STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KENOSHA EDUCATION ASSOCIATION, Complainant, vs. KENOSHA UNIFIED SCHOOL DISTRICT NO. 1, Respondent, KENOSHA TEACHERS UNION LOCAL 557, WFT, AFT, AFL-CIO, Intervenor.	:	Case XLIII No. 19669 MP-522 Decision No. 14162-A
KENOSHA TEACHERS UNION LOCAL 557, WFT, AFT, AFL-CIO, Countercomplainant, vs. KENOSHA EDUCATION ASSOCIATION, Counterrespondent.	:	Case II No. 20372 MP-608 Decision No. 14573

Appearances:

Perry & First, S.C., Attorneys at Law, by Messrs. Arthur Heitzer and Richard Perry, appearing on behalf of the Complainant.

Mr. Gary L. Covelli, Attorney at Law, appearing on behalf of Respondent.

Goldberg, Previant & Uelmen, S.C., Attorneys at Law, by Mr. Peter D. Goldberg, appearing on behalf of the Intervenor.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On October 9, 1975, the above named Complainant having filed a complaint with the Wisconsin Employment Relations Commission alleging that the above named Respondent had committed and was committing prohibited practices within the meaning of the Municipal Employment Relations Act (MERA); and on October 24, 1975, the above named Intervenor having filed with the Commission a motion to intervene in said matter; and said motion to intervene having been granted by Hearing Officer, Marshall L. Gratz by letter dated November 7, 1975; and Intervenor having filed a three-part motion on November 28, 1975 requesting that the Commission appoint a trial examiner to conduct hearing with respect to said complaint, that the Commission direct said trial examiner to conform with the provisions of Sec. 111.07 of the Wisconsin Statutes in setting a time for hearing and further that the Commission direct Hearing Officer Gratz to cease taking actions with respect to the instant case on the grounds that he had not been sufficiently authorized to do so; and the Commission having denied said three-part motion by telegram on December 1, 1975, and by formal Order with Accompanying Memorandum

dated December 2, 1975 1/; and a hearing on said complaint having been held at Kenosha, Wisconsin, on December 3, 1975, Marshall L. Gratz, Hearing Officer, being present; and during the course of said hearing, Intervenor having interposed a countercomplaint against Complainant orally on the record; and Complainant having waived form and notice requirements with respect to said countercomplaint; and hearing also having been conducted with respect to said countercomplaint on December 3, 1975 at Kenosha, Wisconsin; and the Commission having considered the evidence, arguments and briefs of Counsel with respect to the complaint and countercomplaint noted above and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Kenosha Education Association, referred to herein as Complainant, is a labor organization, having its principal offices at 6900 - 39th Avenue, Kenosha, Wisconsin 53140.

2. That Kenosha Teachers Union Local 557, WFT, AFT, AFL-CIO, referred to herein as Intervenor, is a labor organization having a mailing address of c/o Ms. Virginia Tenuta, President, 5627 - 35th Avenue, Kenosha, Wisconsin 53140, having members and supporters within the collective bargaining unit for which Complainant is the certified collective bargaining representative.

3. That Kenosha Unified School District No. 1, referred to herein as Respondent, is a municipal employer having its principal offices at 625 - 52nd Street, Kenosha, Wisconsin 53141.

4. That at all times material hereto, Complainant has been the certified collective bargaining representative for all regular full-time and all regular part-time certificated teaching personnel employed by Respondent.

5. That Intervenor is not and at all times material herein was not, the certified collective bargaining representative for any of the employes who are in the collective bargaining unit represented by Complainant.

6. That at all times material hereto, Respondent and Complainant have been parties to a 1975-77 collective bargaining agreement, referred to herein as the Agreement, which requires all members of the collective bargaining unit represented by Complainant to join the Complainant or to pay to Complainant the equivalent of its regular membership dues; that the Agreement further provides for Respondent to check off such dues from the payroll of the employes covered by the agreement and to pay such amount to the Complainant; that the Agreement also contains the following additional pertinent provisions:

"VI. GENERAL

A. Alteration in Compensation Plans

Requests or proposals from the teaching staff for a check-off system are to be made to the District through the Association as the certified bargaining representative for the teaching staff.

. . .

1/ Decision No. 14162.

XII. PAYROLL DEDUCTIONS

A. The following voluntary payroll deductions will be made:

1. U.S. Savings Bonds
2. Kenosha County United Fund
3. Tax sheltered annuity through the Wisconsin Teacher Retirement Fund and other companies provided each company has at least (35) teachers participating at the time of initial enrollment. New teachers with tax sheltered annuity plans may continue current coverage.
4. Group Life Insurance
5. Kenosha Teachers Credit Union
6. WEAC Insurance Trust

. . ."

7. That at all times material hereto, Respondent has engaged in the practice of making regular payroll deductions of Intervenor dues and of transmitting same to Intervenor, with respect to employes in the collective bargaining unit for which Complainant is the certified collective bargaining representative, upon Respondent's receipt of a signed written request from such individual employe(s) that it do so; that, i.e., Respondent has, at all times material hereto maintained a dues checkoff arrangement in favor of Intervenor.

8. That Respondent makes no voluntary payroll deductions at the request of employes in said bargaining unit except for dues deductions such as those noted in Finding No. 7, above, and the other deductions noted in Article XII(a) of the Agreement quoted in Finding No. 6, above.

9. That in May, 1975 Complainant and Respondent were engaged in collective bargaining with respect to the terms of the Agreement; that at that time Complainant (and specifically its Executive Director, Delmar Simmons) had actual knowledge of Respondent's practice of making the payroll deductions in favor of Intervenor referred to in Finding No. 7, above, and had actual knowledge of the holdings of the WERC in Milwaukee Board of School Directors, Dec. Nos. 13642 and 13643 (5/75); and that, at no time thereafter during said negotiations (which culminated in execution of the Agreement on August 28, 1975) were proposals made or discussed by Complainant or Respondent concerning said practice or concerning minority checkoff in general.

10. That by letter dated August 29, 1975, Complainant requested of Respondent that Respondent discontinue the practice noted in Finding No. 7, above.

11. That despite said request, and despite the fact that Complainant supplied Respondent on or about September 16, 1975 with copies of the WERC decisions noted in Finding No. 9, above, Respondent expressly refused, in a letter dated October 9, 1975, and has continued to refuse to comply with Complainant's aforesaid August 29, 1975 request; that said express refusal was contained in an October 9, 1975 letter from Respondent to Complainant which read, in pertinent part, as follows:

> "This will acknowledge your letter of August 29, 1975 suggesting that the District discontinue allowing check-off [sic] for the Kenosha Teachers' Union in view of a recent WERC decision involving the Milwaukee School District.

It would appear that at the present time there is some confusion over the interpretation of the law in this matter. In a prior Wisconsin Supreme Court decision, Board of School Directors of Milwaukee V. WERC, 42 Wis. 2d 637 (1969), the court rules that granting a majority union representative exclusive check-off [sic] as a prohibited practice.

We are advised that the recent WERC decision involving Milwaukee Schools is presently being appealed and, accordingly, in view of the contradictions in legal interpretations and the long standing practice to which no exception has been taken since you first became the exclusive bargaining agent, at the present time we are not going to change our past practice until circumstances change or until a final and unappealable decision is rendered in the recent Milwaukee case.

Please be assured that when the decision in the recent Milwaukee case becomes final, we shall abide by the results."

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

CONCLUSIONS OF LAW

1. That by making payroll deductions of dues of Intervenor, a labor organization which is not the certified collective bargaining representative for its certificated teaching personnel, and transmitting same to Intervenor upon Respondent's receipt of a signed written request from such individual employe(s) that it do so, Respondent has violated its duty to recognize and to bargain only with Complainant, and thereby in said regard the Respondent has committed, and is committing a prohibited practice within the meaning of Sec. 111.70(3)(a)1, 2 and 4 of the Municipal Employment Relations Act.

2. That the Complainant, by filing and processing the instant complaint, has not and is not committing a prohibited practice within the meaning of Sec. 111.70(3)(b)1, 2 and/or 3 of 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, Kenosha Unified School District NO. 1, and its agents, shall immediately:

1. Cease and desist from maintaining a dues checkoff arrangement in favor of Kenosha Teachers Union Local 557, WFT, AFT, AFL-CIO and from initiating and/or maintaining such an arrangement in favor of any other labor organization that is not the certified collective bargaining representative of affected employes of Respondent.

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 the countercomplaint filed herein by Kenosha Teachers Union Local 557, WFT, AFT, AFL-CIO, against Kenosha Education Association shall be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 30th day of April, 1976.

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

History of the Proceeding

Complainant filed the instant complaint on October 9, 1975, alleging that Respondent committed prohibited practices in violation of Secs. 111.70(3)(a)1, 2 and 4 of the Municipal Employment Relations Act (MERA) by granting, and continuing to grant, recognition for dues checkoff purposes to Intervenor, a minority labor organization, in connection with a bargaining unit of which Complainant is the exclusive majority collective bargaining representative. The complaint contained a request for relief in the form of orders that Respondent cease and desist from the alleged prohibited practices and that Respondent make Complainant whole for the expenses incurred by Complainant in processing the complaint. Complainant also attached to its complaint a motion requesting that the Commission issue interlocutory findings, conclusions and orders in the matter following completion of an expedited hearing.

Shortly after the filing of said complaint and motion, the Commission forwarded the case by mail to Marshall L. Gratz, a member of its staff, and instructed him to handle the matter as a "Hearing Officer", that is conduct hearing with respect thereto on behalf of the Commission, without the authority to issue Findings of Fact, Conclusions of Law and Order. The Commission issued no formal order concerning Mr. Gratz's participation in the matter.

On October 16, 1975, Hearing Officer Gratz issued a notice of hearing to Complainant and Respondent setting hearing for November 5, 1975. On October 24 and 29, 1975, Intervenor filed motions to intervene and for postponement of hearing, respectively.

On October 30, 1975, Respondent filed its answer. In that answer, Respondent essentially admitted that it had an ongoing minority checkoff arrangement in favor of Intervenor; that Complainant had demanded that Respondent cease such arrangement on the basis of May, 1975 WERC decisions in Milwaukee Board of School Directors 2/; and that despite such demand, Respondent continued said minority checkoff in good faith reliance upon the Wisconsin Supreme Court's 1969 holdings in Board of School Directors of Milwaukee v. WERC 3/. In addition, Respondent, in its answer, denied that its conduct violated MERA, opposed Complainant's motion for interlocutory orders, asserted that Intervenor was an indispensable party to the proceeding and demanded that the complaint be dismissed in its entirety.

On November 4, 1975, the Hearing Officer issued a notice to Complainant, Respondent and Intervenor postponing the date for hearing to December 3, 1975. On November 11, 1975, the Hearing Officer, by letter to the parties, granted Intervenor's motion for intervention and informed the parties that the Commission has assigned the case to him ". . . in the capacity of a Hearing Officer rather than as an Examiner, apparently in response to the concern for an expeditious determination herein reflected in the [Complainant's motion for interlocutory orders]."

On November 21, 1975, Intervenor sent a letter to the Hearing Officer at the Commission office in Milwaukee requesting subpoenas in connection with the December 3, 1975 hearing herein. The Hearing Officer supplied those subpoenas by letter dated November 24, 1975.

2/ Dec. Nos. 13642 and 13643 (5/75), affirmed Milw. Co. Cir. Ct. 4/2/76.

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

On November 28, 1975, Intervenor filed a motion with the Commission in Madison requesting that the Commission a) appoint a trial examiner in the instant matter, b) direct the trial examiner so appointed to conform to the requirements of Sec. 111.07 in setting a time for a new hearing, and c) direct Hearing Officer Gratz to cease taking actions with respect to the instant case because Hearing Officers are not authorized or permitted by statute or rule to set prohibited practice hearing dates or to conduct prohibited practice hearings. The Commission denied that motion by telegram on December 1, 1975 and by formal Order with Accompanying Memorandum dated December 2, 1975. 4/

On December 3, 1975, the Hearing Officer convened hearing in the instant matter at the Kenosha County Courthouse. Appearances were entered on behalf of Complainant, Respondent and Intervenor. At the outset, Intervenor renewed its three-part motion of November 28, 1975 and further moved for adjournment on the grounds that the Hearing Officer lacked the authority to convene the hearing, i.e., lacked a written order of appointment executed by a majority of the Commission. Both of those motions were denied in their entirety by the Hearing Officer.

Intervenor, joined by Respondent, then moved that all of the Hearing Officer's communications to the Commission concerning the instant case be disclosed to the parties by transcript or carbon copy. The Hearing Officer reserved that matter for Commission determination.

At that point, Intervenor was asked to state for the record its answer to the allegations in the complaint. Intervenor placed several of the complaint allegations in issue, asserted that the complained-of conduct of Respondent did not constitute a violation of MERA and was consistent with and required by the controlling precedent, Board of School Directors of Milwaukee v. WERC, above. 5/ By way of defense and countercomplaint, Intervenor alleged that Complainant was violating Sec. 111.70(3)(b)1, 2 and 3 by seeking in the instant proceeding to deny bargaining unit members their right to the dues checkoff in favor of Intervenor, which is guaranteed them by the collective bargaining agreement in effect between Complainant and Respondent.

In response to that countercomplaint, Complainant waived the statutory form and notice requirements and asserted that the terms of the collective bargaining agreement would be significant in determining the issues raised therein. While Complainant never expressly denied or admitted the allegation in the countercomplaint, it is clear from the record that all parties had reason to know that the allegation in the countercomplaint was at issue herein and that it was not an admitted matter.

Evidence and arguments were then taken with respect to the complaint, the countercomplaint and Complainant's motion for interlocutory orders.

Following the close of the hearing, by letter dated December 26, 1975, the Hearing Officer directed that the parties need not address their briefs to the issues involving Complainant's motion for interlocutory orders in view of Complainant's agreement at the hearing that said motion could be ignored if the Commission intended to issue the initial findings, conclusions and orders herein itself. The Commission indicated an intent to do so in the memorandum accompanying its December 2, 1975 order noted above.

4/ See, Note 1, above.

5/ See, Note 2, above.

On January 27, 1975, copies of the transcript were mailed to those parties who had ordered same. Timely briefs were filed by Complainant and Intervenor on February 16, 1976. Respondent did not file a brief.

Procedural Matters

The Hearing Officer's denial, during the hearing, of Intervenor's reiteration of its three-part November 28, 1975 motion was proper for the reasons set forth in the memorandum accompanying our December 2, 1975 order. 6/ In any event, we fail to see how any party has been prejudiced by the omission of all or any of the procedural steps called for in that motion. Therefore, we find no basis in said motion for diverting from a determination herein of the merits of the complaint and countercomplaint.

We have considered the motion of Intervenor and Respondent requesting disclosure to the parties of all communications between the Hearing Officer and the Commission concerning the instant case. We hereby deny same for the reason that the parties have no right to an intermediate presentation of recommendations or other communications from persons conducting hearing on behalf of the Commission in cases, where, as here, the Commission has an opportunity to read for itself a transcript of the proceedings had before such person. 7/ In any event, the only such communication in fact made by the Hearing Officer herein was his recommended findings, conclusions and orders none of which contained any reference to his impression of witnesses' demeanor and all of which were predicated on matters clearly supported in the transcript and exhibits.

Merits of the Complaint and Countercomplaint

POSITIONS OF THE PARTIES:

Complainant argues as follows:

1. The uncontroverted evidence herein establishes facts which clearly bring the instant case within the purview of the May, 1975 WERC decisions in Milwaukee Board of School Directors (MBSD).

2. The collective bargaining agreement in effect at all material times between Complainant and Respondent does not authorize Respondent to checkoff dues in favor of Intervenor or any other minority labor organization.

3. Reliance by Respondent and Intervenor upon the Supreme Court's 1969 decision in Board of School Directors of Milwaukee v. WERC is misplaced because:

   a. that decision was predicated upon the absence of statutory authorization of union security arrangements in favor of exclusive majority bargaining representatives,

   b. in 1971, the Legislature provided statutory authorization for fair share payments and for an attendant checkoff deduction system exclusively in favor of the majority labor organization,

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6/ See, Note 1, above.

7/ Sec. 227. 12 of the Wisconsin Statutes.

c. legislative approval of exclusive grants of a union security arrangement as protective and supportive of the majority representative as the fair share clearly implies legislative approval of exclusive grants of less potent and supportive union security arrangements as well,

d. the Supreme Court's holding in the named case is therefore no longer controlling.

4. There is a role for minority labor organizations, but that role must be carried out without assistance from the municipal employer. Otherwise the municipal employer is permitted to weaken the majority representative by subjecting it to interunion strife fostered by checkoff assistance to one or more competing minority unions. Public policy demands prompt WERC action consistent with its May, 1975 MBSD decisions to avoid the detrimental effect of a minority checkoff on members of the bargaining and on ". . . the peaceful and expeditious process of collective bargaining in our state."

5. By bringing the instant complaint, Complainant is vindicating not only its own interests but public interests as well; by failing to follow the clear mandate of the WERC's 1975 MBSD decisions of which it has had unquestioned knowledge, Respondent has acted in bad faith; because of Complainant's vindication of public interests and Respondent's bad faith noted above, Respondent should be ordered to reimburse Complainant for the expenses it incurred in filing and processing the instant complaint.

6. Consistent with its 1975 MBSD decisions, the WERC should declare that Respondent has violated Secs. 111.70(3)(a)1, 2 and 4 and should order Respondent to cease and desist from granting and/or continuing to grant dues checkoff recognition to Intervenor or to any other minority labor organization where there is an incumbent majority representative of all of the employes in the bargaining unit of Respondent's employes.

The Intervenor argues that Respondent's grant of a minority checkoff in favor of Intervenor was not a prohibited practice and that for Respondent to have done otherwise (i.e. to have granted Complainant an exclusive majority checkoff) would have been a prohibited practice discouraging of membership in Intervenor and, interfering with employe rights of association for the following reasons:

1. The Wisconsin Supreme Court so held in Board of School Directors of Milwaukee v. WERC, a case interpreting Sec. 111.70, WIS. STATS. (1970). There, the Court held that the rights and benefits that may be granted exclusively to a majority organization by a municipal employer must be limited to those which are related in a rational manner to the functions of the majority organization in its representative capacity. The Court's rationale underlying its test was that such limitation was necessary both to prevent entrenchment of the majority organization as the bargaining representative (thereby balancing municipal employes rights under MERA to bargain collectively through an exclusive representative and to associate and organize) and to protect the constitutional rights of minority organizations and of non-members of majority

organizations to equal treatment. Applying its test to checkoff, the Court reasoned that an exclusive majority checkoff in no way relates to representational functions and that a minority checkoff in no way hinders such functions.

2. The "fair share" revisions of Sec. 111.70 contained in Ch. 124, Laws of 1971 neither affected the underlying rationale for the Court's 1969 decision, nor mooted the pertinence hereto of the test and the result set forth therein. Those amendments were plainly intended only to permit the parties to prevent "free riders" from avoiding their portion of the costs of the majority organization's functioning in its bargaining representative capacity. Therefore, it must be concluded that the fair share amendments were intended to adopt and support the Court's 1969 holding rather than overrule it and to make no greater a revision in existing law (as it had been interpreted by the Court in 1969) than to permit exclusive fair share agreements with the majority representative.

3. In any event, none of the 1971 statutory revisions may be interpreted so as to permit municipal employers, who are, after all, instrumentalities of the state for civil liberties purposes, to infringe upon the constitutionally guaranteed rights of minority organizations and of nonmembers of majority organizations to equal treatment referred to in the Court's 1969 decision.

4. The May, 1975 WERC decisions in Milwaukee Board of School Directors then on appeal to Circuit Court were erroneous and should not be controlling herein.

For the foregoing reasons, Intervenor requests that the instant complaint be dismissed on its merits. Intervenor presented no arguments to amplify either its countercomplaint or its opposition to Complainant's request for costs.

Respondent did not file a brief. At the hearing, it reiterated the defenses set forth in its answer (noted above) and it argued that Complainant's request for an order that Complainant's expenses be paid by Respondent is groundless and ought to be denied.

DISCUSSION:

The instant fact situation is governed by the holdings in our recent Milwaukee Board of School Directors (MBSD) decisions. 8/ Unlike the situation there, there was no showing herein that the instant checkoff arrangement was initiated and/or maintained pursuant to proposals from or discussions with Intervenor, occurring since the passage of the 1971 amendments to MERA. Nevertheless, the fact that Respondent maintained such arrangement in favor of Intervenor at all times relevant herein is sufficient to make the holdings in the above noted decisions applicable herein.

Our express rationale in those cases was as follows:

8/ See, Note 2 above.

"In Board of School Directors of Milwaukee v. WERC, . . . 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). Also, an enforceable duty to bargain with the exclusive bargaining representative has been imposed upon the municipal employer. [Section 111.70(3)(a)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 employes who do not wish to become 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." 9

The above rationale is dispositive of most of the arguments put forth herein by Intervenor and Respondent.

Intervenor's arguments predicated on constitutional protections are rejected for the reason that the Commission presumes the constitutionality of MERA as interpreted in our Milwaukee case until a final judicial determination to the contrary is issued. The Milwaukee Circuit Court specifically found that the forms of union security authorized by the 1971 amendments to MERA did not violate the equal protection rights of the minority organizations in our recent MBSD cases.

With regard to the assertion that the Agreement between Complainant and Respondent requires Respondent to continue the minority checkoff in favor of Intervenor and precludes Complainant from asserting otherwise, our review of that Agreement reveals no provision to that effect. In fact, that Agreement contains a listing of agreed-upon voluntary payroll deductions in Article XII(a), which listing does not refer to checkoff in favor of Intervenor or any other minority labor organization. Furthermore, that Agreement, in Article VI(a), contains a provision that requests or proposals from the teaching staff for a checkoff system are to be made to the District through the Association. The record, however, contains no evidence suggesting that the Association ever received or brought forward a proposal concerning minority checkoff. Finally, the fact that Complainant was aware of our 1975 MBSD decisions and of Respondent's ongoing practice of minority checkoff as of May, 1975, i.e., prior to its August, 1975 execution of the current Agreement, is not sufficient to deprive Complainant of the right to seek relief for the prohibited practices alleged in its complaint. Thus, the Intervenor's defense based upon the Agreement is rejected and the countercomplaint predicated thereon has been dismissed.

For the foregoing reasons, the Commission has concluded that Respondent's continuation of minority checkoff in favor of Intervenor violates Secs. 111.70(3)(a)1, 2 and 4, and we have ordered Respondent to cease and desist from such violations.

The Commission, however, finds no merit in Complainant's request that Respondent be ordered to pay the expenses incurred by Complainant

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9/ It should be noted that in its decision in the Milwaukee Board of School Directors case the Supreme Court, in concluding that "The sole and complete purpose of exclusive checkoff is self-perpetuation and entrenchment" footnoted said conclusion with the following statement:

> "Agreements which seek to perpetuate the majority representative are often referred to as 'union security' provisions. Most often 'union security' agreements require that employees in a given unit must be members of the majority union to keep their jobs. Assembly Bill 389 (1965) would have authorized a municipal employer to enter into a 'union security' agreement. The Senate failed to override the governor's veto by one vote and the bill was rejected.
>
> An exclusive checkoff agreement, while not nearly as effective as a 'union security' agreement, certainly falls into the same family."

in this matter. Thus, we have not incorporated such payments as part of our order herein.

Dated at Madison, Wisconsin this 30th day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Howard S. Bellman, Commissioner

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Herman Torosian, Commissioner