STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JUDITH D. BERNS, PHYLLIS A. BROWNE AND SIXTY-ONE OTHER NAMED INDIVIDUALS, Complainants, vs. MILWAUKEE BOARD OF SCHOOL DIRECTORS; LOCAL 1053 AFFILIATED WITH DISTRICT COUNCIL 48 AND CHARTERED BY AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; AND DISTRICT COUNCIL 48, AFSCME, AFL-CIO, Respondents.	Case LXVIII No. 20203 MP-582 Decision No. 14382-A

Appearances:

Mr. Willis B. Ferebee, Attorney at Law, appearing on behalf of complainants.

Goldberg, Previant & Uelmen, S.C., Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of respondent unions until October 1, 1976, and Podell & Ugent, Attorneys at Law, by Ms. Nola J. Hitchcock Cross, appearing on behalf of respondent unions on and after October 1, 1976.

Mr. James B. Brennan, City Attorney, by Mr. Nicholas M. Sigel, Principal Assistant City Attorney, appearing on behalf of respondent board.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On February 23, 1976, complainants Berns and Browne filed with the commission a complaint on behalf of themselves and a group of unnamed individuals, alleging that the above-named respondents had committed prohibited practices in violation of Sec. 111.70, Stats. By order dated March 1, 1976, the commission appointed an examiner in the matter; and by order dated March 24, 1976 substituted and authorized the undersigned Marshall L. Gratz, a member of its staff, to conduct hearing on said complaint and to make and issue findings of fact, conclusions of law and order in the matter. The examiner conducted a hearing in the matter on May 13 and July 23, 1976 in Milwaukee, Wisconsin. Each party submitted a post-hearing brief the last of which was received on October 1, 1976. The examiner, having considered the evidence and the 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. Milwaukee Board of School Directors, referred to herein as respondent board, is a municipal employer with its headquarters at 5225 West Vliet Street, Milwaukee, Wisconsin.

2. District Council 48, AFSCME, AFL-CIO, and its affiliated Local 1053, jointly referred to herein as respondent unions, are labor organizations representing, inter alia, municipal employes. Respondent unions maintain their principal offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.

3. At all material times, respondent local has been the exclusive bargaining representative of a bargaining unit, consisting predominantly of clerical employes of respondent board, and referred to herein as the bargaining unit.

4. Judith D. Berns, Phyllis A. Browne, Dorothy Ackerman, Oreba Alexander, Jean Bard, Betty Bassett, Gail Baumann, John Behling, Ruth Buenger, Floring Cherwin, Margaret Cieszynski, Yetta Deitch, LaVerne Dugan, Beverly Engelland, Barbara L. Erdmann, LaVerne Fahrenberg, Kathryn Flood, Doris A. Gohlek, Beverly Ann Gray, Corinne Gross, Katherine L. Hanna, Donna Holstein, Robert Holyon, Bernice Johnson, Debra Jones, Inez L. Kiles, Donna Klein, Joyce Knippel, Barbara Kotas, Virginia Lemberger, Jean C. Louchbaum, Mary Martinello, Helen Marx, Cheryl Mazurkiewicz, Janie Mesa, Barbara Morbeck, Antoinette Norris, Harry D. Olszewski, Mary Ann Rakowski, Elizabeth Schiller, Donna Schlaifer, Charlott M. Schmidt, Esther L. Schueneman, Loraine Teske, Nancy L. Tilson, Grace G. Voelz, Irene B. Wagner, Dorothy Wilkes, Nancy L. Bootz, Ruth Burba, Ivona Bureta, Joan Downing, Jeanne Hensel, Nora R. Herriges, Bernice Lang, Bernadine Neal, Kathleen A. Nefzer, Joyce C. Pappalardo, Bernice Raasch, Lorraine Richardson, Audrey A. Wickert, Susan Galler, Gloria Balistreri, referred to herein as complainants, are individuals and residents of the City of Milwaukee, Wisconsin; throughout January, February and March, 1975 each of the complainants was a municipal employe in the employ of respondent board in the bargaining unit represented by respondent unions.

5. Respondents were parties to a 1973-74 collective bargaining agreement which provided in pertinent part as follows:

" . . .

PART 1

. . .

E. CONDITIONS AND DURATION OF AGREEMENT

1. This agreement shall continue in full force and effect from January 1, 1973, to and including December 31, 1974, [immaterial exception ommitted] . . .

. . .

PART II

. . .

C. UNION SECURITY

1. Fair Share Agreement. All employes represented by the Union who have completed sixty calendar days of service with the Board, are compensated for forty-eight (48) or more hours in a month, and are not members of the Union shall be required, as a condition of employment, to pay to the Union each month a proportionate share of the cost of the collective bargaining process and contract administration. Such charge shall be deducted from the employe's paycheck in the same manner as Union dues and shall be the same amount as the Union charges for regular dues, not including special assessments or initiation fees.

. . . "

6. Throughout calendar years 1973 and 1974, respondent board deducted fair share charges equal to respondent local's monthly dues as regards each bargaining unit employe not otherwise authorizing dues deductions in favor of respondent local. Such deductions were taken from the first of two paychecks issued in each month and were at the rate of $5.50 in 1974.

7. On December 31, 1974, respondent board wrote respondent unions and offered to extend their 1973-74 agreement until a new agreement was reached in then on-going negotiations. On January 2, 1975, respondent unions replied, in writing, rejecting that offer but indicating an intent to continue working until further notice. The respondents' 1973-74 agreement expired on December 31, 1974. No agreement to extend same was reached until February 3, 1975.

8. On February 3, 1975 at 2:50 a.m., bargaining representatives of respondents initialed a document setting forth the terms of several tentative agreements including 1975 and 1976 general wage increases and further providing, in pertinent part, as follows:

" . . . Term of Agreement - contract is effective date of ratification with wages and benefits retroactive to Jan. 1, 1975. It is understood that the Union will agree to extend the previous contract to the date of ratification of the new contract."

No other writing with reference to extension of the 1973-74 agreement was exchanged by the respondents besides those noted in Findings 7 and 8, above.

9. Sometime between February 3 and April 2, 1975, respondents mutually ratified the terms of their 1975-77 agreement.

10. On April 2, 1975, respondents executed a 1975-77 agreement containing fair-share language identical to that in their 1973-74 agreement and set forth in Finding 5, above. Neither side in the negotiations leading to that 1975-77 agreement had proposed any modification of the 1973-74 agreement fair-share language. The 1975-77 agreement also provided, in pertinent part, as follows:

" . . .

PART I

. . .

E. CONDITIONS AND DURATION OF AGREEMENT

1. This agreement shall continue in full force and effect from January 1, 1975, to and including June 30, 1977.

. . . "

11. Respondent board made no fair share deductions from any paychecks of Local 1053 bargaining unit employes during January, February or March, 1975. Some Local 1053 bargaining unit employes not otherwise authorizing dues deductions in favor of respondent local experienced no fair share deductions until July, 1975 though they were employed by respondent board throughout 1975.

12. Respondent local's dues increased from $5.50 per month in 1974 to $6.50 per month in 1975. Although respondent local notified respondent board of that dues increase in a timely fashion, the dues increase was not, in some cases, reflected in union members' dues deductions taken in early 1975.

13. In April of 1975, the president of respondent local sent a newsletter to all employes in the bargaining unit informing them, inter alia, as follows: " . . . [t]he entire [1975-77] contract is retroactive, therefore, all fair share personnel will be obligated to pay an amount equal to a month's dues for each month of 1975. . . . "

14. On February 11, 1976, the membership of respondent local approved the concept of collection of 1975 dues and fair share arrearages, including fair share deductions as regards January, February and March, 1976, in amounts of $19.50 or less.

15. On February 17, 1976, respondent board's payroll supervisor wrote each bargaining unit employe; reciting the facts noted in Findings 12 and 13 (sentence two), above; stating that "[t]he final contractual agreement with Local 1053 required that the dues adjustments, as well as the Fair Share amounts previously not deducted, be deducted and paid to Local 1053"; informing them of their individual 1975 deduction shortfall; and setting forth a repayment schedule described as "set up and authorized by Local 1053" calling for monthly repayment installments of $19.50 or less in a month.

16. Pursuant to the repayment schedule referred to in Finding 15, above, respondent board made deductions beginning with the paycheck of February 20, 1976 and, as necessary, from subsequent second-in-the-month paychecks--for repayment of fair-share and dues deduction shortfalls while continuing to deduct dues deductions or fair-share charges in amounts of $6.50 per month from the first-in-the-month paycheck.

17. As a result of its implementation of the repayment schedule noted in Finding 15, above, respondent board deducted $19.50 from the Febrary 20, 1976 earnings paycheck of each of the complainants as fair-share charges for January, February and March of 1975.

18. It is inferred from the facts noted in Findings 13, 14 and 15, above, that agents of respondent local, acting within the scope of their authority, caused and induced respondent board to make the deductions noted in Finding 17, above.

On the basis of the foregoing findings of fact, the examiner makes and issues the following conclusions of law.

CONCLUSIONS OF LAW

1. Although respondents did not enter into a fair-share agreement as regards January, February and March, 1975 until after at least part of that period, respondent board's February 20, 1976 paycheck deductions from complainants as regards said three months were made "where a fair-share agreement is in effect" within the meaning of Sec. 111.70 (3)(a)6, Stats., because:

a. respondents' February 3, 1975 agreement (noted in Finding 8, above) extended their 1973-74

agreement, including fair-share, retroactively from January 1, 1975 through the date of mutual ratification of a successor agreement, and their ratification of a successor agreement (noted in Finding 9, above) created an enforceable fair-share agreement in effect, inter alia, on and after said date of mutual ratification; and

b. independent of (a) above, respondents' April 2, 1975 execution of their 1975-77 agreement, including fair-share, (noted in Finding 10, above) created a fair-share agreement in effect retroactively as regards certain times from and after January 1, 1975 including January, February and March, 1975.

Therefore, respondent board did not commit a prohibited practice in violation of Sec. 111.70 (6), Stats., when it deducted earnings from complainants' February 20, 1976 paychecks for payment to respondent unions as regards January, February and March, 1975.

2. Because respondent board has not been found herein to have committed a prohibited practice in violation of Sec. 111.70 (3)(a)6 by making the deductions noted in Finding 17, above, neither respondent Local nor respondent district council could have committed or did commit a violation of Sec. 111.70 (3)(b)2 or of Sec. 111.70 (3)(c) by causing and/or inducing respondent board to make said deductions.

On the basis of the foregoing findings of fact and conclusions of law, the examiner issues the following order.

ORDER

The complaint filed in the above matter, as amended, shall be, and hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this 15th day of July, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz
Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

History of the Proceeding

The original complaint in this matter, filed on February 23, 1976, named only Berns and Browne as complainants but further alleged that it was being filed on behalf of all other employes represented by respondent local who are subject to fair-share deductions. It was further alleged that respondent board violated Sec. 111.70 (3)(a)6, Stats., by deducting amounts equal to union dues as regards January, February and March, 1975 from employe paychecks on and after February 20, 1976 absent a signed authorization card from the affected employes and absent a fair-share agreement in effect during any of those three months in 1975. The complaint further alleged that respondent unions either induced respondent board to do so in violation of Sec. 111.70 (3)(b)2 or caused respondent board to do so in violation of Sec. 111.70 (3)(c). The remedy requested in the complaint included an order that respondents cease and desist from such practices in the future and that they return "to the complainants and to all other fair share employes similarly situated" the deductions unlawfully taken, induced and/or caused.

Respondent board filed an answer denying that it had committed the violation alleged.

Hearing convened on May 13, 1976. Over complainants' objections, respondent unions were permitted to answer orally on the record, denying that they had committed the prohibited practices alleged and asserting that Browne and Berns' attempt to expand the complainant group beyond themselves into a class proceeding was not proper under Sec. 111.07 (2)(a), Stats.

During the testimony of complainants' first witness, the examiner ruled inadmissible evidence by which complainants sought to prove the existence of a class of unnamed complainants. The examiner so ruled on the ground that, absent an allegation that Berns, Browne and/or their counsel was authorized by the members of the alleged class to institute the instant proceeding on their behalf, such unnamed individuals cannot be deemed parties in interest within the meaning of Sec. 111.07. The examiner offered complainants the opportunity to take an adjournment for purposes of amending their complaint to add parties-complainant by the

process noted in Sec. 111.07 (2)(a), which provides: "[a]ny other person claiming interest in the dispute or controversy . . . shall be made a party upon application". The hearing was thereupon adjourned for that purpose.

An amended complaint was filed, accompanied by sixty-one individually signed applications for party status. Each application expressly ratified Berns' and Browne's prior actions and authorized Berns and Browne and their attorney to represent them in the instant matter. As finally amended, sixty-three individual complainants are named including Berns and Browne. Respondent board answered the amended complaint, denying the violations alleged and asserting that the respondents' 1973-74 agreement, including fair-share, had been extended to cover, inter alia, the months of January, February and March, 1975.

Hearing was reconvened on July 23, 1976. Over complainants' objections, respondent unions answered the amended complaint orally on the record, taking a position identical to that in respondent board's answer. At the conclusion of complainants' case, respondent union moved for dismissal, but the examiner deferred ruling thereon until the close of the hearing and submission of final arguments.

Following the close of the hearing, respondent unions retained substitute counsel. Post-hearing briefs were filed by all parties, the last of which was received on October 1, 1976.

Position of Complainants

Section 111.70 (3)(a)6 prohibits non-individually-authorized deductions from employe paychecks in favor of the employe's exclusive bargaining representative unless there is a fair-share agreement in effect at that time to which the deductions relate. Under that section and MERA generally, such deductions as regards time periods in the past are not made lawful by a fair-share agreement that purports to have effect retroactively throughout the period of time to which the deductions relate. I.e., a fair share agreement cannot lawfully be implemented retroactively (citing federal case law precedents).

Here, the evidence is insufficient to prove that the respondents agreed, prior to January 1, 1975 or at any other time, to extend their 1973-74 agreement beyond its December 31, 1974 date of expiration. For, respondent unions expressly rejected respondent board's December 31, 1974 offer to extend, and the

initialled understanding of February 3, 1975 is only an unfulfilled union offer to later submit a written extension commitment. Moreover, respondent board ceased monthly fair-share deductions as of January, 1975.

There is ample evidence that the respondent unions induced and/or caused respondent board to take the instant deductions. Respondent unions' communications to the bargaining unit reveal an intent and a specific method by which to bring about the disputed deductions. Respondent board's commuications to the bargaining unit reveal that respondent board was making the disputed deductions pursuant to an agreement with respondent local and that the deductions would be implemented in a manner identical to the specific method developed by the respondent local.

Neither MERA nor any case law require a pre-complaint protest to the respondent union as a condition precedent to recovery of earnings deductions unlawfully taken in favor of respondent unions.

Therefore, the requested remedy should be granted to the named complainants. The remedy should be extended, as well, to those unnamed fair-share employes similarly situated. For to do otherwise imposes unwarranted inconvenience upon such persons in the protection of their MERA rights, and each such person could donate the recovered funds to the respondent unions if that is their true desire.

Position of Respondent Unions

The deductions taken in 1976 as regards January-March, 1975 were pursuant to a fair-share agreement in effect as regards those three months on one or more of the following theories of the case:

1. MERA does not require that a fair-share agreement be written, of a definite duration, or coterminous with a comprehensive collective bargaining agreement. Rather, it may arise by reason of a simple unexpressed understanding between municipal employer and exclusive bargaining representative. Such an understanding is evidenced herein by the parties' longstanding, uniform, and unequivocal past practice of continuing in effect, following the termination date of an agreement, those provisions of the old agreement about which no bargaining proposal for modification has been made. The fair-share provision in the respondents' 1973-74

agreement was such an unconstested provision. Therefore, it was carried forward pursuant to the parties understanding reflected in past practice.

2. The duration provision in the 1973-74 does not expressly provide for its termination on December 31, 1974. Instead, it provides only that said agreement is in effect " . . . to and including . . . " that date. Hence, since neither party gave notice of termination, that agreement continued in effect thereafter until supplanted by the 1975-77 agreement.

3. By letter of January 2, 1975 to respondent board, respondent unions, while rejecting a proposed agreement to extend the old agreement until agreement on a successor were achieved, offered, instead--without subsequent objection by respondent board--to extend the old agreement until impasse in the negotiations was reached. Respondent unions manifested that offer by expressing a willingness to continue working (i.e., under current terms and conditions) until it notified the respondent board otherwise.

4. On February 3, 1975, respondents initialled a written agreement whereby the union agreed to extend the 1973-74 agreement from January 1, 1975 throughout such period of time as it would take to execute a successor agreement.

5. On April 2, 1975, respondents executed a 1975-77 agreement (containing a fair share agreement) the duration of which was expressly "from January 1, 1975 . . . ", thus covering inter alia, all of January-March, 1975. The complainants' agreement that fair-share agreement cannot have retroactive effect is without merit. For, no MERA prohibition of such retroactive application exists. MERA encourages voluntary settlements through collective bargaining, and the complainants' proposed interpretation would defeat such a settlement. Fair-share is a mandatory subject; whether a mandatory subject shall have retroactive effect is a mandatory subject; and the respondents' 1975-77 agreement is the product of such mandatory bargaining. MERA authorizes fair-share agreements because they tend to stabilize collective bargaining in the public sector, and con-

tinuous fair-share application fulfills that legislative goal better than the intermittent fair-share application argued for by complainants.

In any event, there is no evidence that the Union induced or caused respondent board to take the deductions in question. The evidence only shows respondent union acquiescence in respondent board's actions. Furthermore, Sec. 111.70 (3)(c) applies only to "persons" other than labor organizations that are the exclusive representative of employe complainants.

Finally, the sixty-one named complainants besides Browne and Berns lack standing to seek monetary relief against respondent union because they were added after the original complaint was filed, they were solicited in a manner not properly informing them of their right to hire counsel other than Mr. Ferebee, and there is no showing that any of them notified respondent unions of their objection to the taking of the disputed deductions prior to their being solicited.

Position of Respondent Board

In February, 1975, respondents agreed to extend the 1973-74 agreement in a manner that put the fair-share agreement therein in effect during January-March, 1975. The failure to actually take the deductions as regards those months in those months was due to payroll department problems created by the extended negotiations, not due to a belief that respondent board had not obligated itself to do so. Furthermore, since complainants received the fruits of union representation throughout the three months in question, the purposes of MERA are clearly served best by allowing the agreed upon deductions to be taken as regards those months.

Discussion

The complainants' case against all respondents fails if the alleged violation of Sec. 111.70 (3)(a)6 by respondent board is not proven. Resolution of that alleged violation hinges on whether the February 20, 1976 deductions as regards January, February, and March, 1975 were deducted" . . . where there is a fair-share agreement in effect" within the meaning of that section.

The term "fair-share agreement" is referred to in several MERA provisions. It is defined in Sec. 111.70 (1)(h) as

> "an agreement between a municipal employer and a labor organization under which all or any of the employes 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 employes effected by said agreement and to pay the amount so deducted to the labor organization".

Section 111.70 (2) excepts from municipal employes' "right to refrain from any and all [protected concerted] activities . . . [the limitation] that employes may be required to pay dues in the manner provided in a fair-share agreement." That section also makes fair-share agreements subject to the right of the municipal employer or a labor organization to petition the commission to conduct a deauthorization referendum to terminate such agreement and subject to suspension if discrimination in membership is found by the WERC.

Section 111.70 (3)(a)5 provides that "the prohibition [against municipal employer discouragement or encouragement of labor organization membership by discrimination in regard to hiring, tenure, or other terms or conditions of employment] shall not apply to a fair-share agreement."

And the provision most centrally at issue herein, Sec. 111.70 (3)(a)6 provides that it is a prohibited practice for a municipal employer . . .

> "to deduct labor organization dues from an employe's or supervisor's earnings, unless the municipal employer has been presented with an individual order therefor, signed by the municipal employe personally, and terminable by at least the end of any year of the life or earlier by the municipal employe giving at least 30 days' written notice of such termination to the municipal employer and to the representative organization, except where there is a fair-share agreement in effect." (emphasis added)

The statutory provisions above reflect the Legislature's judgment that desirable public policy ends are served if municipal employes in a collective bargaining unit are required to pay (by involuntary deductions equal to union dues, if necessary) their proportionate share of the cost of the collective bargaining process and contract administration if the municipal employer and the labor organization representing that bargaining unit so agree and so long as such agreement is not deauthorized or suspended as provided in Sec. 111.70 (2). That legislative judgment and purpose would logically be furthered by enforcing such agreements as regards all (but only) periods of time during which the labor organization was the exclusive representative of the bargaining unit involved, i.e., periods of time during which the labor organization was incurring the costs referred to in the statute

in representing the bargaining unit employes from which deductions are sought.

Furthermore, nothing in the above statutory language itself requires or warrants the conclusion that the Legislature intended to subject the enforceability of fair-share agreements to one or more of the following additional conditions:

1. that they be in fact agreed upon at or before the period of time they are intended to be in effect;

2. that deductions be made from paychecks issued in the month to which the deductions relate; or

3. that they be implemented precisely as written (or become void for the period in which noncompliance occurs).

Interpreted in the light of the foregoing analysis, Sec. 111.70 (3)(a)6 permits fair-share deductions where the parties agree that such deductions should be made as regards a period of time past throughout which the labor organization represented the deductee and the deductee's bargaining unit) even if that agreement is reached after the period of time to which the agreed-upon deductions relate[1/] so long as the total deductions related to the past period

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1/ The federal cases cited by complainants to the contrary are inapposite hereto. In Local 457, United Rubber Workers (Kentile Inc.), 147 NLRB 980, 56 LRRM 1328 (1964) (union demand for discharge of employe for nonpayment of dues during three months preceding effective date of contract, held unlawful) there was no agreement, retroactive, extended or otherwise purporting to cover the three month period in question. In Oil Chemical & Atomic Workers Union (United Nuclear Corp.), 148 NLRB 629, 57 LRRM 1061 (1964), remanded with directions 340 F. 2d 133, 58 LRRM 2211 (1964), modified on remand in other respects 152 NLRB 436, 59 LRRM 1101 (1965) (union efforts to cause discharge of employes who resigned union membership on February 11 held unlawful where maintenance-of membership-agreement was signed on February 12 as part of contract that was retroactive to February 11) the reason for the trial examiner's decision, affirmed by the Board, that the maintenance-of-membership clause was binding only at the time the contract was executed was the facts that the employes were led to believe that the anticipated contract execution date, February 12, would be the deadline for escape from the clause application and the union made no effort to notify the membership that February 11 would instead be the time that the contract would be effective. Id., 1964 CCH NLRB Par. 13,390 at 21,423. Hence, the case does not stand for the proposition that absent such deceptive conduct a maintenance-of-membership agreement cannot be given retroactive effect. Finally, in Teamsters Local 70 (Sea-Land of California, Inc.), 80 LRRM 1300 (1972) (union request for an employer discharge of employe for nonpayment of dues during contract hiatus held unlawful despite subsequent agreement upon an agreement retroactive throughout the period of nonpayment) the Board's holding rested squarely on the ground that the retroactive union shop agreement was unlawful because it denied the express statutory thirty-day grace period guaranteed in the national act. No such grace period guarantee exists in MERA.

do not exceed the "amount of dues uniformly required of all members" as regards such period, and so long as the deductions are made after such retroactive agreement has been in fact reached between the labor organization and the municipal employer.

In the instant case, assuming arguendo that no fair share agreement had been extended to, or reached during 1975 until the 1975-77 agreement was executed on April 2 of that year, the provisions of that agreement are sufficient to cause a fair-share agreement to be "in effect" for January, February and March, 1975 within the meaning of Sec. 111.70 (3)(a)6 as of the time the February 20, 1976 deductions were made. Respondent unions represented the bargaining unit of employes including the complainants throughout January, February and March, 1975. Respondent unions and respondent board agreed on April 2, 1975 (if not before) that fair-share deductions should be made throughout a contract term running "from January 1, 1975 through," inter alia, January, February and March, 1975. Respondent board made deductions as regards January, February and March, 1975 on February 20, 1975, after earlier entering into the 1975-77 agreement authorizing same. And the total fair-share deductions from the complainants' earnings taken as regards January, February and March was $19.50 or $6.50 per month, undisputedly the "amount of dues uniformly required of all members" during the three months in question. Hence, the last proviso to Sec. 111.70 (6) applies so as to negate the existence of the alleged prohibited practice on the instant facts.

While the foregoing analysis is dispositive without consideration of whether the parties' 1973-74 agreement extended (automatically or by agreement) beyond December 31, 1974, the examiner has made findings on that question to facilitate review and because such findings constitute an independent basis for concluding that no violation of Sec. 111.70 (6) was committed herein. An explanation of those findings and the conclusion based thereupon follows.

In Finding 7 (last sentence), the examiner has interpreted the duration clause of the 1973-74 agreement to provide for termination on December 31, 1974 and has rejected respondent unions' contentions that an extension of that agreement arose either out of past practice or respondent unions' January 2 expression of a willingness to "continue working" until further notice. Nevertheless, the examiner does conclude that an extension agreement was embodied in the initialled February 3, 1975 memorandum because that memorandum was drafted at 2:40 a.m., apparently during a late-night bargaining

session, such that great care in typing and in language usage was not likely or evident. Under such conditions the parties' agreement that "[i]t is understood that the Union will agree to extend the previous contract to the date of ratification of the new contract" constitutes an extension agreement, notwithstanding that no subsequent letter more formally confirming same was sent thereafter and that fair-share deductions were not immediately resumed. Since agreements to "extend" labor contracts ordinarily connote and involve extension from immediately after the termination date of the extended agreement until some date in the future, it is presumed that the parties intended such an extension herein running from January 1, 1975 on since they expressed no contrary intentions. When the 1975-77 agreement was ratified, it (including its fair-share agreement) became binding thereafter; so there was no gap in fair-share coverage under this alternate theory of the case.

Based upon either of those theories, no violation of Sec. 111.70 (3)(a)6 has been shown. Therefore, although the examiner has found that respondent unions caused and induced respondent board to make the disputed deductions[2/] such conduct did not constitute the alleged violations of either Sec. 111.70 (3)(b)2 or Sec. 111.70 (3)(c) because the respondent board's conduct was not shown to have been a prohibited practice.[3/]

Dated at Milwaukee, Wisconsin, this 15th day of July, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz
Examiner

2/ The examiner so found based upon the respondent unions' expressed understanding that under the 1975-77 agreement "all fair-share personnel will be obligated to pay an amount equal to a month's dues for each month of 1975" (Finding 13, above), from respondent unions' specific approval of the concept of collection of fair-share arrearages for the early months of 1975 in amounts of $19.50 or less (Finding 14, above), and respondent board's subsequent implementation of arrearage collection by just such a specific plan, and respondent board's payroll supervisor's characterization of the repayment schedule as "set up and authorized by Local 1053" (Finding 15, above).

3/ Sections 111.70 (3)(a)6 and 1, Stats.