

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE TEACHERS EDUCATION ASSOCIATION,	:	
	:	
Complainant,	:	Case LVIII
	:	No. 18346 MP-399
vs.	:	Decision No. 13642
	:	
MILWAUKEE BOARD OF SCHOOL DIRECTORS,	:	
	:	
Respondent.	:	
	:	
-----	:	
UNITED MILWAUKEE EDUCATORS,	:	
	:	
Complainant,	:	Case LXIV
	:	No. 18697 MP-422
vs.	:	Decision No. 13643
	:	
MILWAUKEE BOARD OF SCHOOL DIRECTORS,	:	
	:	
Respondent.	:	
	:	
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Appearances:

Perry and First, Attorneys at Law, by Mr. Richard Perry, for Complainant Milwaukee Teachers Education Association.

Mr. Wayne Schwartzman, Staff Counsel, Wisconsin Education Association Council, for Complainant United Milwaukee Educators.

Mr. Nicholas M. Sigel, Assistant City Attorney, for Respondent Milwaukee Board of School Directors.

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Peter Goldberg, for Milwaukee Federation of Teachers.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaints of prohibited practices under the Municipal Employment Relations Act (MERA) having been filed with the Wisconsin Employment Relations Commission in the above-entitled matters; and a consolidated hearing in the matters having been conducted by Commissioner Howard S. Bellman on February 18, 1975 and March 13, 1975 at Milwaukee, Wisconsin; and the Commission, having considered the evidence and arguments of Counsel, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Milwaukee Teachers Education Association, hereinafter referred to as Complainant MTEA, is a labor organization, having its principal offices at 3917 West Capitol Drive, Milwaukee, Wisconsin and is the certified collective bargaining representative of the professional teaching employes of the Milwaukee Board of School Directors. 1/

1/ Decision No. 8030.

2. That the United Milwaukee Educators, hereinafter referred to as Complainant UME, is a labor organization, having its principal offices at 11040 West Blue Mound Road, Milwaukee, Wisconsin and having members and supporters within the collective bargaining unit for which Complainant MTEA is the certified collective bargaining representative.

3. That the Milwaukee Federation of Teachers, hereinafter referred to as MFT, is a labor organization, having offices at 2266 N. Prospect Avenue, Milwaukee, Wisconsin, and having members and supporters within the collective bargaining unit for which Complainant MTEA is the certified collective bargaining representative.

4. That the Milwaukee Association of Professional Educators, hereinafter referred to as MAPE, is an employe organization, having its offices at Milwaukee, Wisconsin, and having supporters within the collective bargaining unit for which Complainant MTEA is the certified collective bargaining representative.

5. That the Milwaukee Board of School Directors, hereinafter referred to as Respondent, is a Municipal Employer having its principal offices at 5225 West Vliet Street, Milwaukee, Wisconsin, and having Thomas Linton as its Secretary-Business Manager, and agent.

6. That Respondent and Complainant MTEA at all times material herein are parties to a collective bargaining agreement, which includes a "Fair Share Agreement" providing for dues checkoff by members of Complainant MTEA, and fair share payroll deductions for non-members of Complainant MTEA who are within the collective bargaining unit.

7. That Respondent MFT, has checked off dues pursuant to the request of certain MFT members, who are within the collective bargaining unit for which Complainant MTEA is the certified collective bargaining representative.

8. That on September 4, 1973, MAPE requested that Respondent check off dues for its members within the collective bargaining unit for which Complainant MTEA is the certified collective bargaining representative; and that on October 25, 1973 Linton recommended to Respondent that, upon clarification of MAPE's status as a labor organization, MAPE be granted dues checkoff privileges; and that, however, MAPE was never granted the privilege of dues checkoff by Respondent.

9. That on September 3, 1974 Complainant UME requested that Respondent check off dues for its members within the collective bargaining unit for which Complainant MTEA is the certified collective bargaining representative; that on September 17, 1974 Linton recommended to Respondent that, upon clarification of UME's status as a labor organization, UME be granted dues checkoff privileges; and that, although UME was held to be a labor organization within the meaning of Section 111.70(1)(j) of the Municipal Employment Relations Act by this Commission on November 19, 1974, 2/ Respondent did not grant, and has not granted, dues checkoff privileges to UME because of the anticipated Commission decision regarding the issues raised by the instant complaints.

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

2/ Decision No. 13028-A.

CONCLUSIONS OF LAW

1. That, by granting dues checkoff privileges to the Milwaukee Federation of Teachers, a labor organization which is not the certified collective bargaining representative for its professional teaching employees, the Respondent Milwaukee Board of School Directors has violated its duty to recognize and to bargain only with Complainant MTEA, and thereby in said regard the Respondent has committed, and is committing, a prohibited practice within the meaning of Section 111.70(3)(a)1, 2 and 4 of the Municipal Employment Relations Act.

2. That inasmuch as Respondent did not, in fact, enter a dues checkoff agreement with MAPE or UME affecting employees in the bargaining unit of which MTEA is the certified bargaining representative, the Respondent has not, by its actions respecting the requests by MAPE or UME for such agreements, committed any prohibited practice within the Municipal Employment Relations Act.

3. That the Respondent, as a Municipal Employer, by entering a fair share agreement providing for payroll deduction checkoff with MTEA, the certified exclusive bargaining agent of the employees covered by such agreement, but refusing to enter such an agreement with UME or MAPE, has not, and is not, committing any prohibited practice under the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that Respondent Milwaukee Board of School Directors, and its agents, shall immediately:

1. Cease and desist from maintaining a dues checkoff arrangement with the Milwaukee Federation of Teachers, and from entering into such an arrangement with any other labor organization, that is not the certified collective bargaining representative of its professional teaching employees.
2. Notify the Commission, in writing, within twenty (20) days of the date of this Order as to what action has been taken to comply herewith.

IT IS FURTHER ORDERED that so much of the instant complaints as allege violations of the Municipal Employment Relations Act other than those found herein, be, and the same hereby are, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin, this 14th
day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

In a complaint, filed on January 7, 1975, Complainant United Milwaukee Educators alleged that Respondent Milwaukee Board of School Directors had committed, and continued to commit, prohibited practices in violation of Sections 111.70(3)(a)1 and 2 of the Municipal Employment Relations Act by entering dues checkoff agreements with MFT and MTEA, but refusing to enter such an agreement with UME. Complainant United Milwaukee Educators requested as remedies that the Commission find Respondent guilty of these prohibited practices, order Respondent to cease and desist from committing said violations, and further require that Respondent grant the privilege of dues checkoff to the Complainant.

At the hearing on February 18, 1975 Respondent orally answered this complaint by substantially denying the allegations and requesting the dismissal of the complaints.

In an amended complaint, filed February 24, 1975, Complainant Milwaukee Teachers Education Association alleged that Respondent Milwaukee Board of School Directors had committed prohibited practices in violation of Sections 111.70(3)(a)1, 2 and 4 of the Municipal Employment Relations Act by indicating that it might enter dues checkoff agreements with UME and MAPE. Complainant Milwaukee Teachers Education Association requested as remedies that the Commission find Respondent guilty of these prohibited practices and order Respondent to cease and desist from committing said violations.

On March 7, 1975 Respondent filed an answer which substantially denied Complainant Milwaukee Teachers Education Association's allegations and requested the dismissal of the complaint.

The two complaints were consolidated for hearing. The Milwaukee Federation of Teachers participated in the hearings as a party, and both Complainants were granted party status in the cases initiated by the other Complainant.

In Board of School Directors of Milwaukee v. WERC, 3/ the Supreme Court of Wisconsin reversed a Declaratory Ruling by the Commission (Dec. No. 6833-A) by holding that a municipal employer would violate the Municipal Employment Relations Act if it granted exclusive checkoff privileges to the certified collective bargaining representative. The Court based its conclusion upon the premise that exclusive checkoff privileges tended to entrench the majority labor organization and that no authorization for such "union security" devices was present in the Act. Finding no proviso to the Section 111.70(3)(a)3 prohibition against discriminatorily encouraging membership in a labor organization, the Court concluded that, if a majority labor organization was granted checkoff privileges, the same privilege must be granted to all labor organizations with members in the bargaining unit.

Since the Court's decision, there have been significant statutory changes which affect the legality of exclusive dues checkoff. Thus, a proviso has been attached to Section 111.70(3)(a)3 allowing for "fair share" agreements between municipal employers and collective bargaining representatives, with corresponding amendment of Section 111.70(2).

3/ 42 Wis. 2d 637 (1969).

Also, an enforceable duty to bargain with the exclusive bargaining representative has been imposed upon the municipal employer. 4/ In light of these statutory changes and their effect upon the Court's rationale in Board of School Directors of Milwaukee, the Commission concludes that the granting of exclusive dues checkoff to the majority labor organization does not violate the Municipal Employment Relations Act, and that a municipal employer may no longer grant checkoff privileges to minority labor organizations without violating the statute's duty to bargain exclusively with the majority organization, and its prohibitions against employer assistance to labor organizations, as reflected in Section 111.70(3)(a)2.

The legislative authorization of "union security" in the form of "fair share" agreements, as defined at Section 111.70(1)(h), strikes directly at the Court's objection to the entrenching quality of exclusive dues checkoff. In the face of such legislative approval of this arrangement which requires financial support of labor organizations by employees who do not wish to be members of same, it must be concluded that the less effective ramifications of exclusive checkoff have been approved as well. It is also noted that the above-cited statutory definition of a fair share agreement explicitly includes dues checkoff, thereby impliedly bolstering the Commission's conclusion as to the legality of exclusive dues checkoff agreements.

The presence of an enforceable duty to bargain requires the conclusion that, by granting the privilege of checkoff to labor organizations other than the exclusive bargaining representative, a municipal employer commits a prohibited practice under Section 111.70(3)(a)4 and 1. Such an agreement would constitute an act of bargaining with a minority labor organization and thus a violation of the municipal employer's duty to bargain exclusively with the exclusive bargaining representative.

On the basis of the foregoing discussion, it is concluded that the Respondent's checkoff agreement with MFT violates the provisions of Section 111.70(3)(a) 1, 2 and 4 of the Municipal Employment Relations Act.

No prohibited practices have been found with regard to Complainant MTEA's allegations that Respondent promised to grant dues checkoff privileges to Complainant UME and MAPE. While Respondent's Secretary-Business Manager Linton recommended that both UME and MAPE be granted said privilege, Respondent at no time entered into such an agreement with either group.

Given the conclusions reached in this decision, Complainant UME's allegations that Respondent violated Section 111.70(3)(a)1 and 2 by granting checkoff privileges to Complainant MTEA but not to UME, and that Respondent violated Section 111.70(3)(a)1 and 2 by granting MFT checkoff privileges while denying them to Complainant UME are deemed to be unfounded.

On April 24, 1975, UME filed a "Motion for Interlocutory Findings of Fact, Conclusions of Law and Order" in these cases. Such filing post-dated the deadline for the filing of briefs and thus occurred at a time when the instant decision was pending. (No timely briefs were filed herein.) In view of such time factors, no Order was issued upon said motion. However, the instant decision disposes of its essential contentions.

Dated at Madison, Wisconsin, this 17th day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner