

1999

PUBLIC SECTOR LABOR LAW  
Final Examination

Instructions:

This package contains two fact patterns and a question drawn from each fact pattern. The examination package will contain the identical fact patterns and a question drawn from each fact pattern. The examination will begin at 11:00 A.M. and end at 1:30 P.M. on Saturday, December 4, 1999 (in class). It is a closed-book examination. You may NOT use any books or notes.

You may add facts that are reasonably based on the facts in the examination. If there are any inconsistencies, I apologize. Reconcile any inconsistencies any way you wish, but be sure to explain any assumptions you make.

Remember, the best examination will identify and fully discuss the issues raised by the fact patterns. You need not cite to specific cases, but you should recite the appropriate standards and rules of law that we discussed in class. Remember your fictional audience. Do not take anything for granted.

## Fact Pattern #1

Grover's Corner is a small community in northeast Massachusetts; population approximately 13,000. It is governed by a Board of Selectmen, with an open Town Meeting. George Gibbs is the business manager and runs the Town's day-to-day operation. Below is a list of all Town employees:<sup>1</sup>

### Selectmen's Office

Business Manager  
Administrative Assistant  
Clerical (part-time)  
Custodian

### Accountant's Office

Accountant  
Clerical (part-time)

### Treasurer's Office

Treasurer  
Assistant Treasurer  
Clerical  
Clerical (part-time)

### Collector's Office

Collector  
Assistant Collector  
Clerical

### Clerk's Office

Clerk  
Assistant Clerk  
Clerical

### Registrar's Office

Registrar (3)

### Assessor's Office

Principle Assessor  
Clerical  
Clerical (part-time)

### Council of Aging

Director  
Clerical  
Bus Driver/Custodian (part-time)  
Nutrition Site Manager

### Police Department

Chief  
Deputy Chief  
Lieutenant  
Sergeant (3)  
Patrol Officer (11)  
Clerical  
Custodian (part-time)

### Fire Department

Chief  
Deputy Chief  
Lieutenant (3)  
Fire Fighter/EMT (16)

### Department of Public Works

Superintendent  
Ass't Superintendent (2)  
Administrative Assistant  
Laborer (14)

---

<sup>1</sup>except School Department Employees.

## Miscellaneous

There are also six (6) committees/boards in Town, including the finance committee, the conservation committee, the capital improvement committee, the historic committee, the board of appeals, and the planning board. Each committee/board has a budget for clerical support and is permitted to pay a recording secretary \$10.00 per hour to attend meetings and transcribe minutes. Although some committees/boards are very active, others meet only occasionally (2-3 times per year).

Many Town employees are already represented by various unions. Below is a list of those unions and a description of the bargaining unit(s) they represent:

### International Association of Fire Fighters

All full-time and regular part-time fire fighter/EMT's, excluding the fire chief and the deputy fire chief.

### International Brotherhood of Police Officers

#### **Unit A**

All full-time and regular part-time police patrol officers, excluding the police chief, the deputy police chief, lieutenants, and sergeants.

#### **Unit B**

All full-time and regular part-time police superior officers, including lieutenants, and sergeants, but excluding patrol officers, the police chief and the deputy police chief.

### American Federation of State, County, and Municipal Employees

All full-time and regular part-time laborers in the Department of Public Works, excluding the superintendent, the assistant superintendents, and the administrative assistant.

### National Association of Government Employees

All full-time and regular part-time custodians.

Massachusetts Library Staff Association

All full-time and regular part-time library employees, excluding the director and the custodian.

On January 2, 1997, the Grover's Corner Municipal Employees Association (the Association) filed a petition with the Labor Relations Commission seeking to represent a bargaining unit described as:

**All full-time and regular part-time clerical and technical employees in the Town of Grover's Corner, including the administrative assistant to the Board of Selectmen, the assistant treasurer, the assistant collector, the assistant clerk, the registrars, the bus driver, nutrition site manager, and nurse in the Council on Aging, the administrative assistant in the Department of Public Works, and all committee recording secretaries.**

The petition specified that there were twenty-six (26) employees in the petitioned-for unit and the petition was supported by eight (8) "Show of Interest" cards.

Many Town employees testified at the hearing. Their testimony can be summarized as follows:

George Gibbs

George Gibbs has been the Town's business manager for ten (10) years and is familiar with the job duties of all Town employees. Clerical employees in the Town are assigned to various departments. They answer the telephone, type, and file. With the exception of the administrative assistant in the Department of Public Works, clerical employees often fill in for each other on vacations and cover lunch breaks.<sup>2</sup> The positions require a high school education and general office skills.

---

<sup>2</sup>The administrative assistant in the DPW does not fill in for other clerical employees because she works out of the DPW garage, which is across Town.

Because the Town Collector and Town Clerk are elected positions, the Collector's and Clerk's Offices are actually run by the assistant collector and assistant clerk, respectively, who have both been with the Town for more than fifteen years. The assistant collector and assistant clerk recommend applicants to fill vacant clerical positions. They also evaluate employee performance and recommend salary increases.

The Town has almost no control over the committee recording secretaries. Although the Board of Selectmen has sign-off authority on all selections, they have never refused to approve a selection and the confirmation process is really pro forma.

The Nurse in the Council on Aging is not a Town employee. She works pursuant to a contract for services and is paid monthly from the Town's vendor account (Town employees are paid weekly). She is not covered by the Town's group health insurance policy and does not receive holiday, sick, or vacation pay. The Town does not withhold federal or state income taxes from her check, does not pay employer taxes, or cover the nurse under its workers' compensation policy. On cross-examination, Gibbs admitted that the nurse works a set schedule (although part-time) and, if she is sick, she is expected to report to the director of the Council on Aging. Gibbs also admitted that the director occasionally directs the nurse to make a "house call" to a client (most of the nurse's duties are performed at the Senior Center).

### Emily Webb

Emily Webb is the administrative assistant to the Board of Selectmen. She reports directly to the Board and is responsible for taking the minutes of the Selectmen's meetings, including some meetings conducted in executive session.<sup>3</sup> She also types all correspondence, including letters to various unions and various collective bargaining agreements. On cross-examination, Ms. Webb admitted that she does not type collective bargaining proposals and does not know the content of those proposals until they are presented to the union.

### Joe Crowell

Joe Crowell is the assistant treasurer, but considers himself the "co-treasurer." Both he and the treasurer have Master's Degrees in Public Administration, with a concentration in municipal finance. Crowell makes decisions about how to manage the Town's funds, including how and where to deposit long- and short-term investments. Although Crowell never makes a decision without consulting with the treasurer, the treasurer never seems to make a decision without consulting with Crowell. Crowell also considers the treasurer's office a "team," with each employee knowing his or her job and working without supervision. However, on cross-examination, Crowell stated that he is an employee at will and could be terminated by the treasurer. He also admitted to disciplining a clerical employee in the treasurer's office a few years ago.

---

<sup>3</sup>The Selectmen also conduct some meetings in executive session without her. However, because she is not invited to those meetings, she does not know what topics are discussed.

Rebecca Gibbs

Rebecca Gibbs is the Nutrition Site Manager. She has a Master's Degree in Nutrition and is responsible for evaluating and managing the nutritional needs of the Town's senior citizens. Although she reports to the director of the Council on Aging, Ms. Gibbs does not discuss each case with the director. Rather Ms. Gibbs is given a budget to work with and, as long as she does not exceed that budget, she has complete authority to purchase services and supplies.

Following the hearing, the Association filed a charge of prohibited practice. The investigation revealed the following facts:

On the day after the hearing, Emily Webb wore a "Union - Yes" button to work. When George Gibbs saw the button, he became very angry and told her to "take that damn button off." When Webb protested, Gibbs told her to take the button off or go home. When faced with taking the button off or being sent home, Webb took the button off. She really did not think that Gibbs would send her home, but she took the button off "to avoid trouble." A personnel by-law prohibits wearing buttons or other slogans that are "offensive," and last year a DPW laborer was reprimanded for wearing a "take this job and shove it" hat.

The following week, Emily Webb and Rebecca Gibbs were having lunch and discussing the "union thing." Eventually, the conversation turned to health benefits. Webb stated that she believed that the Town should offer family-plan coverage to Gibbs's boyfriend, who had lived with her for more than five years. Webb also told Gibbs that she thought that the union might be successful in getting such a benefit.

When Webb reported to work the next day, George Gibbs called her to his office and told her that he had an important assignment for her. She was to report to the Town Hall basement and catalogue the Town's vital records from the 1800's. He also told her that the job could last at least a month, and possibly even beyond the union election. When Webb asked why her, Gibbs responded "why not you?" Ironically, later that day, Gibbs received a copy of a new state regulation that required the work. When Gibbs went to check on Webb's progress, he told about the new regulation.

Fact Pattern #2

Three years have now passed since the Association won the election and became the certified collective bargaining representative of a bargaining unit of clerical employees. The Association and the Town are parties to a collective bargaining agreement covering the period July 1, 1997 through June 30, 2000. Article 14 of that agreement, entitled "Health Insurance," states, in part:

**Bargaining unit members shall be entitled to enroll in any of the Town's group health insurance plans and the Town shall contribute 75% toward the premium of any such plan.**

In September 1999, the Town offered Blue Cross/Blue Shield Master Medical and a number of Health Maintenance Organization (HMO) plans and, consistent with Article 14 of the parties' agreement, contributed 75% toward the cost of those plans. In November 1999, George Gibbs received the following letter:

**November 1, 1999**

**George Gibbs  
Business Manager  
Grover's Corner, Massachusetts**

**Dear Mr. Gibbs:**

**Our records indicate that enrollment in Blue Cross/Blue Shield Master Medical has dropped below the minimum participation rate of 20%. Accordingly, we will be unable to offer Blue Cross/Blue Shield Master Medical to the Town of Grover's Corner after December 31, 1999.**

**Sincerely,**

**Simon Stimpson  
Account Executive**

Gibbs sent a copy of the letter to all of the unions that represent Town employees and offered to bargain. On the same day (the letters crossed in the mail), the Association sent the following letter to Gibbs:

**November 1, 1999**

**George Gibbs  
Business Manager  
Grover's Corner, Massachusetts**

**Dear George:**

**With the end of our first collective bargaining agreement approaching, the Association seeks to begin negotiations over the terms of a successor agreement. Kindly forward any proposals you may wish to discuss to me at your earliest convenience.**

**Sincerely,**

**Emily Webb  
President  
Grover's Corner Municipal Employees Association**

In response, Gibbs wrote:

**November 5, 1999**

**Emily Webb  
President  
Grover's Corner Municipal Employees Association**

**Dear Emily:**

**Just a short note to clear up a couple of things. First, the Town is more than willing to negotiate with the Association over the terms of a successor collective bargaining agreement. However, because the Finance Committee has not yet completed its projections for FY01, I suggest that we put off any negotiations until March 2000. Second, my letter dated November 1, 1999, was an offer to bargain over Blue Cross's decision to cancel Master Medical. I believe the subject should be bargained apart from the main collective bargaining agreement negotiations. If you refer to Blue Cross's letter dated**

November 1, 1999, they plan to cancel Master Medical effective January 1, 2000.

Sincerely,

**George Gibbs**  
**Business Manager**

Despite Gibbs's suggestion that the parties begin negotiations in March 2000, the parties actually began negotiating the terms of a successor collective bargaining agreement on November 10, 1999. At the first meeting, Gibbs offered a 1% across-the-board salary increase for all members of the bargaining unit and stated that he was pretty firm on the wage term and "didn't see much room for movement." In response, Webb told him to shove the 1% and that the Association would have no counter offer until the Town came up with something they could work with.

In the meantime, Gibbs was becoming concerned about costs and productivity. In November 1999, he hired a personnel consulting firm to analyze the job duties and write position descriptions for all Town employees. When the Association learned of the project, it immediately demanded copies of "all reports submitted to the Town" by the personnel consulting firm.

On the morning of November 28, 1999, as Webb was walking to Town Hall from her car, she noticed a video camera mounted at the top of one of the light poles in the parking lot. She did not think much of it until, later that day, she received a telephone call from the administrative assistant at the Department of Public Works and learned that cameras had been installed all over Town.

When Webb questioned Gibbs about the cameras, he said nothing. A couple hours later, Gibbs went to see Webb and the following exchange occurred:

GIBBS: Please come to my office, we need to discuss something.

WEBB: Is it about the Union or just me?

GIBBS: Just you.

WEBB: I want to bring a Union representative with me.

GIBBS: You don't need one.

WEBB: If you are going to interrogate me, I want a witness.

GIBBS: I am not going to interrogate you.

WEBB: You're a liar.

GIBBS: Emily, I said I am not going to interrogate you.

WEBB: I'm not coming.

GIBBS: Fine.

Following the exchange, Gibbs handed Webb the following memorandum:

**TO: Emily Webb**

**From: George Gibbs**

**Date: November 28, 1997**

**RE: Written Warning**

---

**On November 27, 1999 at approximately 5:01 P.M., you were seen leaving Town Hall with a box of paper clips. As you know it is against work rules to pilfer office supplies. You are hereby warned that this behavior is unacceptable and that further unacceptable behavior will result in additional discipline up to and including discharge.**

Gibbs also issued another warning to Webb for insubordination for refusing to meet with him.

Later that evening, Webb brought the warning up at an Association meeting. She stated that she believed she was disciplined unfairly and stated that the Association should hire a lawyer and "fight this thing all the way to the Supreme Court." One of the other members told Webb that she got caught red-handed and should just accept the consequences. The conversation became heated when another member expressed his view that a \$0.75 box of paper clips is not worth the two or three thousand dollars it could take to arbitrate the grievance. Another member opined that it might not be a good idea to antagonize Gibbs during successor contract negotiations. A third member agreed and added "Hey Emily, If you pay your dues, maybe we'd have the money to hire you a lawyer." Ultimately, the members voted not to take the grievance to arbitration.