

SUPREME COURT OF WISCONSIN

CASE No. : 2009AP1874-AC

COMPLETE TITLE :

Metropolitan Milwaukee Association of Commerce,
Inc.,

Plaintiff-Respondent,

v.

City of Milwaukee,

Defendant,

9to5 National Association of Working Women,
Milwaukee Chapter,

Intervenor-Defendant-Appellant.

ON CERTIFICATION FROM THE COURT OF APPEALS

OPINION FILED: October 14, 2010

SUBMITTED ON BRIEFS:

ORAL ARGUMENT: October 1, 2010

SOURCE OF APPEAL:

COURT: Circuit

COUNTY: Milwaukee

JUDGE: Thomas R. Cooper

JUSTICES:

CONCURRED:

DISSENTED:

NOT PARTICIPATING: ZIEGLER, J., did not participate.

ATTORNEYS:

For the intervenor-defendant-appellant there were briefs by *Barbara Z. Quindel, Richard Saks, and Hawks Quindel, S.C.*, Milwaukee, and oral argument by *Barbara Z. Quindel*.

For the plaintiff-respondent there was a brief by *Scott C. Beightol, Joseph Louis Olson, and Michael, Best & Friedrich, LLP*, Milwaukee, and oral argument by *Scott C. Beightol*.

An amicus curiae brief was filed on behalf of the Wisconsin Coalition Against Domestic Violence and the Wisconsin Coalition Against Sexual Assault by *Tony Gibart and the Wisconsin Coalition Against Domestic Violence*, Madison.

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 2009AP1874-AC
(L.C. No. 2008CV18220)

STATE OF WISCONSIN : IN SUPREME COURT

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FILED

OCT 14, 2010

A. John Voelker
Acting Clerk of Supreme
Court

APPEAL from an order of the Circuit Court for Milwaukee County, Thomas R. Cooper, Judge. *Order granting certification vacated and cause remanded to the Court of Appeals.*

¶1 PER CURIAM. The court is equally divided whether to affirm or reverse the order of the circuit court. Justice David T. Prosser, Justice Patience Drake Roggensack, and Justice Michael J. Gableman would affirm. Chief Justice Shirley S.

Abrahamson, Justice Ann Walsh Bradley, and Justice N. Patrick Crooks would reverse. Justice Annette Kingsland Ziegler did not participate.

¶2 When a certification or bypass results in a tie vote by this court, the better course of action is to vacate our decision to accept certification or bypass and remand the cause to the court of appeals. State v. Richard Knutson, Inc., 191 Wis. 2d 395, 396-97, 528 N.W.2d 430 (1995) (remanding to court of appeals on a tie vote on certification).

¶3 Accordingly, we vacate our order granting certification and remand to the court of appeals.

