

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN STATE FORESTERS ASSOCIATION,

Complainant,

v.

WISCONSIN DEPARTMENT OF NATURAL
RESOURCES,

Respondent.

Case VI
No. 14339 PP(S)-10
Decision No. 10127-A

Appearances:

Mr. Gene Vernon, Attorney, for the Wisconsin Department of
Natural Resources.

Bakken & Feifarek, Attorneys at Law, by Mr. James F. Bakken,
for the Wisconsin State Foresters Association.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter, and a hearing on such complaint having been held at Madison, Wisconsin, on February 9, 1971, before Morris Slavney, Chairman; and the Commission having considered the evidence, arguments and briefs of Counsel, and being fully advised in the premises makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Wisconsin State Foresters Association, hereinafter referred to as the Complainant, is an unincorporated association having its office at Madison, Wisconsin.

2. That the Wisconsin Department of Natural Resources, hereinafter referred to as the Respondent, is a Department of the State of Wisconsin and has its offices at Madison, Wisconsin.

3. That on July 1, 1969, the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, following a petition filed by the Complainant with the Commission requesting a representation election among certain employees of the Respondent, and after a hearing thereon, directed an election among all employees of the Respondent engaged in the profession of Forestry (Foresters and Forest Entomologists), excluding confidential, supervisory, managerial and all other employees, for the purpose of determining whether or not a majority of employees in said appropriate collective bargaining unit desired to be represented, for the purposes of collective bargaining, by the Complainant, or by Wisconsin State Employees Association Council 24, AFSCME, AFL-CIO, hereinafter referred to as WSEA, the latter organization having been permitted to intervene in the election proceeding on its claim that it represented certain employees in said appropriate collective bargaining unit; that, pursuant to said Direction, the Commission, on November 17, 1969, conducted the election, the results of which were as follows:

1. Total number eligible to vote.....	124
2. Total ballots cast.....	111
3. Total valid ballots counted.....	111
4. Ballots cast for Wisconsin State Foresters Association.....	104
5. Ballots cast for Wisconsin State Employees Association Council 24, AFSCME, AFL-CIO, and its Appropriate Affiliated Locals.....	5
6. Ballots cast for neither.....	2

and that on November 26, 1969, as a result of said election, the Commission certified the Complainant as the exclusive collective bargaining representative for all the employees in the above noted appropriate collective bargaining unit.

4. That, for reasons not disclosed, the Complainant, as the exclusive bargaining representative for the employees in the above noted appropriate collective bargaining unit, did not contact the Respondent until September 23, 1970, with respect to the Complainant's status as such collective bargaining representative, and on the latter date, in a letter to the Respondent, over the signature of its Counsel, advised the Respondent that the Complainant was in the process of formulating a final draft of a proposed collective bargaining agreement, and further, therein suggested a time table for negotiations; that in response thereto and on September 28, 1970, by letter, a representative of the Employee Relations Section of the Department of Administration of the State of Wisconsin, advised the Complainant that he would function as the negotiator for the Respondent in negotiations with the Complainant, and further indicated that the proposed time table for negotiations was more or less satisfactory to the Respondent.

5. That on November 23 and 30, 1970, the Complainant submitted to the Respondent approximately sixty payroll deduction authorizations, individually executed by employees in the appropriate collective bargaining unit noted above, which stated, in part, as follows:

"I hereby request and authorize the DEPARTMENT OF NATURAL RESOURCES; as my employer, to deduct from my earnings on a monthly basis a sufficient amount to provide for the monthly payment of dues as established by the WISCONSIN STATE FORESTERS ASSOCIATION. Such amount is to be remitted each month for me and on my behalf to the treasurer of the WISCONSIN STATE FORESTERS ASSOCIATION.

It is understood that this authorization shall begin on the first payroll period following this date and shall continue for one year from this date and shall thereafter continue for successive periods of one year unless thirty days prior to the end of any such successive year period I give written notice of termination to the DEPARTMENT OF NATURAL RESOURCES and to the WISCONSIN STATE FORESTERS ASSOCIATION."

6. That, after the receipt of said check-off authorization cards, the Respondent refused to honor same, and on December 15, 1970, the Respondent returned said authorization cards to the Complainant and advised the Complainant that the matter of check-off of dues was a subject of collective bargaining and should be handled through the negotiation process.

7. That on January 21, 1970, Counsel for the Complainant, by letter, advised the Respondent that the Complainant was in the process of holding meetings with its membership for the purpose of delineating their goals in the field of collective bargaining and that the Complainant contemplated a negotiation meeting with the Respondent.

8. That since February 1956, the Respondent has granted to the WSEA dues deductions pursuant to Section 20.921, Wisconsin Statutes, throughout state employment; that the Respondent has at no time honored check-off authorizations for any employee organization other than the WSEA; and that, further, the Respondent has honored and continues to honor dues check-off authorizations for and has paid same to the WSEA for the following named individuals employed in the appropriate collective bargaining unit noted above, since the date indicated:

Walter Gyllander	5-16-68
Robert Ilg	3-11-57
Frank Morse	3-19-57
George Sheppard	5-16-69
William Volavka	3-3-64
Joseph Zagorski	4-1-57

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

CONCLUSION OF LAW

That the Respondent, Wisconsin Department of Natural Resources, by honoring dues check-off authorizations for the Wisconsin State Employees Association on behalf of certain employees in the appropriate collective bargaining unit consisting of all employees of the Department of Natural Resources engaged in the profession of Forestry (Foresters and Forest Entomologists), excluding confidential, supervisors, managerial and all other employees, and at the same time refusing, and failing, to honor dues check-off authorizations executed by other employees in said appropriate collective bargaining unit on behalf of the Wisconsin State Foresters Association has interfered, restrained and coerced its employees in the exercise of their right to form, join or assist the Wisconsin State Foresters Association, and, therefore, the Respondent, Wisconsin Department of Natural Resources, has committed, and continues to commit, a prohibited practice within the meaning of Section 111.84(1)(a) of the State Employment Labor Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER

IT IS ORDERED that the Respondent, Wisconsin Department of Natural Resources, shall cease and desist from refusing to honor dues check-off authorizations executed by its employees requesting that it deduct monthly dues established by the Complainant, Wisconsin State Foresters Association, and pay same directly to the Complainant, Wisconsin State Foresters Association.


IT IS FURTHER ORDERED that the Respondent, Wisconsin Department of Natural Resources, take the following affirmative action which the Commission deems will effectuate the policies of the State Employment Labor Relations Act:

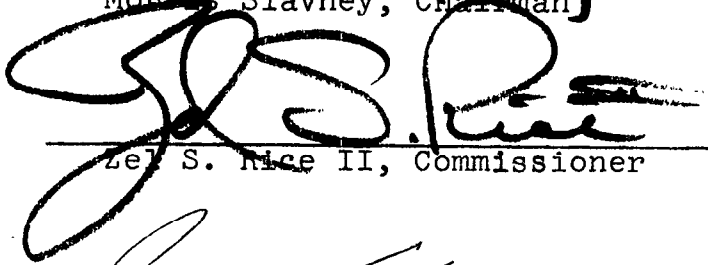
1. Commence honoring authorization for payroll deductions for employe organization dues in favor of the Complainant, Wisconsin State Foresters Association, which authorizations have been executed by its employes, at such time as properly executed authorizations are submitted to it by the Complainant, Wisconsin State Foresters Association, or by the employes involved.
2. Notify the Commission within twenty (20) days of receipt of a copy of this Order as to what steps it has taken to comply herewith.

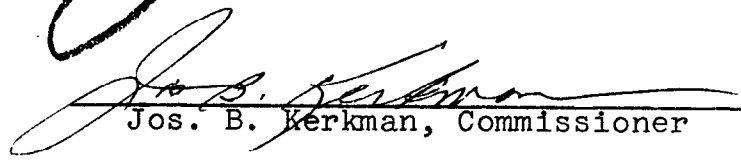
Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of April, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

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MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The facts in this proceeding are not in issue, and those necessary for determination of the matter involved herein are set forth in the Findings of Fact.

Position of the Complainant:

The gist of the Complainant's argument is that the refusal to check off dues on behalf of its organization while honoring check-off authorizations executed by employees in favor of the WSEA places the Complainant at a greater disadvantage and interferes with the rights of the employees with respect to their membership and activity in the Complainant, while on the other hand honoring check-off authorizations on behalf of WSEA, encourages activities on behalf of the latter organization.

Position of the Respondent:

The Respondent argues that the granting of dues deduction is a bargainable subject and should be appropriately handled through the negotiation process. It admits having deducted dues from the salaries of employees in favor of the WSEA since 1956, pursuant to Section 20.921, Wisconsin Statutes, prior to January 1, 1967, the effective date of the State Employment Labor Relations Act. Respondent contends that after the effective date of SELRA it continued to honor dues check-off authorizations in favor of WSEA, since it had honored same for the previous eleven years. It admits that it has refused to grant dues check-off to certified collective bargaining representatives other than WSEA. It contends that the check-off of dues for organizations other than WSEA is a matter of collective bargaining.

It further contends that the fact that Respondent has been deducting dues in favor of WSEA on behalf of six employees in the bargaining unit does not indicate an intent of unlawful activity. It admits that the WSEA enjoys benefits not extended to other labor organizations as a result of extensive lobbying activities for the past forty years. It claims that had the State attempted "to discontinue dues deduction following the passage of SELRA it may very well have been viewed as an attempt to discourage union activity and thus a violation of S.11184 Wis. Stats., to say nothing of the disruptive affect it would have had on the Employer-Employee relationship." It contends, however, that "the granting of concessions to a labor organization prior to the enactment of a collective bargaining law, does not require that these same concessions be granted to all labor organizations, regardless of their representation status."

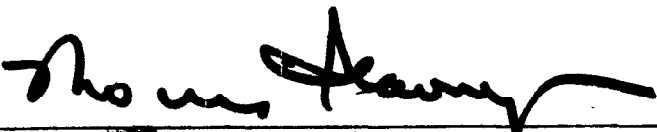
We disagree with the position of the Respondent. It appears to the Commission, if the discontinuance of dues deduction in favor of an organization upon the passage of SELRA would have constituted a prohibited practice, as admitted by the Respondent, that the failure to honor similar authorizations executed by employees in favor of the majority representative, while continuing to honor similar check-offs executed by employees to an organization which was on the same ballot and sought an interest in representing the employees in the unit involved herein, constitutes an attempt to discourage and does discourage, concerted activity in the majority organization.

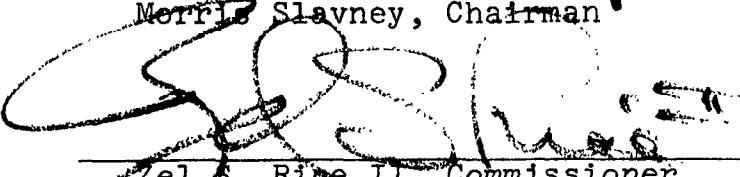
Our Supreme Court in a case involving the interpretation and application of Section 111.70, the Municipal Employment Labor Relations Statute, has stated "the sole and complete purpose of exclusive checkoff is self-perpetuation and entrenchment. While a majority representative may negotiate for checkoff, he is negotiating for all the employees, and, if checkoff is granted for any, it must be granted for all."1/ The factual situation herein is opposite to that in the case considered in the Supreme Court. There the municipal employer had granted check-off to the majority organization and had denied same to the minority organization, and the Court held that such denial constituted an unlawful act of interference, restraint and coercion, despite the fact that the minority organization has no standing to negotiate a collective bargaining agreement for any purpose. In the instant proceeding, the denial of check-off is to the majority organization. Since the minority organization herein has been granted dues check-off, it is obvious that the majority organization need not bargain for same.

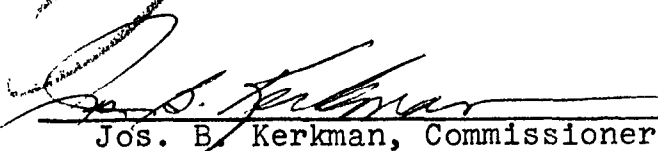
We have, therefore, found the Respondent to have committed unlawful acts of interference, restraint and coercion and have ordered it to honor check-off authorizations submitted to it by its employees in the unit, in favor of the Complainant,

Dated at Madison, Wisconsin, this 27th day of April, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Merrill Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

1/ Board of School Directors of Milwaukee v. WERC, 42 Wis. 2d 637.