

STATE OF WISCONSIN

: :

CIRCUIT COURT  
BRANCH IV

: :

MILWAUKEE COUNTY

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MILWAUKEE FEDERATION OF  
TEACHERS, LOCAL NO. 252,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS  
COMMISSION,

Respondent,

Case No. 432-049

MILWAUKEE BOARD OF SCHOOL DIRECTORS,

Co-Respondent,

MILWAUKEE TEACHERS EDUCATION ASSOCIATION,

Decision Nos. 13642-A  
13643-A

Co-Respondent,

UNITED MILWAUKEE EDUCATORS,

Co-Respondent.

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#### WRITTEN DECISION

The above-entitled action was commenced by a hearing in the form of a status conference before this branch of the Court on August 27, 1975. At the conclusion of the hearing, the Court took the matter under advisement and ordered briefs to be submitted by the respective counsels.

The record discloses that this proceeding was commenced on June 5, 1975, under Chapter 227 of the Wisconsin Statutes to review the decision and order of the Wisconsin Employment Relations Commission which was dated May 14, 1975. In its decision, the Commission determined that the Milwaukee Board of School Directors (hereinafter "School Board") had violated its duty to recognize and bargain exclusively with co-respondent, Milwaukee Teachers Education Association (hereinafter "MTEA"), the certified collective bargaining representative for its professional teaching employees, by granting dues checkoff privileges to petitioner, Milwaukee Federation of Teachers (hereinafter "MFT"), a minority labor union. The Commission further determined that by this action the School Board had committed a prohibited practice within the meaning of the Municipal Employment Relations Act, Section 111.70 (3) (a) 1, 2, and 4, Stats. The Commission further found:

"That inasmuch as Respondent (School Board) 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.

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."

The Commission, therefore, 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 agreement 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."

Subsequent to its entry, the petitioner, MFT, filed a motion with the WERC for a reconsideration of the Order. On the 20th of May, 1975, the Commission dismissed the Motion to Reconsider. The MFT thereafter petitioned this Court to review the decision and order of the WERC.

The undisputed facts in the case at bar disclose that in February, 1964, MTEA was certified by the Commission as the exclusive collective bargaining representative for the School Board's professional teaching employees. The facts further disclose that during negotiations between the MTEA and the School Board, a question arose as to the propriety of granting the privilege of exclusive dues checkoff to MTEA. The MFT filed charges with the WERC, and the Commission found that exclusive checkoff for the majority representative did not constitute a prohibited practice. Board of School Directors, Dec. No. 6833-A, 3/66.

However, the Supreme Court reversed the decision of the WERC in Board of School Directors of the City of Milwaukee vs. WERC, 42 Wis. (2d) 637 (1969). In its decision, the Court stated its grounds for reversal:

"The WERC made no attempt to explain how the granting of exclusive checkoff was rationally related to the functioning of the majority organization in its representative capacity; nor can we see any relationship whatsoever. 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 . . . We think an exclusive checkoff agreement is a prohibited practice as a matter of law."

The MFT (Minority Union) was thereafter granted checkoff for dues deduction purposes. The School Board entered into an agreement with MFT whereby it would deduct union dues from certain employees from the payroll and forward the dues to MFT.

In November, 1971, the Legislature amended the Municipal Employment Relations Act (Chapter 124, Laws of 1971) to permit fair share agreements. Section 111.70 (1) (h) provides the following:

"Fair-share agreement" means an agreement between a municipal employer and a labor organization under which all or any of the employees in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members. Such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employees affected by said agreement and to pay the amount so deducted to the labor organization."

The record further discloses that pursuant to the Act, as amended, the School Board and MTEA negotiated a fair share agreement providing for dues checkoff for MTEA members and fair share payroll deductions for non-MTEA members in the collective bargaining unit.

The record further discloses that in July, 1973, the Milwaukee Association of Professional Educators (hereinafter MAPE), a minority union, requested a dues check-off program for its members in the School Board's collective bargaining unit of Professional Teaching Employees, similar to the one enjoyed by MFT. In August, 1974, the United Milwaukee Educators (hereinafter UME) also requested a dues checkoff for its members.

In September, 1974, the MTEA, as the exclusive bargaining representative, filed a prohibited practice complaint with the WERC. The MTEA Alleged that the School Board violated Section 111.70 of the Wisconsin Statutes by offering to recognize UME and MAPE for purposes of payroll checkoff of dues.

In January, 1975, UME filed a complaint with the WERC, alleging that the School Board violated Section 111.70 of the Wisconsin Statutes by continuing to grant dues checkoff to MFT, but denying dues checkoff to UME. Both complaints were consolidated for hearing before the WERC. In its decision, the Commission determined that an exclusive dues checkoff is not a prohibited practice, and conversely, that a municipal employee commits a prohibited practice by granting dues checkoff privileges to a minority union.

On June 3, 1975, the School Board notified the Commission that it had terminated the dues checkoff for the minority union, MFT, pursuant to the order of the Commission. MFT seeks a review of the Commission's decision and order, contending that the Board of School Directors decision, supra, is res adjudicata on the issue of whether exclusive dues checkoff for the majority representative constitutes a prohibited practice.

It is the contention of the petitioner, MFT, that employees of a minority union have the right to a dues checkoff under the statutory scheme established by the Municipal Employment Relations Act, and that this has been upheld by the decision of the Supreme Court in the case of Board of School Directors, supra. It is further contended by the petitioner, MFT, that the subsequent amendments to the statute allowing fair-share agreements have neither affected the underlying rationale of the Court's decision nor mooted the conclusion determinative of MFT membership rights made in Board of School Directors, supra. The petitioner further contends that the right of MFT members to checkoff dues as members of a minority union remain intact.

The co-respondent, MTEA, finds no quarrel with the conclusions reached by the Supreme Court in Board of School Directors, supra. However, it is the contention of MTEA that since November, 1971, Section 111.70 of the Wisconsin Statutes has been extensively amended to explicitly require "good faith bargaining" between the municipal employer and the exclusive bargaining representative of the employees, and that in addition thereto, the Legislature authorized "fair share" between the municipal employer and the collective bargaining representative of the employees.

Counsel for the Wisconsin Employment Relations Commission (WERC) contends that the Commission could properly conclude that an exclusive dues checkoff for the majority exclusive bargaining representative is not a prohibited practice under the Municipal Employment Relations Act, Section 111.70 (3) (a) 1 and 3, Stats., as amended by Chapter 124, Laws of 1971.

Counsel for the WERC further contends that since the Court's decision in Board of School Directors, supra, there have been significant statutory changes in the Municipal Employment Relations Act which hit at the very heart of the legality of the exclusive dues checkoff. Amongst these provisions, as previously stated, has been a proviso attached to Section 111.70 (3) (a) 3 which permits fair-share agreements to be contracted for and between municipal employers and the exclusive bargaining representatives. Counsel further contends that in light of these statutory changes and their effect upon the Court's reasoning in Board of School Directors, supra, the Commission properly concluded that the granting of exclusive dues checkoff to the majority labor organization does not violate the Municipal Employment Relations Act.

The following issues are presented to this Court for determination:

- (1) Whether the Wisconsin Employment Relations Commission erred in deciding that an exclusive dues checkoff for the respondent, MTEA, as the majority exclusive bargaining representative, is not a prohibited practice under the Municipal Employment Relations Act, Section 111.70 (3) (a) 1 and 3 Stats., as amended by Chapter 124, Laws of 1971?
- (2) Whether the Wisconsin Employment Relations Commission erroneously concluded that the co-respondent, School Board, violated its duty to recognize and bargain only with the majority exclusive bargaining representative by granting dues checkoff privileges to petitioner, MFT, a minority union, and thereby commits a prohibited practice within the meaning of the Municipal Employment Relations Act, Section 111.70 (3) (a) 4, Stats.?
- (3) Whether the Wisconsin Employment Relations Commission's decision was contrary to petitioner's constitutional rights or privileges, or contrary to the constitutional rights or privileges of its members?

The petitioner, MFT, seeks a reversal of the decision and order of the Wisconsin Employment Relations Commission based upon the holding of the Supreme Court in Board of School Directors, supra. In this decision, the Supreme Court determined that an exclusive dues checkoff agreement was a prohibited practice as a matter of law because there was no rational relationship between exclusive dues checkoff and the functions of the majority organization in its representative capacity. The Court stated the following:

"The WERC made no attempt to explain how the granting of exclusive checkoff was rationally related to the functioning of the majority organization in its representative capacity; nor can we see any relationships whatsoever. 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 . . . We think an exclusive checkoff agreement is a prohibited practice as a matter of law."

The Supreme Court determined that an exclusive dues checkoff provided the majority collective bargaining representative with a form of "union security" which the Municipal Employment Relations Act did not expressly provide. However, since the Board of School Directors decision, the Legislature has amended the Municipal Employment Relations Act to allow for "union security" through "fair share" agreements between municipal employers and collective bargaining representatives. Section 111.70 (1) (h) provides a definition of a "fair share" agreement :

"An agreement between a municipal employer and a labor organization under which all or any of the employees in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members. Such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employees affected by said agreement and to pay the amount so deducted to the labor organization."

In permitting the negotiations of fair share agreements between the municipal employer and the collective bargaining representative of the employees, the Legislature has provided the authorization for "union security" which the Supreme Court found lacking when it decided the Board of School Directors case, supra. In the Municipal Employment Relations Act, the Legislature has also imposed an enforceable duty upon the municipal employer to bargain with the exclusive bargaining representative of the employees. Section 111.70 (3) (a) 4 Stats. By providing an enforceable duty upon the municipal employer to bargain exclusively with the majority bargaining representative, and further allowing "fair share agreements" to be reached between the municipal employer and the collective bargaining representative of the employees, this Court is of the opinion that the Legislature has, in effect, authorized exclusive dues checkoff agreements between the majority bargaining

representative and the municipal employer. As such, this Court agrees with the WERC when it stated in its decision:

"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 dues 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 conclusions as to the legality of exclusive dues checkoff agreements. WERC Dec. Nos. 13642 & 13643, at 5.

This Court in reviewing Section 111.70 of the Wisconsin Statutes as it existed prior to the amendments of 1971, and considering the Section as it exists today, together with the Board of School Directors case, cannot agree with the petitioner, MFT, that employees of a minority union have the right to a dues checkoff under the Municipal Employment Relations Act. Therefore, this Court affirms the decision of the Wisconsin Employment Relations Commission that an exclusive dues checkoff for the respondent, MTEA, as the majority exclusive bargaining representative, is not a prohibited practice under the Municipal Employment Relations Act.

The petitioner, MFT, further contends that an interpretation of the Municipal Employment Relations Act, so as to allow an exclusive dues checkoff, would violate the employee's constitutional right to associate and would also violate the equal protection guarantee of the Fourteenth Amendment. However, the respondents have correctly brought to the Court's attention several cases from other jurisdictions which have refuted this contention. Federation of Delaware Teach. vs. De La Warr Bd of Ed. (D. Del, 1971), 335 F. Supp. 385, 78 LRRM 2764; Local 858, AFT vs School District No. 1 (D. Colo. 1970), 314 F. Supp. 1069, 74 LRRM 2385; Bauch vs. New York, (N.Y. Ct. of Apps. 1968), 237 N.E. 2d 211, 67 LRRM 2944.

This Court is further of the opinion that the enactment of legislation to allow for exclusive checkoff through "fair-share agreements" does not violate the equal protection clause of the U.S. Constitution, as the legislation reflects a justifiable public purpose. It is in the public interest to encourage peace and tranquility among competing labor unions by allowing exclusive privileges to the majority collective bargaining representative. This is especially true when the education of children in public schools is at stake. As stated by the Court in Local 858, AFT, supra:

"The granting of exclusive privileges to one of two competing unions after that union has won a representation election serves several interests. It allows the effective exercise of the right to form and join unions in the context of public employment. \*\*\* It eliminates inter-union competition for membership within the public schools except at times of representation elections. This has several salutary aspects. Orderly functioning of the schools as education institutions is insured through the limiting of the time span when they may become a labor battlefield. The representative union is not subjected to competition within the schools, and thus is better able to function as a representative, its efforts not spent in constant competition with the union that lost the representation election. The fact that the representative's strength is not bled away by such constant high intensity inter-union conflicts allows public employees better representation, providing a more beneficial exercise of the right of association . . ."

The majority bargaining representative of the professional teachers, MTEA, must be given the opportunity to make a concerted and concentrated effort towards resolving labor problems concerning all teachers in the Milwaukee public schools whether or not they are members of the union. This may only be accomplished by the elimination of inter-union competition for dues with the unions that have lost the representative election. It is only just and proper that the majority union may

obtain money from non-members of the union to cover the cost of negotiations which will benefit all the members of the bargaining unit, regardless of union affiliation. If this were not the case, some teachers would have the best of two worlds -- they would not pay a cent to the majority union which represents them at the bargaining table, while reaping the benefits of any negotiations which resulted from the work of the majority union. However, by enacting the provision for "fair-share agreements," the Legislature has resolved the potential for inter-union conflict over dues by requiring all or any of the employees in the collective bargaining unit to pay to the majority union their proportionate share of the cost of the collective bargaining process. This is definitely within the public interest.

The Court is further of the opinion that an exclusive dues checkoff does not violate the employee's constitutionally protected freedom to associate. The members of the minority union, MFT, are not being prohibited from gathering to discuss any of the problems confronting their union. If there was such a prohibition, then this Court would conclude that the employees' constitutional right to associate were indeed violated. However, the record does not disclose that the use of an exclusive dues checkoff would in any manner violate the employee's right to associate. As stated by the Court in Bauch vs. City of New York, supra:

"The petitioners also argue that the withdrawal of the dues checkoff will weaken their minority union to the point of threatening its very existence. They will thus be deprived, they assert . . . of their right of freedom of association guaranteed by the First and Fourteenth Amendments of the Federal Constitution and by Article I of the State Constitution. Their claim lacks substance. Nothing in the city's labor policy denies members of the petitioners' union the right to meet, to speak, to publish, to proselytize and to collect dues by the means employed by thousands of organizations of all kinds, that do not have the benefit of a dues checkoff. Neither the First Amendment nor any other constitutional provision entitled them to the special aid of the city's collection and disbursing facilities."

Based upon the foregoing conclusions, this Court is of the opinion, and so finds, that the exclusive privileges (dues checkoff) granted to the respondent M.T.E.A. are constitutionally permissible. The Court further finds that the denial of similar rights to the Petitioner serves to promote a compelling governmental interest, the desire to keep school buildings and grounds from becoming a "battle-field" between unions and the respective members of such unions, and I further find that there exists a rational relationship between the classification and the constitutionally permissible objectives.

IT IS, THEREFORE THE ORDER OF THIS COURT that the decisions and orders entered by the Wisconsin Employment Relations Board in the above-entitled action under dates of May 14th and May 20th of 1975 are hereby affirmed in all respects.

Dated at Milwaukee, Wisconsin, this 2nd day of April, 1976.

BY THE COURT:

Robert C. Cannon /s/  
Hon. Robert C. Cannon, Circuit Judge