcott's desk and almost reaching mine (four desks away) my supervisor Judy Allcott yelled from here desk in a snotty voice that "some woman called for you but you were no were to be found." It is commonplace for us in our area to get up for our desks without telling someone. As I walked by my supervisor's desk

to go and get my water bottle filled I said quietly to her that I had been to the bathroom. Having diarrhea I choose to use a private bathroom right downstairs in the Sheriff's gym instead of the office bathroom. I didn't think I needed to share that with supervisor though. More retaliation and embarrassment. I phoned Gerdie Purifoy our Union Staff Rep and asked her to phone me in about five minutes at a phone number so I could speak to her privately about 02/20/03. I asked her what happened after she went to members of Management of Clerk of Courts and told them after she interviewed the other three employees having made complaints against Judy Linck that she could get a clearer picture of the situation. Gerdie said that they would get back to her. Management hadn't yet contacted her about it to this date.

03/12/03 I did not feel well in a.m. but had a 9:30 meeting so I went to work anyway. After having diarrhea four times already in the morning from stress/nerves I phoned a co-worker Romeka to tell my supervisor I had left sick. I left quickly due to the diarrhea and left my coat, my lunch and my bag containing my gym shoes with my ID badge for access to Sheriff's Dept. gym which costed \$50.00, all at my desk.

03/14/03 I went to my doctor, showing my Nurse Practitioner this documentation and asked to go on FMLA. This working environment is intolerable as it is. My medical records show that my present medical condition is caused from a "Hostile Job"

Judy Allcott is back to her tactics of pitting Union employees against one another and attempting to alienate me because I dare to question her. I wouldn't be surprised if she is doing the same thing to me that she did to Coraga when Coraga was on her hit list ... putting all kinds of notes into her Word Perfect and attempting to alienate union employees. Now she and Coraga are the best of buddies after about 10 months of hell.

Ron, why can't this stop and simply we go to work to earn a living? Allcott runs from desk to desk and one or two employees out in the hall to plan strategies in attempts to hurt others. Ron, you know in the past I have been in such defense of Judy Allcott addressing the positive points but I am so wrong and to see co-workers hurt because they either are on her hit list or her "butt kissing" list.

I am asking my Union representatives to contact Judy Allcott at 278-5256 and to have any of her retaliation towards me "cease" and that any contact she have with me in regards to my work and especially where anything to do with her smoking buddy and my co-worker, Judy Linck is concerned that it be in the presence and in a meeting with the Union.

10. On or about April 25, 2003, Hart wrote Gasper as follows:

First I would like to thank you for contacting the Union regarding the unfair treatment and working conditions you have been working under in the Clerk of Courts Office which you stated have caused you to be on your present FMLA.

The Union is here to assist in getting these matters resolved. I have been advised since you are presently in an "inactive status" I can not file your grievances until you return to active status. What that means, once your doctor has release (sic) you to return the (sic) work, I will be able to assist in resolving these matters to make sure you are working in a safe environment.

What I am requesting you to do at this time and (sic) to find out when your doctor will be releasing you to return the (sic) work and before you go back, we meaning myself, the President, along with the Staff Representative from DC 48 will meet with the Management staff to make sure you are not returning to a hostile working environment and upon your return, we can proceed with the grievances you would like to file. Filing them now would only be moot.

Please give me a call and we can discuss it (sic) further details. The Union is here for you and to assist you. So don't feel along (sic). Be assured we do have your best interest before us and we will make sure that your working surroundings are safe.

11. Hart testified that on or about May 7, 2003, he received the following memo from Gasper:

I know its not often you get a Thank You for all your hard work you provide the members of Local 1654.

I know this might not be much, but I want to Thank You for your time and energy you have place (sic) on the issues I have brought to the Union attention on behalf of myself and the employees in the Clerk of Courts Office ..

I also want to thank you for taking a personal interest in my issues and talking with the Management of the Clerk of Courts. Since your involvement, things have become much better and Judy Allcott is treating me much better and other management staff is careful of the way they talk to not only me but other staff as well.

Tom Oelstrom is making sure I get my commitment lit on a timely basis and is willing to assist when the need arises.

Once again, I would like to say Thank You and may God continue to bless you and give you the strength you need in your role as Chief Steward.

Because of you, the Clerk of Courts Office has become a better place and the environment is much more pleasant.

Linda

Gaspar, who testified under the oath, "So help me, Jesus," testified that she did not send this note, but that she thought the reference to God was "a nice touch."

12. On May 8, 2003, Gaspar filed seven grievances, as follows:

#40347 "For pay period 03/02/03 – 03/15/03, when the new version of CCAP was installed and all employees in the case prep area were behind in their work, I was offered and denied 2 hours of overtime." As remedy, Gaspar sought "to be made whole. Be compensated with pay for the 2.0 hours of denied overtime."

#40348 "Tom Oelstrom is an Accountant IV. I asked him to generate lists for me to do my main job function, the issuance of fine & cost commitments. This list takes him minutes to do. The 1st request took him 6 days to return to me. The 2nd request was never received to date (02/28/02). J. Allcott did do a list for me on 02/12/03 to fill my 1st request to T. Oelstrom. On 02/13/03 I asked J. Allcott for another list – she flatly said "no". 02/18/03 I received a list from T. Oelstrom."

Gaspar claimed this course of events violated the collective bargaining agreement sections 1.05, 2.10 "and any civil service, state, federal rules that may apply." As remedy, she sought "to be made whole. For all work to be given to me in a timely manner since I have deadlines to meet."

#40349 "Jean Gmeindl and/or Paul Kenney asked my union staff rep, Gerty Purifoy, to help me. Jean Gmeindl and/or Paul Kenney did not give Gerty Purifoy all the facts that a number of employees made complaints to management against Judy Linck and the Clerk of Courts and they neglected to follow through with their own policy for non-aggression and zero threat tolerance policy. They also wrongly made an attempt to use my own union as a tool against me – again violating their own policy. A grievance was also filed a year ago relative to this." As remedy, Gaspar sought "To be made whole. Management to cease and desist playing union members and representatives against each other. And treat all staff fair."

#40350 “03/10/03 – Ron Hart was on the phone with me having received my fax including documentation and me having put top two paragraphs to Judy Allcott on her desk w/ word retaliation highlighted in yellow. Judy Allcott puts union employees against one another. Judy Allcott yelled across the office to me “some woman called for you but you were no where to be found.” This caused me embarrassment, humiliation, and her continued harassment towards me. Employees have been known to leave their desk w/o question as common place.” As remedy, Gasper sought “To be made whole.”

#40351 “Re: Sarah Blair, Administrator – On my 1st minute back from FMLA, which was caused by a hostile work environment, on 03/31/03 my key card was deactivated for access to the courthouse and my office. On 04/04/03, I asked James McDonald if his key card was ever de-activated by Sarah when he was on FMLA and he said “no”. To me this is more harassment by management.”

#40352 “On 03/06/03, after our new computer version was updated and CCAP support staff was available, I was having a conversation with co-worker Tammy Bachtel about our printer problems – Supervisor Judy Allcott came out of no where ranting and raving towards me that our printer problems are not the same. When I later asked CCAP support staff if our printer problems were the same I was told “yes”. Co-workers talk amongst themselves as common place unless it doesn’t fit the plan of Judy Allcott attempting to alienate employees in her retaliation and harassments. (Same as she tried to do to Coraga). J. Allcott causes scenes inappropriately.” As remedy, Gasper sought “to be made whole.”

#40384 “Listed in grievance #40350 in which supervisor Judy Allcott at 9:30 a.m. on 03/10/03 yelled at the top of her lungs – with most of co-workers present, that ‘some woman phoned and I was no where to be found.’ J. Allcott’s continued harassment, embarrassment, hostility and retaliation.” Gasper alleged this was a violation of the section of the collective bargaining agreement pertaining to management rights “and violence in the work place, verbal abuse. And any civil service, state, federal rules that may apply,” and sought as remedy “To be made whole.”

13. On May 9, 2003, Hart prepared the following hand-written note:

To Whom It May Concern:

This is to advise that the Union will be representing Ms. Linda Gasper in Seven Grievance Hearings against the Supervision and Management of the Clerk of Courts for Milwaukee County.

Ms. Gasper is presently on an approved FMLA medical leave for stress.

Any further questions or concerns, please feel free to call me at [material redacted].

14. Also on May 9, 2003, Union steward Georgia Scott wrote the following handwritten note:

Regarding dealing with the Clerk of Court's situation dealing with their employee's (sic), I have filed grievances with them regarding the treatment of their employee's (sic) and the problems never go away. It has been very stressed working with the Supervisor's (sic) in this dept. The employees have been stress. (sic) I have been stress (sic), because management pits one employee's (sic) against the other then lie when you try to have a conference with them. Linda has been one of the person (sic) that they seem to have personally targeted and seem to set out just to make her life very uncomfortable. She has been so stressed she called me many times in tears, because of the way she was being treated in that dept. She have (sic) been under a great deal of stress by working under this supervision. Changes need to be made, management needs to learn how to treat their employee's. (sic).

15. On August 5, 2003, union staff representative Gerty Purifoy advanced the seven May 8 grievances to the second step of the grievance process, the Director of Labor Relations. A hearing on these grievances was held on September 17, 2003; present on behalf of the union were local president Jackie Bly, chief steward Hart and staff representative Purifoy. Pursuant to standard practice, Gasper was not present at the hearings. On or about December 5, 2003, Milwaukee County Director of Labor Relations Troy Hamblin wrote to District Council 48 staff representative Penny Secore informing her that the grievances had been denied. Secore returned the correspondence, a standard form, on January 16, 2004, indicating that she did the disposition was "not approved" by the union. Hart testified that he wrote Gasper informing her of the disposition and his recommendation that the grievances not be taken to arbitration, and that she could appeal his recommendation to the executive board and membership; Gasper testified she never received the letter, which Hart read from at the hearing. None of the grievances were taken to arbitration.

16. On September 10, 2003, Gasper prepared the following grievance:

On 06/12/03 Approximately 9:00 A.M. Tom Oelstrom, Wallace Ewing and Kathy Kinney came into room 223 several feet from my work station where I was entering commitments. Tom said to Kathy and Wallace "This employee shouldn't be here she should be downstairs by Judy someone else was hired to work here meaning me for a temporary commitment projet. On 06/18/03 12:08 P.M. Judy Allcott came to me with a bunch of Commitments in her hand she asked which copy get the original seal i stated that the one goes to the Sheriff Dept. she stated Tom wanted an original seal on his copies.

Gaspar contended this course of events violated several provisions of the collective bargaining agreement as well as “dept policy Zero Tolerance against harassment.” As remedy, she sought “Harassment needs to cease and desist by management, it is none stop.”

17. On November 20, 2003, Gaspar filed grievance #37980, as follows:

On 11/19/03 Patty Morgan and I was working together, we found files over loaded with papers which shouldn't have been I initiated myself to do extra work that I was not assigned to do and was not part of my job assigned to do. More folders needed for filing Jeanne Deswysen Yelled at me and stated I need to order more folders I stated this was not my Job, she stated gthat we are all Milw. Co Employees and they sign our checks she was yelling, I found this to be un professional and there was no cause for her to speak to me like she did. This was embarrassing, degrading and humiliating.

As specific relief, Gaspar sought “respect, not to be degraded, embarrassed and humiliated in front of co-workers by management. Supvr Jeanne needs to learn how to speak to employees and not yell and shout.”

18. On or about November 24, 2003, Gaspar sent the following letter to conservative talk show hosts Charlie Sykes and Jeff Wagner:

Here is a copy of the Clerk of Courts/Milwaukee County Board approved and county wide policy against harassment and as you can see, if reviewed, it is not only sexual harassment but any form. You were recommended to me as being someone who cared and will help. Our Union has so many internal problems right now with our International investigating various elected members of Local 1654 and the majority of employees in our area seem to have no faith in our union other than giving them money every paycheck. The Chief Steward of this local wastes time and energy by trying to get out of filing grievances on behalf of the employee which benefits management. Should we just give our Union dues to management or keep flushing them down the toilet by paying for NO REPRESENTATION!! Both the Chief Steward and President do not know how to return phone calls and when they do it is to feed a lot of baloney with no substance. The quiet employees seem to get trampled because our management refuses to stop the abusive employees, **our union cuts deals with management behind employees backs.** Management in our area is out of control with abusive treatment, harassment and intimidation. Any step in resolution of problems in the work environment requires first and foremost for a grievance to be filed. We have Rich Abelson, Jackie Bly and Ron Hart aka Larry, Moe and Curly. Ron doesn't want to file any grievances taking rights fromees. Jackie does what again? Rich is invisible.

Our Union needs a major investigation. Many members of our management come from either the former Milwaukee County Hospital as employees or Mental Health. So between our management and Ron Hart and Gerty Purifoy all coming from the same general area, it is like a big club. They meet and screw over employees ... the ones paying the Union dues and pacify management. This has to stop and intervention is needed.

The Clerk of Courts Milwaukee violates County wide policy against harassment in the workplace running rampant and with District Council 48 Local 1654 running away from involvement, resolution and representation of it's members we need drastic intervention. Our union is a MESS!

(all emphases in original)

19. On December 1, 2003, Gasper filed a grievance as follows:

Since I have Returned from my FMLA leave, there is on going harassment from Tom Oelstrom returning errors to me stating they are mine when they are not, I have kept a record of all the work that I do, If this type of harassment continues I will be forced to file State charges. Judy Allcott brought paper work to me stating they were from Tom Oelstrom dates as follows 06/12/03, 9:00 06/18/03 1:20, 09/09/03 9:00 and 9/16/03.

As remedy, Gasper sought "Cease and deceit with this on going harassment. Treat Employees with respect."

20. On December 9, 2003, Gasper filed grievance #38232, as follows:

On 12/04/03 room 223/sb I work in a file room on this day I noticed all the traffic that came through and they were not taking any thing out therefore the only reason I can se they were all checking to see what I was doing names and times as followering Barb Finnegan Marcum, Tom Oelstrom and Kathy Markowski 8:0 a.m. to 8:30 a.m. Tom Oelstrom 9:0a.m. to 9:10 a.m. Tom Oelstrom 9:20 to 9:35 a.m., Vurna Burnett 9:45 to 9:48 a.m. Laura Funk 10:07 to 10:12 a.m. Tom Oelstrom 10:20 a.m. to 10:21 a.m. Judy Allcott 10:25 a.m. to 10:41 Tom Oelstrom 2:25 p.m. to 2:40 p.m. 110:0 minutes checking the file room to get nothing out of it.

Gasper claimed "this is a form of harassment and retaliation on management part because I filed a grievance, this kind of action needs to ceist and deceit my management."

21. On December 12, 2003, Gasper emailed the following note to Jean Gmeindl:

At 9:28 this morning Judy Allcott was up her (sic) by me in room 223 Safety Bldg looking for a file by the OOCF's. I was in the same isle (sic) looking for a file to put a piece of loose filing away. I have (sic) on sunglass reading glasses. Judy Allcott looked at my face and asked me "What is wrong with your eyes.(")(sic) I did not respond. Judy Allcott then asked me, "What is your problem?(")(sic) I did not respond. Judy Allcott blocked my way so I could not get out of the isle (sic) to go back to my desk. Judy Allcott then said, "Don't be disrespectful" Then when she allowed me to pass to go to my desk she said, "Well I'll just have to take care of this a different way." I take this as some type of threat added to the ongoing harassment and retaliation by management. Faxed copy to Ron Hart Chief Steward.

Gaspar prepared a Grievance Fact Sheet recounting this incident, writing "I WAS THREATENED - FILE ASAP" at the top. As adjustment, she sought "same as previous grievances - follow County wide policy against harassment. Management training." Gaspar also sought to have "union employees be notified they are not to side with management against other bargaining unit employees." Hart did not file a grievance in this matter, but was able to convince management to reduce Gaspar's discipline from a proposed written warning to a verbal reprimand.

22. According to Gaspar, she filed an Open Records Request with the Milwaukee County Director of Human Resources, Charles McDowell, on December 30, 2003, seeking the 2003 annual salaries of six co-workers -- Judy Allcott, Tom Oelstrom, Sarah Blair Gunn, Paul Kenney, Jean Gmeindl and Clerk of Courts John Barrett. On August 11, 2005, Gaspar wrote to the Wisconsin Department of Justice stating that she had not received any response to such request, with a copy to McDowell. On August 16, 2005, McDowell responded with the information requested, and apologized "for the fact that you did not get a timely response to your initial request."

23. On January 8, 2004, Sarah Gunn, Administrator of the Criminal Division for the Milwaukee County Clerk of Courts, sent Gaspar the following memorandum:

On January 2, 2004, your supervisor observed the attached sign on your workstation. You were not at work. Upon your return, you received a directive to return with your belongings to your assigned workstation. Moving to another workstation without authorization violated Civil Service Rule VII, Section 4[1][c] - Unauthorized use of county premises.

This memo is to document a verbal reprimand. If this behavior continues, you will be subject to further discipline.

The sign referred to in the Gunn memo read as follows:

Linda has now moved to the back room since my Doctor's instructions include avoiding any stress, yelling or harassment.

If you need a file – call me and I will deliver it.

If you are here to stare – stare at this **JESUS LOVES YOU (EMPHASIS in original)**

Hart testified that management wanted to issue a written reprimand to Gasper for moving her desk and posting the above-quoted sign, but that he prevailed on them to issue a verbal reprimand instead.

24. On January 2, 2004, Jean Gmeindl wrote to Hart to schedule a hearing on two additional Gasper grievances on January 9. On January 8, Gasper asked that the meeting be postponed, and that former steward Georgia Scott, who had retired in December 2003, represent her. Later that day Hart informed Gasper that Scott could not represent her, and informed her he would not seek to reschedule the hearing.

25. On or about January 12, 2004, Chief Steward Ron Hart wrote to Gasper as follows:

This is a follow-up to the phone message you left on my voice mail January 10, 2004 at 6:30 a.m. Ms. Gasper the message you left I found quite offensive and upsetting I quote **“Both yourself, Jackie Bly and Gerty Purifoy need to return to the plantation because you jungle bunnies are poor examples of leadership and set a bad example for all other Union Workers. The officers and leaders of this local are too chocolate. The Whites in this local do not stand a chance with any of their issues as long as people like you are in control and the invisible Rich Abelson just set back and do nothing to help his people.” (emphasis in original).**

Ms. Gasper it is my job as Chief Steward and officer of this local and a delegate of District Council 48 to make sure all members are treated equally and fairly. I do not discriminate in my representation and I do not base my representation on a person's race, creed, sex, sexual orientation, religious beliefs, age and national origin. It is my job as Chief Steward to make sure all members get due process and fair representation. Ms. Gasper if you will be honest in search within your heart, you know I have fairly represented you in all your issues and will continue to do so. Ms. Gasper I am a little surprise (sic) at your comment but everyone is entitled to their opinion but I must say I do resent the comment you made it is very hurtful and mean but life will go on.

Now on the purpose of this correspondence. I am in receipt of Labor Relations decisions of your grievances that were heard on September 17, 2003. As

promised in our last communication, I advised you as soon as I heard something regarding your cases, I would send you written communication of their decision. **All your grievances were denied.** The next procedure in the process is Arbriation (sic). Since the issue of harassment were readdressed at your January 9, 2004 hearing and were resolved in agreed to by you. (sic). It will be the recommendation not to move these grievances to arbitration (sic) since they are dealing with the same matter and we were able to meet once again with management and resolved these matters. Now if you don't agree with this decision, you have a right to appeal this before the Executive Board and Membership for consideration to carry forward. If I do not hear nothing from you within the next 10 working days, I will assumed you are satisfied with this decision and I will close your file on this matter. (sic). As always the Union is hear (sic) for you and will continue to serve the needs of all of you and all its members. Once again thanks for bringing your concerns to the Union Attention (sic) and we look forward to assisting you in the future with any other concerns you may have.

Any questions, please feel free to call me at (number redacted).

26. Gasper denied under oath leaving the message referred to in the first paragraph of Hart's letter. Hart testified he did not preserve the recording. Gasper also denied receipt of the letter itself, which Hart testified he mailed to the same address he used for other correspondence with Gasper. Hart testified that of the seven grievances, two were resolved; a grievance relating to overtime was resolved by the county offering Gasper two hours of overtime work, which she declined to accept, while a grievance concerning management providing necessary reports in a timely manner was actually resolved prior to the meeting, but that Gasper insisted the matter be advanced. Hart also testified that Gasper raised harassment allegations incessantly, at one time phoning him 25 times in one month, a figure Gasper disputed.

27. Union steward Georgia Scott wrote on May 9, 2003:

Regarding dealing with the clerk of courts situation dealing with their employees, I have filed grievances with them regarding the treatment of their employees and the problems never go away. It has been very stressful working with the supervisors in this department. The employees have been stressed, I have been stressed, because management pits one employee against the other. They lie when you try to have a conference with them. Linda has been one of the persons what seem to have been personally targeted and they seem to set out just to make her life very uncomfortable. She has been so stressed she called me many times in tears because of the way she was being treated in that department. She has been under a great deal of stress by working under this supervision. Changes need to be made and management needs to learn how to treat their employees.

Scott testified that she “got complaints practically from everybody that worked in the clerk of courts department,” and that “the clerk of courts is about the worst” department in county government for employee morale and relations with management.

28. On January 8, 2004, Gasper faxed to Hart a letter requesting that a grievance hearing scheduled for the following day be delayed for “a week or two.” She added:

I think some clarification needs to be addressed with District Council 48 Local 1654 that Union Officers work for us the members and for our behalf and out betterment. Not for management and what might be easy. People file grievances to correct an injustice and be compensated. Not under this leadership. The same grievances have to be filed again and again with clear violations of contract and existing policies???

I will be waiting for the letter you said you sent. You and I will discuss my grievance and why it is necessary to continue to file grievances for the same issues as previous grievances. As of today’s date I have not received either in writing of (sic) verbally a response to my 7 grievances (mostly harassment) taken to the Labor Relations step.

Gasper provided a corresponding copy to AFSCME International President Gerald McEntee, her third letter to McEntee criticizing Local 1654 officers since December 15.

The steward whom Gasper wanted to represent her at the January 9, 2004, Georgia Scott, had retired on December 13, 2003. Because of allegations of ongoing problems within the Clerk of Courts office, Hart as Chief Steward decided to start overseeing grievances from that office, and handled Gasper’s grievances. Also on January 8, Hart replied as follows:

Per your request to have your grievance delayed for two weeks can not be honored at this time. Due to the volume of concerns and the number of members this local has to entertain and service, it could take from one month to two months to have this grievance heard. **Therefore, the grievance for 1/9/04 at 9:30 a.m. will be heard as scheduled.** Another reason we will not delay these grievances, you have stated in the past and continue to state that DC 48 and Local 1654 is not moving fast enough on your issues. You have made a complaint to the International on this also. Therefore, we will comply with your concern to keep everything moving in a timely fashion.

I will be meeting with you at 9:00 a.m. in the conference room near Ms. Gmeidl office to review the facts of your case. There is no need to postpone (sic) this matter any longer the Union and Management both are prepared to move forward.

You can be assured that Local 1654 and District Council 48 is here to represent the members by giving advice, making recommendations on behalf of the members and looking out for the betterment of the members.

Hart also had another steward accompany him and Gasper to the meeting.

29. Hart testified that the Union filed at least 18 grievances on Gasper's behalf. Although he testified he never refused to file any grievances for Gasper, it appears that did not submit the items noted in Finding of Fact 7. Under the collective bargaining agreement, Gasper could have filed those grievances herself. Hart testified that once he became aware of Gasper's perceived need to move her desk, he communicated that to management which promptly moved Gasper's desk to ensure her physical and emotional safety. Hart came to conclusion that Gasper was in the wrong on some of grievances, especially relating to harassment. Hart declined to seek a continuance of the January 9, 2004 grievance hearing for scheduling and tactical reasons.

30. Gasper believes that under the collective bargaining agreement, no grievance can be settled unless the grievant, management and union all agree. Gasper never used internal appeal mechanisms to challenge Hart's decision not to take grievances to arbitration.

31. Sometime prior to February 5, 2004, Gasper wrote the County Department of Human Resources to request that her name be restored to the eligible list for several clerical and support positions. She also noted that she did not want to be certified for vacancies at several specific locations. On February 6, the department's manager of employment and staffing, Daniel Pierzchala, wrote Gasper to inform her that he had restored her name accordingly. On the following dates in 2004, the noted county departments took the following actions:

Feb. 17	Register of Deeds	Invitation to Interview Fiscal Asst. II
Feb. 18	Human Services	Invitation for interview Fiscal Asst. II
Feb. 24	Employees Retirement	Invitation to Interview Clerical Asst. II
Mar. 17	Health and Human Services	Position filled
Mar. 31	Employees Retirement Invitation to Interview	Clerk Typist IV
July 16	Public Works	Clerk Typist IV filled

August 6	Child Support	Invitation to Interview Fiscal Asst. 2
August 16	Child Support	Invitation to Interview Office Support Asst. 2
August 23	Child Support	Fiscal Assistant 2 filled
Aug. 2	Health and Human Services	Invitation to Interview Fiscal Asst. II
Sept. 14	Health and Human Services	Fiscal Assistant II filled
Sept. 23	Register of Deeds	Invitation to Interview Clerical Assistant 2
Oct. 11	House of Corrections	Invitation to Interview Clerical Assistant 2
Oct. 14	Administrative Services	Invitation to Interview Fiscal Assistant II
Oct. 2	Register of Deeds	Clerical Assistant 2 filled
Oct. 28	Child Support	Invitation to Interview Fiscal Asst. 2
Nov. 4	Health and Human Services	Invitation to Interview Fiscal Asst. II
Nov. 9	Child Support	Fiscal Assistant 2 filled
Nov. 16	Admin. Services	Fiscal Assistant II filled
Nov. 11	House of Corrections	Job Offer Clerical Assistant II (see below)

On the following dates in 2005, the following County departments took the following actions:

Jan. 3	Sheriff	Invitation to Interview Stores Clerk I
Feb. 2	Sheriff	Invitation to Interview Clerical Assistant II

Feb. 25 Sheriff

Invitation to Interview
Clerical Assistant I

March 14 Register of Deeds

Invitation to Interview
Clerical Assistant I

32. On March 2, 2004, Jean Gmeindl, the Human Resources Manager (Courts) in the Administrative Services Division in the Clerk of Circuit Court for Milwaukee County sent Gasper the following letter:

Dear Linda:

I am in receipt of the note from your health care provider, Dr. Paul Mateo, stating that "no work until further notice." Therefore, I am extending your FMLA leave through April 2, 2004. At that time you will have exhausted the 480 hours of FMLA time, which is the maximum amount allowed under the state and federal FMLA laws.

As of February 19, 2004, you had no further accrued paid time remaining. As such, any FMLA time used after that date will be without pay. You will be notified by the Department of Human Resources when you must submit your employee portion of your health insurance premium.

You are expected to return to work on Monday, April 5, 2004. If you fail to return to work on that date and have not contacted me by April 8, 2004, you may be considered to have resigned in absentia pursuant to Milwaukee County Civil Service Rule VIII, Sections 6 and 7.

Best wishes for continued improvement in your health.

33. On April 14, 2004, Gmeindl sent the following letter to Gasper:

Our payroll records indicate that you were on an approved Family and Medical Leave for the period 1/12/04 to 4/2/04. After 4/2/04 you had exhausted 480 hours of FMLA time, which is the maximum amount allowed under the state and federal FMLA laws. As I stated in my letter to you on 3/2/04, you were expected to return to work on Monday, April 5, 2004. As of today's date, you have not contacted me and have not returned to work and have been on an unauthorized absence without pay since 4/5/04.

I have received a note from your attorney, Thomas C. Simon, stating you would not be in to work on 4/5/04, due to a note from Dr. Raul Mateo dated 2/27/04 stating "no work until further notice." This is a copy of the same note from Dr. Mateo that you submitted to me on 3/1/02, at which time I granted you an extension of your FMLA through 4/2/04. Again, you have exhausted all FMLA

time allowed under the state and federal FMLA laws, and have no further time remaining.

I understand from our central human resources department that you applied for unemployment compensation on 4/5/04, stating that you were no longer working for us, as you were unavailable for an/or physically unable to do your work. As such, I have enclosed an Employee Transaction Change Report (ETCR) for your signature, which indicates taht you have resigned effective 4/5/04. You may send the ETCR form to me into enclosed, self-addressed, stamped envelope. If I do not receive the signed ETCR form before the end of the day on 4/21/04, you will be considered to have resigned in absentia pursuant to Milwaukee County Civil Service Rule VIII, Sections 6 and 7.

34. On September 14, 2004, the Milwaukee County Personnel Board voted 5-0 to accept the following agreement and close its file regarding the Charges for Discharge that John Barrett, Clerk of the Circuit Court, filed against Gasper on April 23, 2004:

In resolution of the complaint brought against Linda Gasper seeking her discharge from County service, the parties agree as follows:

The employee enters into this agreement knowingly and voluntarily and has had the opportunity to seek counsel prior to execution of this agreement.

It is further understand that, as part of the terms of this agreement, the employee agrees not to initiate any further action, legal or otherwise, against Milwaukee County, with respect to the underlying fact situation or statements contained in either the written charges for discharge or this settlement agreement. It is further agreed that a breach of these terms shall void this agreement and allow the initiation of disciplinary proceedings contemplated by the underlying charges, which are the subject of this agreement.

Additional terms and conditions of this agreement are as follows:

1. The employee shall be placed on a medical leave of absence for a period of a year and one day pursuant to Milwaukee County civil service rules;
2. The employee shall not accept certification to any position in the office of the Clerk of the Circuit Court for Milwaukee County.

Gasper's attorney at the time, Thomas C. Simon, signed on Gasper's behalf. Gasper later renounced the agreement, contending she had never agreed to its terms. Gasper received correspondence reflecting the September 14 hearing within a day or two, but took no steps to alert Milwaukee County that the agreement was based on misrepresentation by her attorney. A

tape recording Gasper made of her conversation with Simon does not support her contention that she renounced the agreement. Despite her contention that Simon had deceived her in September 2004, Gasper retained Simon as her attorney at least until early 2005.

35. On November 11, 2004, the Human Resources Coordinator for the Milwaukee County House of Corrections sent Gasper the following letter:

The House of Corrections is pleased to offer you a position of Clerical Assistance II in the Records/Control Center area of its inmate support function. This offer is contingent upon two factors: one, the satisfactory completion of a criminal background check and two, your immediate submission of written documentation from your health care provider that you are physically/mentally capable of performing the essential functions of the classification of Clerical Assistant II (which may include involuntary overtime and/or scheduling any day/shift of the week), with or without accommodation, and are thereby released from the medical leave of one year and one day (effective September 14, 2004) which you were granted by the Milwaukee County Clerk of Courts.

Your projected start date is November 29, 2004, at the HOC Franklin Administration building at 8885 S. 68 Street at an hourly rate of \$14.9969 per hour. Please contact Lynn Ashworth, the acting Supervisor, at (414).... as soon as possible. She will detail your report time and the course of your orientation and training. As we discussed, your projected shift is second (2:00 p.m. until 10:00 p.m.). However, pending the staffing available when you finish the training period, HOC may exercise its need to place you on third shift (e.g., 10:00 p.m. to 6:00 a.m.). It is my understanding that you agree to this.

If you have questions or concerns, please do not hesitate to call me at (414)

Gasper refused to execute the Request and Authorization for Release of Information necessary for the county to conduct the background check, and thus did not accept the position offered.

36. On or about August 30, 2005, Gasper wrote to the State of Wisconsin Department of Workforce Development Equal Rights Division, requesting an investigation into "why Milwaukee County is holding six weeks of my vacation monies" from 2004 and 2005. Gasper subsequently filed a written complaint in the matter. A DWD Labor Standards Investigator wrote to a Milwaukee County official on September 30, 2005, requesting a written answer to Gasper's complaint. On October 13, 2005, the county provided to the investigator a check payable to Gasper representing 240 hours of vacation minus appropriate payroll deductions.

37. The Complainant failed to establish by a preponderance of the evidence that the agents and representatives of Respondent Milwaukee District Council 48, AFSCME, AFL-

CIO, Local 1654 were arbitrary, discriminatory or acting in bad faith in their handling of the complainants grievances against Milwaukee County.

38. The Complainant failed to establish by a preponderance of the evidence that the agents and representatives of Respondent Milwaukee County retaliated against the complainant for filing grievances, or otherwise acted to interfere with, restrain or coerce her in the exercise of her statutorily protected rights, or to discourage membership in a labor organization by discrimination in regard to hiring, tenure or other terms or conditions of employment.

On the basis of the above and foregoing Findings of Fact, the Examiner issues the following

CONCLUSIONS OF LAW

1. The labor organization did not commit prohibited practices as defined by Sec. 111.70 (3)(B)1, Wis. Stats.

2. The municipal employer did not commit prohibited practices as defined by Sec. 111.70(3)(A)3 and 1, Wis. Stats.

On the basis of the above and foregoing Conclusions of Law, the Examiner makes and issues the following

ORDER

That the complaint in this matter be and hereby is dismissed in its entirety.

Dated at Madison, Wisconsin, this 2nd day of May, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stuart D. Levitan /s/

Stuart D. Levitan, Examiner

MILWAUKEE COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER DISMISSING COMPLAINTS

POSITIONS OF THE PARTIES

Complaint against Union

In support of her complaint against the Union, Complainant Gasper filed a written brief as follows:

M.O.A. between Milwaukee County and Milwaukee District Council 48 AFSCME and its appropriate locals 2001 and 2003-2004 pg 2 1.03 NONDISCRIMINATION lines 9-12, 13, (3) 20-23 The County and the Union shall not discriminate in any manner whatsoever against any employee for employment because of race, sex, age, nationality, handicap, political or religious affiliation or marital status.

Pg. 66 lines 19-25 09/20/05 transcripts Chief Steward Ron Hart testifies: And they had a problem for the record with the contents of this because it could be offensive to other people within the department. Especially the bottom one, "If you are here to stare, stare at this, Jesus loves you." They feel that is not her place to post.

Pg. 67 lines 20-22 and pg. 68 line 09/20/05 transcripts line 2 Complainant Linda Gasper questioning Chief Steward Ron Hart: Are you aware of other signs and religious content, crosses, bible verses in other cubicles in the office that they were not written up about? Linda Gasper responds, "I'm targeted."

M.O.A. pg. 2 1.02 NONDISCRIMINATION lines 20-22 (3) (in re: sexual harassment) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. In Chief Steward Ron Hart's 04.25/03 letter to Linda Gasper, Mr. Hart writes in the third paragraph that, "before you go back, we meaning myself, you, the President, along with the Staff Representative from DC 48 will meet with the Management staff to make sure you are not returning to a **hostile working environment** and upon your return ... (enclosed copy). (**emphasis** in original brief).

Pg. 66 lines 1-6 09/20/05 transcript Linda Gasper questions Ron Hart, "Did you receive a copy of my doctor's note stating Linda Gasper, her desk will be moved. She is to be away from the stress, yelling and harassment. A copy was forwarded to you. Did you receive that?" Ron responded, "All I have is what is in my hands." (enclosed copies doctor's note and fax to Ron Hart)

In 2003 I was on a Family Medical Leave on 03/14/03. I worked 3/31/03, 04/01/03, 04/02/03, 04/03/03 and 04/04/03 ... harassment continued so I went back on FMLA until my return on 06/06/03. in 2004 I went on Family Medical Leave on 01/12/04 until ?

M.O.A. MANAGEMENT RIGHTS page 3, lines 27-29. But these rights shall not be used for the purpose of discriminating against any employee or for the purpose of discrediting or weakening the union. See included in my complaint grievances #'s 40347, 40348, 40349, 40350, 40351, 40352 and 40384. All were served on 05/05/03. Letter dated 02/18/04 from Labor Relations referencing my letter dated 02/14/04 inquiring on information on my 09/17/03 Labor Relations Hearing. Director of Labor Relations Mr. Troy Hamblin included copies on Labor Relations stationery of all seven decisions that he denied the grievances. Each individual grievance 40347, 40348, 40349, 40350, 40351, 40352 and 40384 was listed on one sheet of paper per grievance. The date of each is December 5, 2003 showing in bolded **Grievance Denied** (**emphasis** in brief). On the bottom right of each of the seven sheets shows a signature of current Staff Rep William Mollenhauer writing a 01/16/04 date and circling **NOT approved** (**emphasis** in brief) on all seven sheets. These are in the complaint/exhibits as well. Other than these I do not have access to the personal signature of Mr. Mollenhauer. I believe a Staff Rep is higher on the food chain than Chief Steward. These seven grievances were as of 01/16/04 set to get a date for Arbitration. Maybe Bill should have told Ron what he did before 09/20/05?

In my 09/04/05 WERC amendment to AFSCME paragraph number 13 last sentence about the 09/17/03 Labor Relations meeting with the above mentioned grievances I write ... to this day I still was never told what happened in that meeting by my Union. Page 156 lines 7-25, page 157 lines 1-19 09/20/05 transcript. The above mentioned will again confirm that I never received any January 12, 2004 correspondence about the status of my 7 grievances and I am sure Mr. hart should ascertain whose voice left that offensive message on his 01/10/04 claim. I do not speak that way and additionally I would be beating a "dead horse" by my contacting the State Attorney General's office August 2, 11, and 26, 2005 for an open records request on my 09/17/03 Labor Relations bearing involving my 7 grievances. The 01/12/04 document listed as Exhibit 11 in the 09/20/05 transcript is fabricated. This was my first sighting of this document two years and three days after my 09/17/03 Labor Relations Hearing for my 7 grievances. See transcript page 40 lines 22-25 through page 43 lines 1-25 ... letter was written to Ms. Gasper on 01/12/04 no mention of mailing because I did not receive this.

Exhibit 6 from 09/20/05 transcripts listed as a memo dated 03/07/03 is not even questionable, it is ludicrous. There would be no rational reasoning for me to

fax Chief Steward Ron Hart approximately 5 to 6 pages of documentation of negative unresolved incidents in the Case Prep are of the Clerk of Courts due to he, in his capacity, putting Band-Aids on cancer than thanking him for it. Nice touch with the God Bless you though. Please remember I had a 10/3/02 and a 10/330/02 grievance never typed, filed or served. Remember also that my reclass took one and one half years longer for resolution. I was denied the filing of a grievance earlier in 2002 by Chief Steward Ron Hart, which was not done until January 03. Ron Hart also on numerous occasions suggested having meetings with employees and management because the area was such a mess. The key word employee seemed to be avoided by Mr. Hart as being insignificant. The management and Union meetings seem to take precedence. The bargaining unit employee pays the union dues. I repeatedly asked Mr. Hart about the employee/management meetings as he continually skirted the issue to the labor management meetings. This, again, makes the bargaining unit employee insignificant, unrepresented and without a voice. 09/20/05 transcript page 70 lines 9-12 Ron stating he would file 50 grievances for be because it is my right. 09/20/05 transcript page 71 lines 2-8 Ron Hart states to me, "Like I said, if you would have asked me to file 50, I would have had to file them because that is you right. You could have filed your own grievances also. I represented you well on that. I will continue to represent you. If you wanted 100 filed, I would have filed it on the same think whether I agreed with it or not." The filing is not the issue, the grievances are not brought to completion or satisfaction of me, the grievant. Your decisions are not mine or for my best interest or we would not be in the midst of this action. I would be working at a Milwaukee County job.

Each time Mr. Hart makes a direct reference as a fact about Judy Alcott, Tom Oelstrom, or the individual work environment I will refer back to my question posed as to how many minutes did he work in the Clerk of Courts as referenced in 09/20/05 transcripts page 53 lines 14 to 17. Ron Hart's soapbox discourses on management are without merit. When a grievance is filed it is to correct an injustice. Each of my grievances were very specific in content.

Local 1654 Constitution Section 7, page 5 that references, "The Chief Steward shall be the officer recommended to handle along with two other representatives picked up by the employee all grievance matters brought by an union member." In direct contradiction to my rights in Local 1654 Constitution under the Chief Stewards positions, I was denied my right to be properly represented by my requested Steward Georgia Scott in the 01/09/04 hearing for 3 grievances which Ron Hart denied my dissatisfaction with his decision. Georgia was not tainted in her representation and actually represented the employee and oddly her 05/09/03 letter (included as exhibit 8 in 09/20/05 transcript) paints such a contrary picture to all of Ron Hart's allegations and details of dealings with the Clerk of Courts. She is very truthful. When my grievances got to Ron Hart

they disappeared to my harm and the benefit of management. Georgia did what she could. If I could have requested only her representation it would have been sufficient and honorable in any Clerk of Courts grievances so that the abuse and harassment would cease and desist once and for all. There are so many awesome employees in that are minus a few mean-spirited people. It won't stop with Ron Hart in that position of Chief Steward as bargain unit employees are stuck dealing with his tactics.

Reference my grievance initiation form dated 05/08/03 #40349 where Jean Gmeindl (former H.R. manager now retired and Paul Kenney (former Sr. Administrator now retired) recruit my Union Staff Rep Gerty Purifoy (now retired) as a tool against me. This is so inappropriate and out of order to outright dirty. I pay the union dues and am sure by me filing this grievance alone is motivation alone for Ron making numerous attempts not to file my grievances. This is an absolute embarrassment for the Union. Ron Hart's first attempt was with his 04/25/03 letter which would make most of my 90-day time frames moot. Next his behind the scenes meeting with management. I will now refer to the two Open Records requests linking quite a few Clerk of Courts management and personnel and union officers to their common work histories at former Milwaukee County Hospital and the Mental Health Complex – Exhibits. That is why Ron Hart worked so hard to get rid of my grievances without my knowledge or consent. My union dues were for naught.

M.O.A. page 63 part 4, Section 4.02(5) SETTLEMENT OF GRIEVANCES It is further agreed that the County and the Union shall make every reasonable effort to resolve employee grievances at the lowest possible level of the procedure. Any grievance shall be considered settled at the completion of any step in the procedure if all parties are mutually satisfied. Dissatisfaction is implied in recourse from one step to the next. I never consented. Employees pay dues for a voice not negligence or betrayal.

M.O.A. pages 62 to 62-4.02 GRIEVANCE PROCEDURE The County recognizes the right to an employee to file a grievance, and will not discriminate against any employee for having exercised their rights under this section. Having read this aloud at the request of Attorney Holt for a purpose unknown to me since I was harassed, intimidated and retaliated against by Clerk of Courts management and the Union failed to properly represent me bringing to this action. (transcript 09/20/05 page 139 lines 18-25) As to continue with Attorney Holt's assertion that I, as an individual, can file a grievance according to my M.O.A., can see his thinking but only at Step 1. At the second step there is a consistent reference to the Director of Labor Relations or his/her designee and the Union. This step seems to prevent an individual filing of a grievance to proceed past Step 1. This also seems to be a detour to try to make me accountable for Local 1654's Failure to Represent that would lead to nervous

breakdowns two years in a row with major depression and anxiety attacks. I hold District Council 48, Local 1654 fifty percent responsible since the grievances followed through to completion would have been protective measures against management.

09/20/05 transcript page 165 lines 16-22 Please take note that at first Mr. Hart gave an answer to receiving his message via e-mail (which would leave a paper trail) but Attorney Holt had to prompt him to answer voice mail and of course there wouldn't be a tape because it didn't happen. In line 18 Attorney Holt asks, "How did you receive it via e-mail or voice mail?" Now Ron gets the answer right.

There are so many nonsensical discourses during Mr. Hart's testimony and detours to avoid answering a direct question and all with such a lack of veracity with definite exaggerations. With 172 pages of transcripts it would be far too exhausting to address them all. Ron certainly sided with management over the union employee the vast majority of his testimony. Georgia knew how to draw a line in the sand and not cross over. Georgia represented union employees .. period!

The union with Ron Hart in his capacity as Chief Steward failed me. The grievance procedure, as handled, failed me. The Union did more damage than help. I have had the honor for a short period of time to see an actual union that backed its employees and fought for the employee. The employee felt as if surrounded by linebackers and secure and protected. Management listened!

Gasper would like full reimbursement for any and all Union dues while a Milwaukee County employee. Gasper also will need full payment for negligent representation on the handling of my reclassification and made whole. Gasper will need any legal and other related expenses reimbursed for the need to file this action in lieu of proper representation at the onset by District Council 48, Local 1654. Milwaukee County should be able to police itself without intervention from any State of Wisconsin agencies.

Also correction in re 1-9-04 3 grievance hearing – contrary to Mr. Hart's testimony management produced no documents other than the reprimands/mtg. That is it. (Handwritten addendum).

In support of its position that the complaint should be dismissed, the Union asserts and avers as follows:

Complainant has failed to meet her legal burden of establishing that the union's actions were arbitrary, discriminatory or in bad faith.

She failed to alleged or establish bad faith by the union, neither alleging what the bad faith was that motivated the union or producing evidence at hearing that the union ever demonstrated or was motivated by bad faith. To the contrary, the evidence showed the union responded to Gasper, filing at least 18 grievances on her behalf. It is Gasper who showed bad faith, leaving a derogatory voice mail with Hart and writing a derogatory letter to local radio personalities. Gasper's denial that she left the voice mail is simply not credible.

The reclassification request was handled properly, other than Gasper submitting her request more than eight months after it was due. Indeed, Gasper acknowledged at hearing that Hart filed a grievance within the contractual time frame.

Gasper's allegations that the union refused to file grievances on October 3 and 30, 2002, raised in her Amended Complaint of September 4, 2005, are untimely. Even if considered timely, these allegations are not supported by facts in evidence, which show that the union filed at least 18 grievances on her behalf. The record also shows that Gasper was satisfied enough with the union's representation of her that on or about March 7, 2003 she gave Hart a memo thanking him for his help. Had Hart refused to file grievances in October 2002, Gasper definitely would not be thanking him for his representation just five months later.

Again, Gasper's denial of sending this memo is simply not credible. This memo is formatted in a fashion similar to other memoranda Gasper sent Hart.

The union represented Gasper fairly as it processed her multiple grievances, proceeding in a timely manner and giving Gasper every opportunity to participate. Gasper misreads the labor agreement when she concludes that it gives her the right to have grievances adjusted to her satisfaction. The contractual reference to "parties" is to the union and the county, not individual employees such as Gasper. Moreover, courts have long given unions broad discretion in deciding whether to settle a grievance or pursue it to arbitration.

The evidence demonstrates that the union invested considerable time and resources in representing Gasper. She has not established bad faith, nor has she identified any problem with the union's handling of her multiple grievances. Her subjective lack of satisfaction is not sufficient to demonstrate a breach of the union's duty of fair representation.

Further, the union properly represented Gasper when she was disciplined for wearing sunglasses at work, refusing to explain why she was doing that, and moving her desk without authorization. On each occasion, Hart was able to convince management to reduce its proposed written warning to a verbal

reprimand. Gasper's claim of not being satisfied simply does not rise to the level of a violation of the duty of fair representation.

Rather than offering any evidence that the union failed to meet its duty, Gasper's own evidence demonstrates that the union exercised good faith and diligence in its representation. The complaint, as amended, should be dismissed.

In her reply brief to the Union, the Complainant asserts and avers further as follows:

Gasper does recall Ron Hart raising his hand to tell the truth in the presence of God at the above-mentioned hearing. God loves justice and hates lies! God asks Gasper to pray for those in authority. Also Gasper is asked to pray for her enemies and ask God to bless (speak well of) those that persecute you and despitefully use you. Mr. Hart's name will be found in probably most of the prayer and fast days printed by her church. Sarah Blair, Judy Linck, and Barb Finnegan were also included regularly on these prayer and fast days. Due to the depression Gasper asked for her church to help her in her prayers for these people as mentioned above. Three of the most unlikely women in the office were blessed with husbands in this time frame as God did truly bless them as requested. Sarah Blair Gunn, Judy Linck Renner and Barb Finnegan Macum!! Lea and Gasper would also pray for them while walking with Romeka on break.

Part 1, Section 1.03 NONDISCRIMINATION page 2 lines 8-12 and 13-14, 20-22 states, "the County and the Union shall not discriminate in any manner whatsoever against any employee for employment because of race, sex, age, nationality, handicap, political or religious affiliation or marital status." "Sexual harassment shall be considered discrimination under this Article." (3) "such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." Chief Steward Ron Hart and Milwaukee County not only violated this portion of Gasper's contract but Milwaukee County had Mr. Hart's endorsement as Gasper was "written up" for having exercised her religious beliefs. The Civil Service rule cited claims "unauthorized use of County premises." The content of Gasper's sign ending with, "If you are here to stare, stare at this. Jesus loves you." Mr. Hart made too many comments at the hearing about the content being offensive to be ignored. Three co-workers having signs without being written up also points to Gasper being targeted by management with the endorsement of the Union via Ron Hart. To Mr. Holt's question as to when Gasper's pictures introduced at hearing were taken. The obvious Christmas decorations included with the co-worker's sign are sufficient to answer that.

Mr. Hart also did receive a fax of Gasper's letter from Dr. Raul Mateo stating to move Gasper's desk. Avoid the stress, yelling and harassment. Gasper does not find on that doctor's note instructions for authorizing management to come up to where Gasper works alone to continue the harassment. Hart's 04/25/03 letter including hostile work environment with reference to Gasper's place of employment in the Clerk of Courts. Instead of Mr. Hart using every resource to ensure this portion of the contract was adhered to, Mr. Hart used his energies to protect the very management Gasper filed the harassment grievances against. Gasper should have been protected by either the Union by the grievance process or by Clerk of Courts management per both this section of the contract and the Milwaukee County policy against harassment. Mr. Hart as aware of Gasper's depression. Mr. Hart was aware of the seven grievances for mostly harassment. Mr. Hart was aware of the ongoing harassment since the 6 page time-stamped documentation faxed to him dated 03/07/03. Mr. Hart's typed and fabricated thank you letter to himself with that date is not signed or time stamped. The problems as outlined and included in the original WERC complaint in six pages, Mr. Hart's thank you letter to himself is yet another red herring to draw attention away from not filing the two grievances in October 2002 – harassment. As to the reference of unauthorized use of county premises referring to moving my desk can also be addressed. If Mr. Hart should have been supportive of wanting Gasper to be removed from the ongoing harassment. But Mr. Hart endorsed management forgetting the contents of the 7 grievances and the 3 new ones.

Also the need to again address the grievance not typed as per the grievance fact sheet provided by Gasper and to be included atone of the 7 dated 05/08/03 was the grievance about the disclosure of personal health information about Gasper's Family Medical Leave to co-workers without Gasper's knowledge or consent. One of the payroll clerks Carolyn Carter who happened to be one of the previous Local 1654's best friends that Mr. Hart must have been protecting by not typing the grievance.

Mr. Ron Hart mentioned on a few occasions that he chose to take jurisdiction over my grievances. Gasper does not find that anywhere in the contract of the Constitution for his self imposed authority. This was just a continued attempt by Mr. Hart to manipulate the grievances to the benefit of management. The cronyism between Clerk of Courts management and the union Local 1654 as produced via the Open Records requests makes sense out of the outcome of grievances of union employees in this department.

Gasper also needs to provide the amount of Milwaukee County muscle as to their 2004 annual salaries as they retaliated against Gasper for grievances filed and the request Gasper made that the countywide harassment policy be enforced. The total exceeds \$381,000 in comparison to Gasper's \$18,200. Mr. Hart's

comments in his testimony that 5 members of management is acceptable in his opinion to be at my 01/09/04 grievance hearing (with John Barrett's door open) Mr. Hart further states that if management wanted to have 50 members of management there, they could have. This comment was not only insensitive but gave a true picture of Hart's loyalties. Gasper was denied the representation by Steward Georgia Scott as per Local 1654 Constitution. Georgia Scott was forthright and defended the union employee and that is why her description of the Clerk of Courts is so very different. The unfortunate thing is that the grievances Scott would work so hard to type in protection of the union employee were thrown in the toilet by Mr. Hart making those same grievances disappear.

Mr. Hart did absolutely nothing in her behalf. Mr. Hart was in collusion with management and not acting for Gasper's protection or representation. Representation does not harm the Union employee. Mr. Hart knew the reprimands were acts of retaliation. By Mr. Hart endorsing the reprimands after receiving the notification via the 12/01/03 grievance and the WERC complaint shows Ron Hart was joining himself with management against Gasper – the Union employee. Mr. Hart was accommodating his cronies by denying Georgia to represent Gasper. Gasper was being targeted now with the endorsement of Hart. The grievances were meaningless and the retaliation of these verbal written reprimands were obvious as to Sarah Blair Gunn vindictive treatment of employees since 1993 in Jury Management. Ron Hart states he took jurisdiction because of ongoing complaints. This self-proclaimed power was not authorized by neither the contract, constitution Local 1654 not by Gasper giving Ron Hart this carte blanche authority over her life or decision making. Gasper neither gave Hart this authority in writing or verbally.

Ron Hart spoke of 18 grievances filed for Gasper – but no proof was provided as back up evidence. Simply his words. Mr. Hart also spoke of 800 members in our local. Gasper later brought up a close amount of 600 with the inclusion that the majority of union employees are uninvolved in anything to do with the union and to the lack of a quorum at union meetings. Ron Hart making grievances disappear and dodge phone calls or dodging any interventions to the betterment of union employees would keep his exaggerated job more real. The contract states that the union employee has to be agreeable or grievances are automatically moved to the next step. The union employee is included in “all parties concerned.” At no time did Gasper give Chief Steward Ron Hart carte blanche authority to make decisions on her behalf that caused harm to her health or employment. Gasper does not find anywhere in the MOA or Constitution Local 1654 that would give the Chief Steward the authority Mr. Hart contributes to himself.

As to the reclass three of Gasper's co-workers were reclassified below co-workers doing the same cross trained job but they found some resolution a year

earlier than Gasper and Gebre. No explanation why ours took a year longer than our 3 co-workers and no back pay was fought for by the union or given.

Gasper experienced being screamed at like a piece of dog crap by supervisor Judy Alcott on several occasions with excused made for this by Mr. Hart. Gasper was an eyewitness to Supervisor Judy Alcott screaming at co-worker Lea in degradation when Lea asked for clarification of a job duty. Gasper was an eyewitness to a few co-workers would call an extremely quiet lady Germaine "crazy" or "cuckoo" who worked across from Gasper. Although Supervisor Allcott's desk adjoined Germaine's desk she would not intervene to protect Germaine from the name callers. Gasper was an eyewitness to Allcott screaming at Romeka and making a scene in the office causing her embarrassment on several occasions.

Mr. Hart purposefully manipulated the grievances in benefit of the union cronies listed in the Open Records request. Hart promised to be present at Gasper's 06/06/03 return to work. Hart was not present. Hart promised in 04/25/03 letter that a meeting would be set up so that Gasper would be assured she is not returning to a hostile work environment. That never occurred. On 09/20/05 Gasper is made aware in another of Hart's fabricated documents that he made yet another group of grievances disappear. Prior to this hearing date Gasper did not have any knowledge that Mr. Hart intended to do this without the consent or knowledge of Gasper. If Gasper had been informed the document would have been included as an Exhibit by Gasper. This was another fabricated document by Hart as was the thank you letter he typed about and to himself.

Due to the union's failure of intervention on behalf of and for the protection of union employees this management was out of control. Why? Because management has no fear of any repercussions of any sort from the union.

The union was not successful in deterring a two-year situation from escalating to the point of affecting Gasper's health with the internal grievance procedure or any other union intervention. The union's unwillingness to protect Gasper's basic contractual rights led to John Barrett filing to have Gasper terminated. Where was Local 1654 to fight this termination? To be terminated for having a nervous breakdown and Gasper's three Health Care Professionals not allowing her back to the Clerk of Courts is wrong. Local 1654 (having knowledge of the medical issues and grievances for harassment) made no effort whatsoever to place Gasper in a safe work environment through Human Resources. Were District Council 48 Local 1654 and Clerk of Courts management complicit in conspiring to keep Gasper from Milwaukee County employment? District Council 48 made no effort to contact Gasper whatsoever since her leaving on FMLA 01/09/04 to aid in placement to any lateral Milwaukee County position to enable Gasper to make her 15 years of employment and receive the medical

benefits. Gasper does not have a job which in itself attests to the success of AFSCME District Council 48 Local 1654 in her situation.

In its reply brief, the Union further asserts as follows:

Gasper's brief, containing numerous allegations not otherwise supported by evidence, should be disregarded for failing to stay within the record. There are at least seven statements which should either be stricken or disregarded because they are argumentative and not reflective of the facts in evidence.

Regardless of the evidentiary dispute, Gasper has not met her burden regarding her allegation that the union failed its duty to represent her fairly. While Gasper claims the union violated its duty because it settled grievances in a way that was not satisfactory to her, the duty of fair representation does not require the union to settle grievances to the satisfaction of each grievant.

And while Gasper claims she was improperly denied representation by a particular steward, she was offered competent union representation. Gasper is here not being rational; the steward she sought to have represent her had retired, and Gasper was represented by the union's *Chief* steward, who provided substantial and effective representation to her. (*emphasis* in original). There is simply no legal authority for the proposition that the union violates its duty to members by providing representation by a chief steward instead of a regular one.

Gasper has failed to offer any evidence that the union failed in its legal duty of fair representation, and has instead offered evidence that the union indeed exercised good faith and diligence. The complaint, as amended, should be dismissed.

Complaint against Employer

In support of her position that the County committed prohibited practices, the Complainant asserts and avers as follows:

1. On 02/18/03 the Clerk of Courts held a 5 to 1 ratios of a meeting with Gasper being the 1 – not allowing Steward Georgia Scott in for a witness – in discussion of the Clerk of Courts not enforcing their harassment policy. 3 out of 4 employees complaining against Linck Renner not included in this meeting. (Clerk of Courts management Paul Kenney, Jean Gmeindl, Sarah Blair Gunn and Judy Alcott).

2. Five members of management harassing Gasper after Gasper asked supervisor Judy Allcott that the countywide policy be enforced in relation to the harassment by two co-workers of Linck Renner and Finnegan Marcum towards Gasper allowed to go on for four months?
3. Following the 2003 Family Medical Leave for nervous breakdown, stress, depression, anxiety and panic attacks from management harassment – with grievances filed for protection – management did continue the harassment towards Gasper.
4. Even after Gasper's family doctor Raul Mateo's return to work dated 06/04/03 being faxed to John Barrett/Jean Gmeindl, Charles McDowell, Ron Hart and the referencing of harassment and yelling, that the harassment continued due to the (7) 05/08/03 grievances filed.
5. Fall 2003 the need to file 3 more grievances because the harassment by management continued and escalated including the 12/01/03 inclusion in one grievance that if the harassment continued Gasper would be forced to file state charges. It did. So Gasper did.
6. Supervisor Judy Allcott blocking me in the aisle upstairs by my workplace in the file room and screaming in my face.
7. Sarah Blair Gunn writing Gasper up for moving her desk AND for a sign with references to "if you are here to stare – stare at this Jesus Loves You." Three other employees in the same office were not written up for their signs "unauthorized use of county premises" therefore Gasper, again being targeted.
8. Gasper's 12/30/03 Open Records request for the annual salaries of: John Barrett, Paul Kenney, Jean Gmeindl, Tom Oelstrom, Sarah Blair Gunn and Judy Allcott – the second request Gasper made was with the inclusion of the State Attorney General's Office and the request was honored two years later on August 16, 2005.
9. 05/21/04 Exhibit 24 Inter-Office Communication advising Gasper of a recent decision in Milwaukee County Ordinance 17.17(1) advising that Gasper's seniority date with respect to vacation is 11/16/90 and therefore granted two extra weeks. On 11/23/04 Gasper sent a handwritten letter to the attention of Milwaukee County Clerk of Courts Certified Mail 7002 2410 0003 9200 4246 requesting the two weeks of added vacation be paid to Gasper. Cc: Attorney Simon, Tad Parks D.O.A. There was no response to Gasper's 11/23/04 letter.

10. At the conclusion of 01/09/04 grievance hearing at the same table in the same room with all the players present – does Sarah Blair Gunn, in retaliation and in the presence of two Union stewards, present Gasper with 2 verbal reprimands – a) one for a sign on desk and moving desk to a safe place unused since set up, b) supervisor Allcott
11. While on Family Medical Leave beginning 01/12/04 Clerk of Courts – Criminal Division failed to respond to 4 requests to have Gasper's pay stubs mailed to her home address. Carbon copies to Mr. McDowell, Tad Parks Fiscal, Attorney Gasper received them on 4/22/04 hampering attempts to obtain heat assistance, etc.
12. In the year 2004 with approximately 20+ letters received as invites to interviews Milwaukee County purposefully did not rehire Gasper to another job with more than sufficient medical evidence received by Milwaukee County that returning to Clerk of Courts – Criminal Division was not a job option due to the two nervous breakdowns. Exhibit 36, Exhibit 37.
13. The vast majority of invite letters for invite to Milwaukee County job interviews were for promotional positions. Exhibit 36
14. Gasper was denied the priority in consideration for a lateral transfer position for Milwaukee County jobs having completed the necessary Transfer request paperwork and having it on file. Exhibit 36, M.O.A. Part 2, Section 2.36 TRANSFER POLICY lines 26-30.
15. 04/23/04 form letter for County of Milwaukee Written charges against Civil Service Employees for the discharge of Linda M. Gasper signed by John Barrett. Exhibit 42 Having more than sufficient documentation with 7 grievances, 3 more grievances, doctor's notes faxed directly to John Barrett, worker's compensation claim forms completed dated 05/07/03 and 02/29/04 faxed personally to John Barrett, PRB letter written by Gasper in re: harassment by Tom Oelstrom cc: John Barrett, County Executive Scott Walker's office, Richard Nyklewicz, 02/12/03 letter faxed to John Barrett, 02/18/03 meeting with his senior Administration Sarah Blair Gunn, Jean Gmiendl, Paul Kenney in re: co-worker harassment. . .two nervous breakdowns from management harassment and three of Gasper's medical doctor's/attendees in agreement. Exhibit 22, Exhibit 37, Exhibit 42 that Gasper is unable to return to the Clerk of Courts – Criminal Division. John Barrett did transfer Lea Kyle-Lewis to the Civil Division AND Jacqueline Sloan to Jury Management out of the Criminal Division – Jacqueline addressing harassment by Tom Oelstrom. Mr. Barrett could have also transferred Gasper but opts to fire her instead.

16. In November 2004 with the promotional job offer from House of Corrections to Gasper with the inclusion phrase on the background check. Also please note in reference to the phrase included in the form provided by HOC, Gasper did personally ask the Sergeant in charge of ALL background checks for both the Sheriff's Department and the House of Correction. Gasper did personally read to that same Sergeant the phrase included and made reference to. . .Gasper was told that the form was not one of theirs. Transcript page 75 lines 18-25 through page 77 line 16 Transcript page 41 lines 14-23, page 76 lines 5-17, lines 18-25, page 77 lines 1-16, page 78 lines 14-16.
17. This subpoena is the only one Gasper used the Milwaukee County Sheriff's Department Process service for since the employee worked 3rd shift and the only one that the paperwork ends up mysteriously missing. The subpoena was docketed #309778, \$35.00 fee received but Gasper traced the paperwork via telephone through 5 to 7 employees still unable to locate the subpoena w/Gasper's return envelope for Lt. Thomas Kriefall. Also note evidence faxed to WERC and Attorney Schoewe dated 11/02/05.
18. Milwaukee County, being self-insured, refused to pay medical bills for Gasper and son/dependent Jeffrey. The majority of the year Milwaukee County did pay for visits to therapist Jan Hubert. Gasper attempted 3 phone calls to resolve. When unsuccessful Gasper filed a complaint with the State of Wisconsin Insurance Commission for intervention. The OIC stated in their 11/22/04 responsive letter to Gasper in second paragraph, second sentence: *This means your employer actually provides the funds to pay claims.* Exhibit 39
19. With reference to Union M.O.A. 2.19 EMPLOYEE HEALTH BENEFITS Gasper did pay the appropriate premium for the year time indicated, however, after the year time frame ended the Milwaukee County Clerk of Courts Criminal Division did not comply per contract and sent Gasper's first full premium notice for March 2005 with WPS PPO as the insurance with the dollar amount being owed by Gasper \$850.58. Gasper had Humana EPO with a monthly cost for Milwaukee County to be \$446.17. On a telephone conversation on 04/21/05 Gasper did ask Cynthia Zemlicka in Employee Benefits who selected WPS without Gasper's consent? Cynthia responded, "probably Jertha Ramos-Colon." (She replaced Jean Gmiendl as Human Resource Manager for Clerk of Courts not Sarah Blair Gunn.) Please see remainder of insurance premium notices. . .this was never corrected. Exhibit 39. Also **M.O.A. Part 2, Section 2.19 EMPLOYEE HEALTH BENEFITS (6) lines 32-40 page 20** In the event an employee who has

exhausted accumulated sick leave is placed on leave of absence without pay status on account of illness, the County Shall continue to pay the monthly cost or premium *for the health plan chosen by the employee and in force at the time of the leave of absence without pay status is requested*, if any, less the employee contribution during such leave period not to exceed one year.

20. On 07/05/05, Gasper received a notice of Cobra benefits “due to your termination of employment.” Exhibit 39
21. In August 20, 2005 Gasper did write a letter to Richard Nyklewicz Gasper’s County Supervisor cc: State of Wisconsin Department of Workforce Development Equal Rights Division requesting: 1) Gasper’s present rate of pay; 2) That Gasper’s six weeks of vacation be paid directly to her. Included was a request for a written response by August 20, 2005. Supervisor Nyklewicz left a message on Gasper’s answering machine that he was in receipt of my letter, it was not his jurisdiction, but that of Human Resources, and that he would forward my written request to the attention of Mr. Charles McDowell – Human Resources. There was not a response. Gasper contacted Workforce Development in pursuit of the complaint which was filed LS 2005 03177. Workforce Development then gave Mr. McDowell in the Notice of Complaint until October 14, 2005 to respond IN WRITING or send a check made payable to Linda Gasper directly to Workforce Development by the required date. Exhibit 34, Transcript pages 67 lines 15-25, page 68 lines 1-25, page 69 lines 1-25, page 70 lines 1-25, page 71 lines 1-13.
22. 10/06/05 Gasper received from Milwaukee County Department of Human Resources a Certificate of Group Health Plan Coverage. Due to the depression, nervous breakdowns (caused by all of the above), and as a result of having to take anti-depressant medication Lexapro and a medication specifically for the panic attacks – Gasper is now in a high risk insurance category. Because of this Gasper would always have to pay higher insurance premiums at a higher rate if forced to obtain private health insurance. The need for these medications continues until the complete resolution of this case. Exhibit 37, Exhibit 39
23. Milwaukee County did send Gasper a certified letter dated 10/12/05 initially from the Clerk of Courts about Gasper’s return to work. The panic attacks still and did occur for three days with this Clerk of Court contact. Transcript page 74 lines 22-25, page 75 lines 1-5. Gasper knowing that with medical documentation, as well as, the 09/14/04 agreement they received, the Clerk of Courts would have no need to contact her. Gasper did not accept the Clerk of Courts mail but returned

them. (as photocopied and forwarded to WERC and Attorney Schoewe.) See Transcript page 74 lines 22-25 and page 75 lines 1-5. The second certified mail came from simply the zip code 53233 so Gasper picked up this from the U.S. Post Office on 10/29/05 a Saturday. The subject of the letter was return to work and to notify Dan Pierzchala Human Resources Employment Staffing by 10/17/05 or 10/20/05. This would have been impossible since Gasper received the letter 10/29/05 and secondly, October 2005 would have no more significance than any other day. Per transcript pages 109 lines 23-25, page 110 lines 1-5, 16-18, page 113 lines 3-8, page 114 lines 14-17 and page 142 lines 16-19 both Gasper and Attorney Simon in the taped conversation believe the time frame to be April 2005. Gasper was supposed to return from Family Medical Leave 04/05/04 and being unable to return to the Clerk of Courts by three of Gasper's Health Care Professionals, there was no attempt by Milwaukee County to place Gasper in a comparable job. Gasper was simply sent numerous notices for Milwaukee County job interviews – mostly promotional. The priority in the transfer policy was not honored per contract. Gasper did not receive any notification in April 2005 to return to position within her classification or any other job with Milwaukee County. Faxed 10/31/05 to WERC and Attorney Schoewe.

24. Gasper also included a copy of a served subpoena to co-worker Romeka Terry who, "a man threw the served subpoena at the server's car." Gasper requested that Romeka have a phone interview for her safety. Romeka was being harassed by management at work as showing how Milwaukee County handles opposing witnesses. Intimidation and fear in Little Iraq. Transcript page 34 lines 21-25, page 35 lines 1-4, page 36, lines 1-4.

On January 9, 2006 will be officially two years since Gasper has physically worked at Milwaukee County. Gasper's body and emotions could not handle the harassment/retaliation by Clerk of Courts management and had a nervous breakdown. There was so much energy put into keeping Gasper from due process in the 7 internal grievances, 3 additional grievances resolved behind my back and without my consent or personal knowledge, three scheduled PRB hearings (not one was Gasper afforded the opportunity to present evidence or issues) and the obvious dragging out this WERC case (by Attorney Simon supposedly on my behalf) so that as Attorney Schoewe stated to Steward Georgia Scott on 10/18/05 that he wanted to make sure the 7 internal grievances would be "dead in the water" past the year time frame. The two years on enduring Milwaukee County's deceit, trickery and silly games are to what end? Gasper did not create the statutes, work rules, civil service

rules, contract and ordinances. They equally should bind all levels of Milwaukee County employees.

25. Upon the completion of the 10/18/05 WERC Hearing Gasper returned her blue key card and key to Room 223 Safety Building to Attorney Schoewe. Gasper then asked Attorney Schoewe if he could return Gasper's radio and black bible from the file room where she worked. The radio had am/fm, c.d. player and tape player was shown to Attorney Schoewe on the evidence pictures included in Exhibit 44. The radio was not brand new. Attorney Schoewe told Gasper that he would have them mailed to her. To this date Gasper has not received these items.

In support of its position that the complaint as pertains to it should be dismissed, Milwaukee County asserts and avers as follows:

None of the witnesses called by the complainant corroborated her allegations; rather, the opposite occurred. Darlene Wink had not personal knowledge of the substantive portion of Gasper's complaint. Daniel Wildt had no personal knowledge of anything Gasper complained about. Neala Swieczkowski was not supportive of her allegations. Mary Loeck essentially refuted the allegations Gasper called on her to support. Jackie Sloan only heard rumors. Georgia Scott never commented about the merit of any grievance. None of the witnesses could offer support or specific testimony to bolster the vague accusations Gasper attempted to proffer.

Gasper also attempted to support her complaint by testifying and putting numerous exhibits into the record. The County has already objected to accepting these putative exhibits for the truth of the various matters asserted. They are not at all authenticated or germane, and Gasper was in no way qualified to offer opinion testimony on their contents. They should all be stricken.

Gasper has singularly failed to meet her burden of persuasion; in her troubled world, she draws a straight line from unwarranted assumptions to foregone conclusions, but shows no harassment. Gasper did absolutely nothing in the four corners of the record to establish that Milwaukee County either interfered with, restrained or coerced her in the exercise of her statutory rights, or that the county either encouraged or discouraged membership in a labor organization by discrimination in regard to hiring, tenure or other terms or conditions of employment.

This case is entirely without merit, and in other setting would be termed frivolous. The complaint should be dismissed and the county reimbursed for the effort and expense of having to defend itself from these bogus claims.

Both the Complainant and the County waived their rights to file reply briefs regarding the complaint against the municipal employer.

DISCUSSION

Complaint against Union

As the exclusive representative of the employees within the bargaining unit, the union has certain rights and responsibilities. Its most basic right is to act on behalf of all; its most basic responsibility is to give fair representation to each. These twin towers of the union's identity – the power to act for all, the obligation to be fair to each – form the core of the duality inherent in its duty of fair representation.

There's no reason why the power to act for all and the obligation to be fair to each should ever be in conflict. But sometimes they are, or are seen to be so, so the courts and commission have had to set standards.

Early on, the courts clearly found collectivism to take priority, subject to challenge only on grounds of bad faith and abuse. By giving the collective representative the widest authority to evaluate questions of contract administration or bargaining priorities consistent with the collective relationships at stake, subject only to the abuse-of-discretion standard, the courts and commission have set a high bar for a complainant to succeed in a duty of fair representation case.

Collective representation, the U.S. Supreme Court has observed, does not mean that every member of the bargaining unit will be happy with every action of the labor organization. "The complete satisfaction of all who are represented is hardly to be expected." *FORD MOTOR CO. V. HUFFMAN*, 345 U.S. 330, 338 (1953), cited in *HUMPHREY V. MOORE*, 375 U.S. 335, 349 (1964).

For more than forty years, Wisconsin law has held a high standard for employees challenging a decision by their union on whether or not to pursue a grievance. As the Wisconsin Supreme Court held in *FRAY V. AMALGAMATED MEAT CUTTERS*, 9 Wis. 2d 631, 641 (1960):

The union has great discretion in processing the claims of its members, and only in extreme cases of abuse of discretion will courts interfere with the union's decision not to present an employee's grievance. In certain cases for the greater good of the members as a whole, some individual rights may have to be compromised. Whether or not a cause of action is stated depends upon the particular facts of each case.

There has been no better analysis of this issue than its seminal statement. Here is how Justice White explained it almost 35 years ago:

A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith. See HUMPHREY V. MOORE, *supra*; FORD MOTOR CO. V. HUFFMAN, *supra*. There has been considerable debate over the extent of this duty in the context of a union's enforcement of the grievance and arbitration procedures in a collective bargaining agreement. See generally Blumrosen, "The Worker and Three Phases of Unionism: Administrative and Judicial Control of the Worker-Union Relationship", 61 *Mich. L. Rev.* 1435, 1482-1501 (1963); comment, "Federal Protection of Individual Rights under Labor Contracts", 73 *Yale L. J.* 1215 (1964). Some have suggested that every individual employee should have the right to have his grievance taken to arbitration. 13 Others have urged that the union be given substantial discretion (if the collective bargaining agreement so provides) to decide whether a grievance should be taken to arbitration, subject only to the duty to refrain from patently wrongful conduct such as racial discrimination or personal hostility. 14 [386 U.S. 171, 191]

Though we accept the proposition that a union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion, we do not agree that the individual employee has an absolute right to have his grievance taken to arbitration regardless of the provisions of the applicable collective bargaining agreement. In L. M. R. A. 203 (d), 61 Stat. 154, 29 U.S.C. 173 (d), Congress declared that " Final adjustment by a method agreed upon by the parties is . . . the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement." In providing for a grievance and arbitration procedure which gives the union discretion to supervise the grievance machinery and to invoke arbitration, the employer and the union contemplate that each will endeavor in good faith to settle grievances short of arbitration.

Through this settlement process, frivolous grievances are ended prior to the most costly and time-consuming step in the grievance procedures. Moreover, both sides are assured that similar complaints will be treated consistently, and major problem areas in the interpretation of the collective bargaining contract can be isolated and perhaps resolved. And finally, the settlement process furthers the interest of the union as statutory agent and as coauthor of the bargaining agreement in representing the employees in the enforcement of that agreement. See Cox, "Rights Under a Labor Agreement", 69 *Harv. L. Rev.* 601 (1956).

If the individual employee could compel arbitration of his grievance regardless of its merit, the settlement machinery provided by the contract would be substantially undermined, thus destroying the employer's confidence in the union's authority and returning the individual grievant to the vagaries of

independent and unsystematic negotiation. Moreover, under such a rule, a significantly greater number of grievances would proceed to [386 U.S. 171, 192] arbitration. 15 This would greatly increase the cost of the grievance machinery and could so overburden the arbitration process as to prevent it from functioning successfully. See *NLRB v. ACME INDUSTRIAL CO.*, 385 U.S. 432, 438 ; Ross, *Distressed Grievance Procedures and Their Rehabilitation, in Labor Arbitration and Industrial Change, Proceedings of the 16th Annual Meeting, National Academy of Arbitrators* 104 (1963). It can well be doubted whether the parties to collective bargaining agreements would long continue to provide for detailed grievance and arbitration procedures of the kind encouraged by L. M. R. A. 203 (d), *supra*, if their power to settle the majority of grievances short of the costlier and more time-consuming steps was limited by a rule permitting the grievant unilaterally to invoke arbitration.

Nor do we see substantial danger to the interests of the individual employee if his statutory agent is given the contractual power honestly and in good faith to settle grievances short of arbitration. For these reasons, we conclude that a union does not breach its duty of fair representation, and thereby open up a suit by the employee for breach of contract, merely because it settled the grievance short of arbitration. *VACA v. SIPES*, 386 U.S. 171, 190-193 (1967)

The duty is satisfied so long as a labor organization represents its members' interests without hostility or discrimination, exercises its discretion with good faith and honesty, and acts without arbitrariness in its decision making. Thus the legal formulation for a breach of the duty of fair representation is whether the Union's actions are arbitrary, discriminatory or taken in bad faith.

The Wisconsin court determined that VACA made the FRAY language "probably too broad." So over a quarter-century ago it formulated a clear, post-VACA test, in *MAHNKE v. WERC*, 66 Wis. 2D 524 (1975):

The test is whether the action of the union was arbitrary or taken in bad faith in the performance of its duty of fair representation on behalf of the employee member. *Id.*, at 532.

As the court explained:

VACA ... provides that suit may be brought subsequent to an arbitrary, discriminatory or bad faith refusal to arbitrate by the union. VACA also requires the union to make decisions as to the merits of each grievance. It is submitted that such decision should take into account at least the monetary value of his claim, the effect of the breach on the employee and the likelihood of success in arbitration. Absent such a good-faith determination, a decision not to arbitrate based solely on economic considerations could be arbitrary and a breach of the

union's duty of fair representation. This is not to suggest that every grievance must go to arbitration, but at least that the union must in good faith weigh the relevant factors before making such determination. *Id.*, at 534.

I turn now to applying this legal standard to the facts in the record.

At the outset, I must note that a comprehensive analysis of this matter is complicated by the fact that a witness, either Hart or Gasper, lied during the proceeding on two very important matters.

Hart testified that Gasper (a) wrote him a letter in May, 2003, thanking him for his efforts on her behalf, and (b), left him a phone message in January, 2004, filled with vile racist bile. Gasper testified she neither wrote such a note, nor left such a message. This is not a matter where there can be any ambiguity or difference in perception; either Gasper wrote the note or she didn't; she either left the message or she didn't. Hart testified she did; Gasper testified she didn't. It is, of course, possible that someone *pretending* to be Gasper wrote the note and left the message, and that Hart believed – erroneously – that both were from Gasper, but that seems highly unlikely. It appears almost certain that either Hart or Gasper lied, on material matters.

Unfortunately, as hearing examiner I had neither the resources nor the opportunity to pursue an investigation as to who lied. For the legitimacy of the administrative process, however, I hope the matter of this perjury does not end here, and that whoever was telling the truth will bring this to the attention of the proper authorities.

As the Findings of Fact establish, in the spring of 2003 Gasper unleashed a torrent of grievances, including seven on one day, over such matters as another employee taking too long to provide necessary job tools, her access key being deactivated while on medical leave, and supervisors speaking to her in such a way as to cause Gasper embarrassment. I have quoted at length from Gasper's communications to give the full flavor of the challenge the union faced in providing her with full representation.

Hart responded appropriately, processing and submitting them to the employer. After these grievances were denied, Hart made a considered professional opinion to not advance them to arbitration. Gasper testified that she believed her agreement was necessary for there to be a voluntary resolution of a grievance. But the individual employee is not a party to the collective bargaining agreement; the parties are the labor organization and the municipal employer.

As Chief Steward, Hart assigned himself to handle Gasper's grievances, and was successful in resolving several of them.

When Gasper moved her work station without authorization, the employer was prepared to impose discipline. Hart was able to convince the employer to issue only a verbal reprimand, rather than the more serious discipline the employer had planned.

Quite apart from the unproven allegation that Gasper is racist – inherent in Hart’s claim of the purported phone message – it is clear that Gasper believes Hart is deficient in character, candor and conduct. But an employee’s dissatisfaction with the character of the union representative does not mean the union has failed in its duty of fair representation, just as an employee’s dissatisfaction with the quality of the union’s representation does not necessarily lead to that conclusion.

Indeed, as explained above, even valid criticisms of the quality of union representation do not, by themselves, establish that the union has failed to meet its statutory duty. Mediocre or even incompetent representation is not against the law – a prohibited practice only occurs when the union acts in an arbitrary manner or in bad faith.

Gasper has failed to establish any such bad faith on the part of any union official or agent. The fact that Chief Steward Hart may have known various supervisory personnel from his own worksites does not lead to the conclusion that he deliberately subverted the grievance process on their behalf. Moreover, the record shows Hart and other union representatives expended significant time and energy advocating on Gasper’s behalf. The fact that Gasper disapproves of Hart on a personal level or was dissatisfied by the ultimate outcome of many of her grievances does not satisfy the legal standard for establishing that the union failed to meet its duty of representation.

On this record, it is also impossible to conclude that Hart committed a prohibited practice by failing to submit as grievances Gasper’s fact sheets of October 3 and 30, 2002 and March 18, 2003, all of which allege harassment by non-supervisory and non-managerial employees. Even if these allegations are considered timely, absent evidence establishing bad faith, which is not here present, it was within a steward’s legitimate discretion to decline to grieve the fact that one of Gasper’s co-workers asked if she had had the flu, or to grieve the incidents of October, 2002.

Nor has Gasper established by a preponderance of the evidence that Hart was acting in bad faith or in an arbitrary or capricious manner in his initial strategy concerning her reclassification grievance, which he ultimately did file.

This is not to say the Union is blameless in this matter, for Hart appears to have violated Section 7 of the Union constitution when he denied Gasper the right to have former steward Scott as a representative at the grievance meeting in January 2004. That section provides for grievances to be handled by the chief steward “along with two other representatives picked up (sic) by the employee....” The ungrammatical nature of the sentence notwithstanding, this provision is unambiguous about granting the affected employee the right to choose her or his representatives “to handle ... all grievances matters....brought by an union member.” The constitution does not require the affected employee to choose only from among stewards or even current employees – on its face, the constitution grants unlimited discretion to the employee in this matter. While the chief steward retains the primary responsibility for representation, the affected employee is allowed to pick the two other representatives.

Scott had retired on December 13, 2003. Believing that only current employees could or should serve as representatives, Hart denied Gasper's request. There is no evidence, however, that he did so for improper reasons.

Gasper also sought to have that hearing rescheduled from January 9, 2004, another request Hart denied. As he explained in his letter of that date, Gasper had already been complaining about the timeliness of her grievance proceedings (even complaining to the International President about Hart's performance). Given the workload and the difficulty in scheduling matters, the record does not establish that Hart was acting in bad faith or in an arbitrary manner when he exercised his authority as chief steward to keep the January 9 meeting date.

The Union also should have done a better job keeping Gasper informed about her grievances, especially the January 2004 hearing at which the seven from May 2003 were considered and summarily denied.

Again, however, the legal issue before me is not the quality of the union representation; the test is whether there is a preponderance of evidence establishing that the Union acted as it did in bad faith or for arbitrary reasons.

Gasper's suspicions and conjecture aside, there is no evidence establishing bad faith on the part of the union, which is an essential element of a successful complaint alleging failure to provide fair representation. In the context of the grievance workload which Gasper presented, and the absence of any evidence as to bias on the part of Hart or other Union officials, the Union's shortcomings documented above are not enough for me to conclude as a matter of law that the Union failed to meet its duty of fair representation.

Accordingly, I have dismissed the complaint against the Union.

Complaint Against Milwaukee County

Gasper's complaint alleges the County has violated two sections of the statutes, but has not indicated which of the employer's activities she considers to have violated which statutory provision. Below, I present the legal standards for analyzing such claims, and evaluate Gasper's claims where they seem most appropriate.

Analysis of Alleged Violation of Sec. 111.70(3)(a)1, Stats.

Section 111.70(3)(a)1, Stats., makes it a prohibited practice for a municipal employer:

1. To interfere with, restrain or coerce municipal employees in the exercise of their rights guaranteed in sub. (2).

Section 111.70(2), Stats., describes the rights protected by Sec. 111.70(3)(a)1, Stats., as being:

(2) RIGHTS OF MUNICIPAL EMPLOYEES. Municipal employees shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The statutes thus protect the rights of employees and their union to file and prosecute grievances alleging violations of the collective bargaining agreement.

To establish a claim of interference, a complainant must establish by a clear and satisfactory preponderance of the evidence that the respondent's conduct contained either some threat of reprisal or promise of benefit which would tend to interfere with, restrain or coerce employees in the exercise of their section (2) rights. WERC v. EVANSVILLE, 69 Wis. 2d 140 (1975); JUNEAU COUNTY, DEC. NO. 12593-B, (WERC, 1/77). It is not necessary to demonstrate that the employer intended its conduct to have such effect, or even that there was actual interference; instead, interference may be proven by showing that the conduct has a reasonable tendency to interfere with the exercise of protected rights. CITY OF BROOKFIELD, DEC. NO. 20691-A, (WERC, 2/84). If the conduct in question has a reasonable tendency to interfere with the exercise of Sec. 111.70(2) rights, a violation will be found even if the employer did not intend to interfere and no employee felt coerced or was, in fact, deterred from exercising Sec. 111.70(2) rights. BEAVER DAM UNIFIED SCHOOL DISTRICT, DEC. NO. 20283-B (WERC, 5/84); CITY OF BROOKFIELD, DEC. NO. 20691-A (WERC, 2/84); JUNEAU COUNTY, DEC. NO. 12593-B (WERC, 1/77). However, employer conduct which may well have a reasonable tendency to interfere with an employee's exercise of Sec. 111.70(2) rights will generally not be found to violate Sec. 111.70(3)(a)1 if the employer had valid business reasons for its actions. D.C. EVEREST AREA SCHOOL DISTRICT, DEC. NO. 29946-L (Burns, 8/03); CITY OF BROOKFIELD, DEC. NO. 20691-A (WERC, 2/84); CEDAR GROVE-BELGIUM AREA SCHOOL DISTRICT, DEC. NO. 25849-B (WERC, 5/91); CENTRAL HIGH, DEC. NO. 29671-B (Mahwinney, 5/00); BROWN COUNTY, DEC. NO. 28158-F (WERC, 12/96); CITY OF OCONTO, DEC. NO. 28650-A (Crowley, 10/96), *aff'd by operation of law*, DEC. NO. 28650-B (11/96); MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 27867-B (WERC, 5/95).

It is clear from the record that Gasper's experience at work was not a happy one, but was filled with tension and stress. The presence of tension, however, does not establish that the employer is guilty of a prohibited practice.

Indeed, the record establishes that bad labor/management relations are endemic to the Office of the Clerk of Circuit Court, in a manner that transcends the specific relationship between Gasper and her supervisors. As Gasper's own witness and preferred steward, Georgia Scott, testified, "the clerk of courts is about the worst" department for labor/management

relations, that “management pits one employee against another” and “management needs to learn how to treat employees.” In short, the record suggests that management is hostile to all employees, whether or not they are engaged in protected activity.

Gasper has failed to meet her burden of establishing by a clear and satisfactory preponderance of the evidence that the employer contained some threat of reprisal which would interfere with her exercise of statutory rights. Although Gasper describes the encounter with Allcott over wearing sunglasses at work as a “threat,” an individual who wears sunglasses for purely personal reasons while at an indoor desk job is not engaged in concerted activity under the terms of Sec. 111.70(2), Wis. Stats.

Gasper also claims the County acted illegally in bringing four or five supervisory personnel to the February 18, 2003 meeting, but preventing Gasper from bringing union steward Scott. That meeting, however, was not in consideration of a grievance Gasper filed, nor was it a meeting which could have lead to Gasper’s discipline; instead, it was to consider Gasper’s complaints about another, represented employee. Although it may well have been a good idea to have Ms. Scott participate in the discussion, the County did not commit a prohibited practice by having the discussion without her. Indeed, given Scott’s comments criticizing Union members who complain about other Union members, appended to the February 12, 2003 note, it is unclear how Scott would have supported Gasper’s position at the meeting.

There being no evidence in the record that the employer undertook any action to limit Gasper’s enjoyment of her statutory rights, I have dismissed the 111.70(3)(a)1 complaint.

The complaint as to Sec. 111.07(3)(a)3

Section 111.70(3)(a)3, Stats., makes it a prohibited practice for a municipal employer to “encourage or discourage a membership in any labor organization by discrimination in regard to . . . tenure or other terms or conditions of employment.” It has been well-settled for over thirty years that, to prove a violation of this section the Complainant must, by a clear and satisfactory preponderance of the evidence, establish that:

1. Complainant was engaged in protected activities; and
2. Respondents were aware of those activities; and
3. Respondents were hostile to those activities; and

4. Respondents' conduct was motivated, in whole or in part, by hostility toward the protected activities.¹

Evidence of hostility and illegal motive (factors three and four above) may be direct (such as with overt statements of hostility) or, as is more often the case, inferred from the circumstances. TOWN OF MERCER, DEC. NO. 14783-A (Greco, 3/77). If direct evidence of hostility or illegal motive is found lacking, then one must look at the total circumstances surrounding the case. In order to uphold an allegation of a violation, these circumstances must be such as to give rise to an inference of pretext which is reasonably based upon established facts that can logically support such an inference. COOPERATIVE EDUCATION SERVICE AGENCY #4, ET AL., DEC. NO. 13100-E (Yaffe, 12/77), *aff'd*, DEC. NO. 13100-G (WERC, 5/79).

Regarding the fourth element, it is irrelevant that an employer has legitimate grounds for its action if one of the motivating factors was hostility toward the employee's protected concerted activity. LACROSSE COUNTY (HILLVIEW NURSING HOME), DEC. NO. 14704-B (WERC, 7/78). In setting forth the "in-part" test, the State Supreme Court noted that an employer may not subject an employee to adverse consequences when one of the motivating factors is his or her union activities, no matter how many other valid reasons exist for the employer's action. MUSKEGO-NORWAY C.S.J.S.D. NO. 9 v. WERB, 35 Wis. 2D 540, 562 (1967). Although the legitimate bases for an employer's actions may properly be considered in fashioning an appropriate remedy, discrimination against an employee due to concerted activity will not be encouraged or tolerated. EMPLOYMENT RELATIONS DEPT. V. WERC, 122 Wis. 2D. 132, 141 (1985).

As noted above, Gasper must establish by the preponderance of the evidence several conditions to prove that the county has engaged in unlawful behavior. She has failed to do so.

In advancing her claim under section (3)(a) 3, Gasper has established that she was engaged in protected activities (filing grievances and seeking adherence to the anti-harassment policy), and that the respondent was aware of her actions. She has failed, however, to offer any evidence, either testimonial or documentary, that the employer was hostile to such activities, and that supervisory personnel were motivated, even in part, by their hostility.

Gasper called six witnesses, current and former employees of Milwaukee County. None offered testimony as to the relevant factual issues, namely whether managerial employees were hostile toward Gasper for her protected activities and retaliated against her due to that activity. Their testimony established that Gasper was a dedicated and hard-working municipal employee, and that there were significant and widespread labor/management tensions in the office where Gasper worked, but those considerations do not prove Gasper's complaint.

¹ The "in-part" test was applied by the Wisconsin Supreme Court to MERA cases in MUSKEGO-NORWAY C.S.J.S.D. NO. 9 v. WERB, 35 Wis.2D 540 (1967) and is discussed at length in EMPLOYMENT RELATIONS DEPT. v. WERC, 122 Wis.2D 132 (1985). See also ROCK COUNTY, DEC. NO. 29219-B (WERC, 10/98), and D.C. EVEREST AREA SCHOOL DISTRICT, DEC. NO. 29946-A (Burns, 8/2000).

Indeed, if anything, the poor working relationship throughout the office of the Clerk of Circuit Court makes Gasper's case more difficult, because she must prove that her difficulties were uniquely the result of her protected activities, and not just reflective of the generally troubled state of affairs.

This has been a difficult case, for procedural and other reasons. I know that this resolution leaves the Complainant feeling further disenfranchised and adrift. However, under the statutory standards setting the burden of proof and the procedure for the conduct of administrative hearings, I have had no choice but to dismiss the complaint in its entirety.

Despite the dismissal of all charges, I decline to order complainant to reimburse the employer for the cost of its defense, as requested by Milwaukee County. Although Sec. 227.483, Stats., authorizes such an order under certain circumstances, I do not believe requiring this *pro se* complainant to reimburse Milwaukee County would advance the cause of industrial justice in the municipal workplaces of Wisconsin.

Dated at Madison, Wisconsin, this 2nd day of May, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Stuart D. Levitan /s/

Stuart D. Levitan, Examiner

