

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

UNITED LAKEWOOD EDUCATORS,

Requesting a Declaratory Ruling  
Pursuant to Section 227.06, Wis. Stats.  
Involving a Dispute Between Said  
Petitioner and

HAMILTON JOINT SCHOOL DISTRICT NO. 16  
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Case V  
No. 21159 DR(M)-77  
Decision No. 15765

In the Matter of the Petition of

UNITED LAKEWOOD EDUCATORS,

Requesting a Declaratory Ruling  
Pursuant to Section 227.06, Wis. Stats.  
Involving a Dispute Between Said  
Petitioner and

SCHOOL DISTRICT OF KETTLE MORaine  
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Case IV  
No. 21153 DR(M)-74  
Decision No. 15766

In the Matter of the Petition of

UNITED LAKEWOOD EDUCATORS

Requesting a Declaratory Ruling  
Pursuant to Section 227.06, Wis. Stats.  
Involving a Dispute Between Said  
Petitioner and

SCHOOL DISTRICT OF MUKWONAGO  
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Case XIV  
No. 21154 DR(M)-75  
Decision No. 15767

In the Matter of the Petition of

UNITED LAKEWOOD EDUCATORS

Requesting a Declaratory Ruling  
Pursuant to Section 227.06, Wis. Stats.  
Involving a Dispute Between Said  
Petitioner and

MUSKEGO-NORWAY CONSOLIDATED SCHOOL  
DISTRICT NO. 9  
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Case XV  
No. 21155 DR(M)-76  
Decision No. 15768

Appearances:

Mr. Michael L. Stoll, Staff Counsel, appearing on behalf of ULE.  
Quarles & Brady, Attorneys at Law, by Mr. Michael J. Spector, appearing  
on behalf of Hamilton.  
Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Michael L. Roshar,  
appearing on behalf of Kettle Moraine and Mukwonago.  
Quarles & Brady, Attorneys at Law by Mr. Lawrence E. Gooding, Jr.  
appearing on behalf of Muskego-Norway.

No. 15765  
No. 15766  
No. 15767  
No. 15768

## FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

United Lakewood Educators, which claims to be the lawful successor to Hamilton Education Association, Kettle Moraine Education Association, Mukwonago Education Association and Muskego-Norway Education Association, on December 24, 1976, filed the instant petitions seeking a declaratory ruling determining that it is the lawful successor to the collective bargaining rights and obligations of said associations; and hearing having been held in the matter at Waukesha, Wisconsin, on February 1, 1977, and February 10, 1977, before George R. Fleischli, examiner; 1/ and transcript of the proceedings having been prepared and briefs having been filed by the parties, the last of which was received on May 17, 1977; and the Commission having considered the matter and being fully advised in the premises, makes and enters the following Findings of Fact, Conclusion of Law and Declaratory Ruling.

### FINDINGS OF FACT

1. That Lakewood UniServ Council-West (LUC-W) is an organization which exists for the purpose of providing staff service to the local labor organizations which helped form LUC-W and finance its operations; that the staff services provided by LUC-W consist primarily of professional and clerical help with the process of collective bargaining and contract administration; that Larry Kelley is the staff representative for LUC-W; that prior to September, 1976, LUC-W provided such service for six local teacher associations, which were affiliated with the Wisconsin Education Association Council (WEAC), a state teacher association, and the National Education Association (NEA), a national teacher organization; that said local teacher associations were as follows:

Hamilton Education Association (HEA),  
Kettle Moraine Education Association (KMEA),  
Mukwonago Education Association (MEA),  
Muskego-Norway Education Association (MNEA),  
New Berlin Education Association (NBEA), and  
Oconomowoc Education Association (OEA)

2. That prior to September, 1976, the HEA was voluntarily recognized as the collective bargaining representative of all full-time and part-time certified teaching personnel, excluding administrative and supervisory staff, teacher aides (whether certified or not) and per diem substitute teachers, in the employ of Hamilton Joint School District Joint No. 16, hereinafter referred to as Hamilton; that on or about January 27, 1976, the HEA and Hamilton entered into a collective bargaining agreement covering the wages, hours and working conditions of said employees, which expires by its terms at the end of the last day prior to the commencement of the 1977-78 school year, unless extended in accordance with its terms; that said agreement contains provisions granting recognition to the HEA for purposes of collective bargaining and contract administration and also provides for voluntary deduction of HEA, WEAC, and NEA dues for members of HEA who execute authorizations therefor.

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1/ The hearing on the instant petitions was consolidated with the hearing on election petitions which were filed by Hamilton and Muskego-Norway on January 24, 1977, and December 20, 1976, respectively. Hamilton Joint School District No. 16, Case VI, No. 21274, ME-1402, and Muskego-Norway Consolidated School District No. 9, Case XIV, No. 21125, ME-1390. Although Mukwonago and Kettle Moraine did not file election petitions it was agreed between counsel that elections should be directed in those districts if ULE was not found to be the lawful successor to the MEA and KMEA.

3. That prior to September, 1976, the KMEA was voluntarily recognized as the collective bargaining representative of all certified professional employees including teachers, librarians, full-time substitutes, special teachers, practice teachers, non-teaching nurses, psychologists, office and clerical personnel, maintenance and operating employees, administrators, and supervisory personnel, in the employ of the School District of Kettle Moraine, hereinafter referred to as Kettle Moraine; that on or about August 16, 1975, the KMEA and Kettle Moraine entered into a collective bargaining agreement covering the wages, hours and working conditions of said employees which is effective through August 15, 1977, and thereafter pending negotiations for a successor agreement, unless it is otherwise extended in accordance with its terms; that said agreement contains provisions granting recognition to the KMEA for purposes of collective bargaining and contract administration and also provides for voluntary deduction of dues to be remitted to the KMEA in an amount and number of installments as provided on individual dues authorization cards executed by employees in said bargaining unit.

4. That prior to September, 1976, the MEA was voluntarily recognized as the collective bargaining representative of all regular full-time and regular part-time certified employees engaged in teaching, including classroom teachers, guidance counselors, reading teachers, librarians, and special teachers, but excluding (a) substitute teachers who work less than a regular full-time or regular part-time teaching load for 90 consecutive work days (including days of excused absence); (b) supervisors, managerial and confidential employees; (c) non-instructional personnel such as nurses and non-professional and/or para-professional personnel; (d) interns, practice teachers and teacher aides; (e) office, clerical, maintenance and operating employees; and (f) all other employees and administrators, in the employ of the School District of Mukwonago, hereinafter referred to as Mukwonago; that on or about February 23, 1976, the MEA and Mukwonago entered into a collective bargaining agreement covering the wages, hours and working conditions of said employees, which became effective on August 28, 1975, and expires by its terms at the end of the last day before the first in-service day of the 1975-76 school year unless extended in accordance with its terms; that said agreement contains provisions granting recognition to the MEA for purposes of collective bargaining and contract administration, and also provides for voluntary deduction of MEA, WEAC and NEA dues for members of the MEA who execute authorizations therefor.

5. That prior to September, 1976, the MNEA was voluntarily recognized as the collective bargaining representative of all certificated personnel holding teaching contracts not classified as administrators, teacher aides, substitutes, psychologists and social workers, in the employ of the Muskego-Norway Consolidated School District No. 9, hereinafter referred to as Muskego-Norway; that the MNEA and Muskego-Norway entered into a collective bargaining agreement covering the wages, hours and working conditions of said employees which became effective on August 26, 1975, and expires by its terms on the day preceding the first in-service reporting date for new teachers in 1977; that said agreement contains provisions granting recognition to the MNEA for purposes of collective bargaining and contract administration, and also requires that Muskego-Norway deduct from the earnings of all covered employees "fair share" contributions in 20 installments in the amount of professional dues certified by the MNEA and remit same to the MNEA.

6. That for some time prior to October 1974, various members and officers of the HEA, KMEA, MEA, MNEA, NBEA, and OEA, some of whom were also officers of LUC-W, had discussed the possibility of merging to form a single labor organization for the purpose of collective bargaining with their respective employers; that the interest expressed in forming a single labor organization was in part motivated by a desire to encourage and facilitate the establishment of multi-employer bargaining with the six school districts whose employees were represented by said organizations;

that sometime in October, 1974, representatives of the HEA, KMEA, MEA, MNEA, and NBEA met for that purpose at the offices of LUC-W; that on November 12, 1974, arrangements were made to meet with the superintendents of the six school districts involved at the Waukesha Ramada Inn for the purpose of discussing the proposed merger of said local organizations and the concept of multi-employer bargaining; that not all six districts had representatives at said meeting.

7. That on November 12, 1974, the local presidents and negotiators who represented the six local associations adopted a resolution in favor of proceeding toward the development of a single merged local union; that after the meetings of October, 1974, and November 12, 1974, a meeting was held wherein local officers and building representatives of the six associations met for the purpose of discussing the possible advantages of a single merged local union and the content of the governing documents that would be desirable if such a merger took place; that in December, 1974, the LUC-W board of directors adopted a policy statement in favor of forming a single merged local union, which policy was subsequently endorsed by the membership of each local association; that in December, 1974, a joint committee was formed for the purpose of drafting a constitution and by-laws for said merged organization and each local association appointed one member to said committee; that the drafting committee presented a first draft constitution and by-laws to the LUC-W board of directors in late January, 1975; that thereafter, after further meetings with the LUC-W board of directors and local officers, a final draft of the constitution and by-laws was approved by the officers of the locals involved, and submitted to the LUC-W board of directors on April 16, 1975; that on April 22, 1975, the LUC-W board of directors edited and approved the final draft of the constitution of by-laws and decided that the matter should be submitted to a vote of the membership of each local organization.

8. That after notice to certain employees deemed eligible, as described below, of the time and place of the proposed election and distribution of sufficient copies of the proposed constitution and by-laws so that every voter would have access to a copy, secret ballot elections were held on May 15, 1975 at separate locations wherein said employees from each of the six local associations were allowed to vote; that the ballots utilized at each location read as follows:

"S E C R E T B A L L O T

LAKEWOOD UNISERV COUNCIL-WEST 2/

YES	NO	Approve the adoption of the Lakewood UniServ
		Council-West Single Local Constitution and Bylaws,
<input type="checkbox"/>	<input type="checkbox"/>	which provides that the LUC-W will serve as bargaining
		agent for the professional staff in the following
		school districts:

Hamilton-Sussex  
Kettle Moraine  
Mukwonago

Muskego-Norway  
New Berlin  
Oconomowoc

providing that the representation will take effect  
when legally possible."

9. That only members of HEA, KMEA and MEA were deemed eligible to vote in the elections held among the employees in those districts; that all employees represented by the MNEA were deemed eligible to vote in the election held at Muskego-Norway; that the procedures followed at each district con-

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2/ The name which appeared on ballot was LUC-W. Subsequently when it became clear that not all six associations would act to approve the new constitution and by-laws and LUC-W would continue to exist as a service organization, action was taken to change the name of the single merged labor organization to ULE.

sisted of determining whether the prospective voter was on the list of eligible employees, providing said employee with a ballot and permitting the employee to mark the ballot in secret and to place the ballot in a locked ballot box; that after the balloting was closed the ballot boxes were taken to the offices of the LUC-W, where the ballots were counted; that the count of ballots cast in each district was performed by employees from a different district; that a majority of the eligible voters who voted in the election held at Hamilton, Kettle Moraine, and Mukwonago voted in favor of adopting the proposed constitution and by-laws; that the number of eligible voters at Muskego-Norway who voted in favor of adopting the proposed constitution and by-laws was the same as the number who voted against adopting the proposed constitution and by-laws; that a majority of the eligible voters who voted in the elections held in New Berlin and Oconomowoc voted against adopting the proposed constitution and by-laws; that there were no irregularities in any of said elections and that the number of ballots cast equaled the number of voters who presented themselves to vote at each of the six districts where the balloting was conducted.

10. That on April 29 and 30, 1975, 96 members of the HEA signed a petition requesting that the HEA executive board place certain proposed amendments to the HEA constitution before its general membership at its annual meeting; that the purpose of said amendments was to provide: (1) that the HEA would thereafter be a component part of ULE (then still known as LUC-W); (2) that membership in the WEAC and NEA would thereafter be through the ULE; and (3) that the constitution and by-laws of the HEA would be dissolved, and the assets of the HEA would be transferred to a chapter account maintained by ULE at such time as ULE was "named" the exclusive bargaining agent for the employees in the collective bargaining unit then represented by HEA; that the HEA's general membership met on June 4, 1975, and that said amendments were adopted by two-thirds of the members present, as required by the HEA's constitution; that on May 1, 1975 the representative council of the KMEA met and determined to recommend adoption of similar amendments to the KMEA constitution; that the general membership of the KMEA met at its annual meeting held on May 28, 1975, and approved said amendments to its constitution, pursuant to the procedure contained therein for adopting amendments; that on June 4, 1975, at a regular annual meeting of its membership, the MEA membership voted to adopt and did adopt similar amendments to its constitution, pursuant to the provisions contained therein for adopting amendments.

11. That in the Fall of 1975, a steering committee was formed which comprised representatives of the HEA, KMEA and MEA for the purpose of taking the necessary steps to assist in the proposed merger; that the purpose of said committee was to select a new name for the single merged local because of the failure of three of the local associations to approve said merger and to arrange for the election of officers and the transfer of funds; that, however, no immediate action was taken to implement the merger, and negotiations for collective bargaining agreements to cover the 1975-76 school year were carried out by the responsible officers of the six individual local associations with staff support from representatives of LUC-W.

12. That sometime in November, 1975, the MNEA's representative council met and proposed an amendment to the MNEA constitution which dealt with the disposition of assets in the event of dissolution; that on December 10, 1975, the MNEA's representative council met and approved said amendment; that on January 14, 1976, the MNEA's representative council was presented with a petition signed by a number of members requesting that the question of merger be submitted to a second vote; that on that same date the MNEA's representative council proposed additional amendments to the MNEA's constitution which were similar to those which had been previously adopted by the memberships of HEA, KMEA and MEA; that on February 5, 1976, a second election was conducted among the employees of Muskego-Norway repre-

sented by the MNEA under the same circumstances described in paragraphs 8 and 9 above, except that the ballot utilized omitted the names of the New Berlin and Oconomowoc districts; that a majority of the eligible employees voting in said election voted in favor of adopting the ULE constitution and by-laws; that thereafter on February 11, 1976, the MNEA representative council met and approved the amendments to its constitution which had been proposed on January 14, 1976.

13. That the ULE's representative assembly, consisting of representatives from the HEA, KMEA, MEA and MNEA, met for the first time on March 24, 1976; that thereafter on May 25, 1976, the ULE's representative assembly met and approved the constitution and by-laws, adopted the name United Lakewood Educators, and elected officers; that most of said officers selected were officers in the HEA, KMEA, MEA and MNEA.

14. That during the period after May 15, 1975, and prior to September 9, 1976, the HEA, KMEA, MEA and MNEA continued to individually negotiate on behalf of the employees represented by those organizations and entered into collective bargaining agreements on behalf of said employees with each of the respective districts employing said employees, and engaged in conferences and negotiations for the purpose of administering those agreements on behalf of the employees represented by them; that on September 9, 1976, formal notification was sent to each of said districts that the four associations had merged to form ULE to represent the employees of said districts for purposes of collective bargaining and requested that thereafter all dues money withheld pursuant to the fair share agreement at Muskego-Norway, and the voluntary dues authorization agreements at Hamilton, Kettle Moraine and Mukwonago be sent to the treasurer of ULE; that in said letters the ULE offered to provide each district with copies of the ULE's constitution and by-laws and indicated that Kelley would meet with the superintendents of the four districts in the latter part of October for the purpose of discussing the structure of ULE and "possible patterns of relationships," an apparent reference to ULE's continuing desire to engage in multi-employer bargaining.

15. That the WEAC board of directors met on October 23, 1976, and acted to: (1) approve the disaffiliation of HEA, KMEA, MEA and MNEA from the WEAC; (2) approve the merger of the HEA, KMEA, MEA and MNEA to form the ULE; and (3) approve the affiliation of ULE with the WEAC; that during October and November, 1976, the assets of the HEA, KMEA, MEA and MNEA were transferred to ULE accounts maintained for the exclusive benefit of the members of each of the former associations now known as "chapters" of ULE.

16. That the meeting with the superintendents of the four districts which was proposed by Kelley in the letter dated September 9, 1976, was not held, but Kelley did thereafter meet with each of the school boards of the four districts and was, in each case, accompanied by the chapter coordinator; that at the first such meeting, which was held with the Mukwonago board on November 8, 1976, Kelley advised said board of the procedures followed in forming the ULE and offered to provide said board with certain documents with regard to ULE's claim that it then represented the teachers which had been previously represented by the MEA; that, specifically, Kelley offered to make available copies of petitions which were being circulated at that time among the teachers in the employ of Mukwonago; that said petitions, which reflected the desires of the signators to be represented for purposes of collective bargaining by ULE, were ultimately signed by 199 out of approximately 220 teachers in the Mukwonago bargaining unit at that time; that said signatures were secured during the period commencing on October 26, 1976, and ending on November 24, 1976; that later, in January, 1977, a copy of said petition was made available to the Mukwonago board at its request; that at the second and third of such meetings, the latter which took place on November 15, 1976, Kelley made a similar presentation and offers to the Muskego-Norway board and to the Hamilton board; that the petitions which were circulated among the Muskego-Norway teachers were signed by 153 of approximately 230 teachers employed by Muskego-Norway between the dates of



February 11, 1976, and November 23, 1976, and by 170 of approximately 244 teachers employed by Hamilton between November 10, 1976, and November 16, 1976, but said petitions were not presented to either the Muskego-Norway board or to the Hamilton board because said boards had never requested copies of said petitions; that at the last such meeting, which took place on November 16, 1976, Kelley made a similar presentation and offers to the Kettle Moraine board; that the petitions which were circulated among the Kettle Moraine teachers were signed by 136 of approximately 192 teachers at Kettle Moraine between October 21, 1976, and November 16, 1976, but were not presented to the Kettle Moraine board because it never requested a copy of said petitions.

17. That the procedures followed by the HEA, KMEA, MEA, MNEA, LUC-W and ULE in merging the HEA, KMEA, MEA, MNEA to form a single labor organization, now known as ULE, were fair and democratic and designed to reflect and did reflect the desires as to representation of the employees affected thereby.

18. That former members of the HEA, KMEA, MEA and MNEA are now members of the ULE; that the HEA, KMEA, MEA and MNEA are no longer affiliated with the WEAC or NEA; that, however, the ULE is now affiliated with said organizations; that the HEA, KMEA, MEA and MNEA no longer utilize the services of the LUC-W and have no participation in the financing or governance of that organization; that the ULE now utilizes the services of the LUC-W and participates in the financing and governance of the latter organization, along with the NBEA and the OEA; that under the ULE's constitution and by-laws and its practices thereunder, the former members of the HEA, KMEA, MEA and MNEA have agreed to share the financing of and the control over the collective bargaining process in accordance with the limitations provided therein and the practices thereunder; that the decision to share the financing and the control over the collective bargaining process was an internal union determination which resulted in a merger of said organizations, which merger did not in itself raise a question concerning representation of the teachers formerly represented by said associations and now represented by the ULE.

19. That although the notice of hearing herein was served on the HEA, KMEA, MEA and MNEA, no person claiming to represent any of said associations appeared at the hearing herein; that, however, subsequent to the hearing herein and prior to the receipt of the briefs, John P. Harrington, a teacher employed by Hamilton, in a letter dated April 8, 1977, which was received by the Commission on April 11, 1977, asserted that he represents an organization of teachers known as the "Hamilton-Sussex Education Association (HEA)" and that said organization desired to intervene in the matter of Hamilton's petition for an election or, in the alternative, wished to petition for an election; that Harrington offered to provide a ten percent showing of interest in support of said petition; that after the briefs in this matter had been filed on May 18, 1977, an election petition was filed by Dencie Munns, also a teacher employed by Hamilton, wherein she contended that Hamilton will not grant voluntary recognition to ULE; that ULE will not petition for an election; that, therefore, the Commission should conduct an election at Hamilton; that HEA be placed on the ballot along with ULE; that in said petition, Munns also claimed that 103 teachers of a bargaining unit of 192 teachers have signed petitions supporting an election with HEA's name on the ballot; that an administrative determination has established that at least 30 percent of the eligible teachers at Hamilton have since April 5, 1977, signed petitions wherein they have asked for an election and indicated that they desire that HEA appear on the ballot; that based on these developments, it appears that there may exist, at this time, a question concerning representation at Hamilton.

20. That subsequent to the hearing herein and the receipt of briefs, 16 teachers employed at Kettle Moraine directed a letter to the Commission which was dated June 9, 1977, and received by the Commission on June 13, 1977, which read in relevant part as follows:

"We the undersigned are members of the Kettle Moraine faculty. We are writing this letter as an interested party in the current litigation between the United Lakewood Educators and the Kettle Moraine School Board.

"It is our understanding that as a result of this litigation, the commission may direct an election to determine the collective bargaining representative for the Kettle Moraine District.

"If such an election is ordered, please be advised that we would like an opportunity to place the name of a professional organization on the ballot with the others to be considered. We will provide the necessary 10% show of interest upon demand.

"However, if an election is not ordered, please consider this letter as a petition for an election.

"Please send all correspondence, as well as any necessary forms we may be required to complete, to the attention of Jon Maney at the address listed below.";

that the commission has not taken any action with regard to the requests contained in said letter because the requests therein were contingent on the outcome of this proceeding.

21. That since September 9, 1976, and continuing to date, Hamilton, Kettle Moraine, Mukwonago and Muskego-Norway have refused and continue to refuse to recognize ULE as the lawful successor to the HEA, KMEA, MEA, and MNEA for purposes of collective bargaining and contract administration.

Based on the above and foregoing Findings of Fact, the commission makes and enters the following

#### CONCLUSION OF LAW

That at all times since September 9, 1976, the ULE has been, and is, the lawful successor to the HEA, KMEA, MEA and MNEA.

Based on the above and foregoing Findings of Fact and Conclusion of Law the commission makes and enters the following

#### DECLARATORY RULING

1. That, as the lawful successor to the MEA and MNEA, the ULE is the majority representative of the employees of Mukwonago and Muskego-Norway in the collective bargaining units described above in Findings of Fact numbered 4 and 5 for purposes of collective bargaining; that Mukwonago and Muskego-Norway have a duty to recognize the ULE as such majority representative and also have a duty to bargain with the ULE as such majority representative; and that the ULE is a party to the collective bargaining agreements with Mukwonago and Muskego-Norway previously negotiated by the MEA and MNEA respecting said bargaining units and has the right to enforce the provisions of said agreements including those provisions which run to its predecessor labor organizations, the MEA and MNEA, except as noted in paragraph 3 below.

2. That, as the lawful successor to the HEA and KMEA, the ULE is the majority representative of the employees of Hamilton and Kettle Moraine in the collective bargaining units described above in Findings of Fact numbered 2 and 3 for purposes of collective bargaining; that the ULE is a party to the collective bargaining agreements with Hamilton and Kettle Moraine previously negotiated by the HEA and KMEA respecting said bargaining units and has the right to enforce the provisions of said agreements including those provisions, except as noted in paragraph 3 below, which run to its predecessor labor organizations, the HEA and KMEA; that Hamilton and Kettle Moraine have a duty to recognize the ULE as such majority repre-



sentative and also have the duty to bargain with the ULE as such majority representative; but that, however, such duty to recognize and such duty to bargain, in the case of Hamilton, are contingent upon the outcome of the proceedings presently pending before the commission on the election petition of Hamilton, and, in the case of Kettle Moraine, such duties are contingent upon the outcome of proceedings on an election petition, if any, which shall be filed with the commission no later than September 9, 1977.

3. That, although the ULE is the lawful successor of the MEA, HEA, KMEA and MNEA, the execution by employees of any authorization to Mukwonago, Hamilton and Kettle Moraine to check off dues, to the MEA, HEA and KMEA does not authorize dues checkoff to the ULE, unless such authorizations expressly provide for checkoff to any successor of said labor organizations; and that, however, the valid fair share agreement appearing in the collective bargaining agreement executed by the MNEA and Muskego-Norway continues in full force and effect in favor of the ULE, and, therefore, the latter labor organization is entitled to be paid the dues required to be withheld from the earnings of the employees of Muskego-Norway.


Given under our hands and seal at the  
City of Madison, Wisconsin this 24<sup>th</sup>  
day of August, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION  
OF LAW AND DECLARATORY RULING

The instant petitions were filed by the ULE on December 24, 1976. Prior to that date, on December 20, 1976, Muskego-Norway filed a petition for an election. 3/ Subsequently, on January 24, 1977, Hamilton filed a similar petition for an election. 4/ At the hearing it was noted that an agreement exists between counsel for ULE and counsel for Mukwonago and Kettle Moraine that if ULE is not found to be the lawful successor to the MEA and KMEA, an election should be directed in those two districts. 5/ Counsel for all parties also agreed at the outset of the hearing that if elections are conducted in any of the four districts involved herein, said elections should be conducted based on the existing bargaining units and employees presently included in those bargaining units would be deemed eligible to vote. 6/

Consolidated hearing on the petitions herein and the election petitions was conducted at Waukesha, Wisconsin on February 1 and February 10, 1977. A verbatim transcript was prepared and sent to the parties on March 31, 1977. Post-hearing briefs were filed, the last of which was received on May 18, 1977.

As indicated in the findings above, after the transcript had been prepared but before the briefs had been filed, a letter was received by the commission signed by an individual identifying himself as John P. Harrington, a teacher at Hamilton. Harrington indicated that he was writing on behalf of an organization of teachers known as "Hamilton-Sussex Education Association (HEA)". He stated that if there was an election directed among the teachers at Hamilton it was their desire to be included on the ballot and offered to supply a ten percent showing of interest upon demand. In addition, the letter stated that if an election was not directed based on this proceeding or the petition of Hamilton, the letter should be treated as a petition for an election. The records in a related case indicate that Harrington is in fact a teacher at Hamilton. 7/ A copy of that letter was served on all parties to this proceeding and counsel were advised that it would be treated as a petition to intervene in the election proceeding based on Hamilton's petition.

After the briefs in this case had been received, an election petition was filed on May 18, 1977 by Dencie Munns, a teacher at Hamilton. 8/ In that petition, the petitioner alleges that the District will not grant voluntary recognition to ULE as the representative of the teachers of Hamilton and that the ULE will not petition for an election and states that 103 teachers at Hamilton have signed petitions for an election with HEA to be listed on the ballot. Pursuant to the Commission's policy of requiring a showing of interest in support of petitions for elections which are filed by employees, the petitioner was asked to supply the commission with copies of said petitions and the employer was asked to supply

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3/ Muskego-Norway Consolidated School Dist. #9, Case XIV, No. 21125, ME-1390.

4/ Hamilton Jt. School Dist. #16, Case VI, No. 21274, ME-1402.

5/ Transcript at page 5.

6/ Transcript at page 6.

7/ Hamilton Jt. School Dist. #16, Case VII, No. 21700, ME-1443.

8/ Id.

the commission with a current list of employees in the Hamilton bargaining unit. An administrative determination established that at least 30 percent of the employees currently on the list of eligible employees at Hamilton supported the petition. The petition forms signed by said employees read in relevant part as follows:

"CONFIDENTIAL AUTHORIZATION

I DESIRE AN ELECTION TO DETERMINE THE BARGAINING AGENT FOR THE HAMILTON-SUSSEX SCHOOL DISTRICT. I SUPPORT THE H.E.A. IN ITS EFFORTS TO APPEAR ON THE BALLOT. SIGNING THIS FORM IN NO WAY OBLIGATES ME TO JOIN OR PAY DUES TO THE ASSOCIATION. THIS FORM IS VALID UNTIL SUCH TIME AS IT IS REVOKED BY ME IN WRITING TO THE H.E.A."

Processing of said petition has been held in abeyance pending determination of the issues raised in this proceeding.

Finally, on June 13, 1977, after the parties had filed their briefs, the commission received a letter dated June 9, 1977, signed by 16 teachers at Kettle Moraine, wherein they indicated their desire to place the name of a professional organization on the ballot if an election is conducted at Kettle Moraine based on this proceeding and offered to produce a ten percent showing of interest. In the alternative, said employees indicated that they desired to file a petition for an election if none was directed as a result of this proceeding. Pending a determination of whether an election would be directed as a result of this proceeding, the commission has not asked said employees to produce a ten percent showing of interest on behalf of said organization nor has it acted on the alternative request contained in said letter.

POSITION OF ULE:

ULE contends that it is the lawful successor to the HEA, KMEA, MEA and MNEA for purposes of exclusive representation of the bargaining units formerly represented by those labor organizations; that it is entitled to assume all of the rights and obligations of the current collective bargaining agreements between the four districts involved and its predecessor labor organizations; and that the four districts are legally obligated to recognize and bargain with the ULE.

According to the ULE, the decisions of the Wisconsin Employment Relations Commission and the National Labor Relations Board have established two principles which are given consideration in deciding alleged successor union cases:

1. the intra-union merger procedures must be sufficient to protect the employees' free choice of bargaining agents and reflect the will of the majority of the members of the original unions; and
2. the merger must preserve as much stability as possible within the existing bargaining relationship.

With regard to the procedures followed in effectuating the merger, the ULE argues:

1. the procedures were democratic and the elections were fairly conducted;

2. the four associations followed their own internal rules for amending their constitutions; and
3. there is no evidence of opposition by officers or representatives of the former associations or the membership of the former associations with regard to the manner in which the merger was carried out.

With regard to the requirement that the merger not be disruptive of the established relationship, the ULE argues:

1. ULE has assumed all of the rights and obligations of the four predecessor labor organizations under the four collective bargaining agreements;
2. the election of officers and transfer of membership involved has provided a smooth transition; and
3. the merged labor organizations were affiliated with the same parent organizations (WEAC) and (NEA) as is the ULE, and they have utilized the same service organization (LUC-W) as does the ULE.

Finally, the ULE argues that, as the lawful successor to the four associations, it is entitled to enforce all the provisions of the four collective bargaining agreements negotiated by its predecessor, and argues further that the four districts are obligated to recognize and bargain with ULE and that the existing collective bargaining agreements act as a bar to any petition requesting any representation elections.

#### POSITION OF HAMILTON:

It is Hamilton's position that ULE is not the lawful successor to the HEA. Hamilton contends that in order to constitute a lawful successor, the evidence must establish that the merged organization is, in fact, a continuation of the prior organization under a different name, and that it is not enough that the merger was effectuated through democratic procedures, which condition is secondary.

Hamilton further argues that ULE is not a mere continuation of the predecessor unions, but constitutes a new union, with a wholly different relationship to its members from Hamilton than that which existed with the HEA. Specifically, Hamilton points out:

1. membership in ULE is open to non-Hamilton teachers;
2. only one former officer of the HEA is now an officer of the ULE and there is no requirement in ULE's constitution or by-laws that any officer of the ULE be an employee of Hamilton;
3. the ULE's executive committee and representative assembly are comprised of proportionate representation from each of the four districts based on the number of employees in those districts, thus diluting the control of Hamilton to minority status rather than exclusive control;
4. collective bargaining is carried out by a team comprised of five members (one from each district and Kelley) only one of whom comes from Hamilton and is selected by Hamilton teachers and that individual must secure the votes of at least three other members of the bargaining team to reach tentative agreements on issues arising in the negotiations at Hamilton;
5. important decisions such as whether to ratify a tentative collective bargaining agreement or to call a strike may, under the

constitution and by-laws as written at the time the successorship status was first claimed, be decided by all ULE members;

6. ultimate control over decisions as to whether to extend funds to arbitrate grievances has been removed from Hamilton teachers and transferred to a committee on which Hamilton has a minority voice; and
7. withdrawal of the Hamilton teachers from the ULE is made particularly difficult because of strict timeliness requirements set out in the ULE constitution.

In essence, Hamilton argues that ULE is not a true successor but rather a new labor organization which seeks to displace the HEA, an autonomous independent labor organization, and substitute its own centralized and shared decision-making therefor. According to the employer, the facts in this case are much closer to American Bridge 9/ where the court found a lack of successorship, than to cases such as Pearl Bookbinding 10/ where a finding of successorship was upheld.

With regard to the ULE's claim that its assumption of the rights and obligations under the collective bargaining agreements lends stability to the alleged successorship, Hamilton points out that such argument is circular in that it assumes that ULE is a successor in order to determine whether it is the lawful successor to HEA. Similarly, Hamilton argues that ULE's claim that the collective bargaining agreement is a bar to its election petition presupposes that ULE is the successor to HEA and therefore in a position to claim the existence of that agreement as a bar.

Hamilton requests that an election be conducted and that the HEA, which according to Hamilton has not ceased to exist, as evidenced by the wording of the constitutional amendment adopted and by Harrington's letter, be placed on the ballot in order that the employees at Hamilton can determine their collective bargaining representative.

#### POSITION OF MUSKEGO-NORWAY:

Muskego-Norway makes essentially the same arguments as set forth by Hamilton and contends that ULE is not the lawful successor to the MNEA. In addition, Muskego-Norway points out that the first election conducted at Muskego-Norway did not favor the merger and argues, as does Hamilton, that such an internal union election is no substitute for a commission-conducted representation vote. Muskego-Norway would have the commission conduct an election to determine whether the municipal employer's desire to be represented by MNEA or ULE, or by neither of said organizations.

#### POSITION OF MUKWONAGO:

Mukwonago argues that ULE should not be found to be the successor to the MEA because:

1. the membership of the MEA did not have an adequate opportunity to express its opinion as to the ULE's attempt to assume the role of collective bargaining representative at or near the time of such attempted assumption;

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9/ American Bridge Division, United States Steel Corp. vs. NLRB 457 F. 2d 660 79 LRRM 2877, (3rd Cir. 1972).

10/ NLRB vs. Pearl Bookbinding Co., Inc. 517 F. 2d 1108, 89 LRRM 2614 (1st Cir. 1975).

- a. internal merger discussions were conducted without the knowledge or consent of the membership;
  - b. there was inadequate time to discuss the merits of the proposed merger prior to the May 15, 1975 vote;
  - c. there was a substantial change in the composition of the bargaining unit between the May 15, 1975 vote and the ULE's attempt to assume representative status in September of 1976;
  - d. the internal ULE election is no substitute for a commission-conducted election;
2. the substitution of ULE for MEA would constitute a substantial change in the identity of the collective bargaining representative thereby creating a question concerning representation which can only be resolved by a commission-conducted secret ballot election;
- a. said substitution would alter the bargaining table relationship by changing the method of selection and composition of the employees' bargaining team, the means by which tentative agreements are entered into, and the means by which contracts are ratified;
  - b. under the ULE constitution and by-laws local control of dues, fines and assessments is forfeited;
  - c. the continued existence of a Mukwonago chapter of ULE does not establish a continuation of local autonomy;
  - d. the employer has not acquiesced in ULE's claim of representative status;
  - e. there is evidence of employee objection to the claim of representative status made by ULE; and
  - f. The ULE constitution itself recognizes the appropriateness of a commission-conducted election to resolve questions concerning the representative status of ULE.

#### POSITION OF KETTLE MORaine:

Kettle Moraine makes essentially the same arguments in opposition to the claim of successorship as are made by Mukwonago. Kettle Moraine also points out that there has been a substantial turnover and expansion of the bargaining unit since the ULE election was conducted on May 15, 1975 and prior to the demand for recognition in September of 1976. Finally, Kettle Moraine argues that the letter signed by 16 teachers at Kettle Moraine and received by the commission on June 13, 1977 is a further indication of the need for an election to determine whether ULE represents the teachers at Kettle Moraine as the other districts.

#### DISCUSSION:

A review of the numerous decisions of the commission, the NLRB and the courts which are cited by the parties in their briefs, discloses that alleged successorship situations generally involve three frequently recurring factual patterns:

- 1. cases where an independent local union votes to affiliate with an existing international union, either as a newly chartered

local or through a merger with an existing local union which is affiliated with an international union;

2. cases where international unions merge, thereby requiring the merger of some local unions or the change in affiliation of some local unions to reflect an affiliation with the surviving international union; and
3. cases where two or more local unions merge, but retain their affiliation with the same international union and any intermediate labor organizations that may exist.

The facts in this case are of the third variety.

Among the court cases relied upon by the districts, the American Bridge, 11/ Gloekler, 12/ and Local 428 13/ decisions all fall into the first of these three factual patterns. In two cases, American Bridge and Gloekler, the court refused to uphold an NLRB determination of successorship status. A close reading of those cases indicates that there were a number of factors which were present in said cases that are not present herein. In Gloekler the international union had attempted to displace the existing bargaining representative first by a charge of domination, which was dismissed, and then by a petition for an election, which was also dismissed, before displacing the existing leadership and attempting to claim successorship status. Furthermore, the administrative law judge rejected evidence which would have helped establish what degree of control had been transferred to the international union and the NLRB ignored his error.

In American Bridge the court speaks of "continuity of representation" as the key factor in determining a successorship and appears, by cases it relies on, to equate successorship with a mere name change of the organization. We disagree and feel successorship constitutes more than what amounts to a name change. Successorship should be determined by: (1) considering the degree of continuity between the predecessor organization and the successor organization; and (2) recognizing and giving effect to the desire of the employees which is determined by a procedure which safeguards the free and unfettered choice of said employees.

A further, and more general, distinction between the American Bridge, Gloekler, and Local 428 cases and the instant proceeding lies in the nature of the change that has taken place. Unlike cases where an independent local has surrendered a large amount of control to an international union, here four neighboring local associations have together formed a new joint labor organization and still have retained, through the new association, their state and national affiliation with the WEAC and NEA and remain subject to such controls as those organizations exert over the internal affairs of any affiliated local union. Further, the continuity between the predecessors and successor organizations is far greater in the instant case. In addition to the continuity inherent in continuing the same state and national affiliation, the ULE utilizes the same service organization and personnel which the four associations formerly utilized. Membership in the four former associations and, to a large extent, the

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11/ Supra, footnote 9.

12/ NLRB V. Gloekler Northeast Company 540 F. 2d 197, 93 LRRM 2039 (3rd Cir. 1976).

13/ Retail Store Employees Local 428 v. NLRB 211 NLRB No. 85, 86 LRRM 1441 (1974) enf. 528 F. 2d 1225, 91 LRRM 2001 (9th Cir. 1975).



leadership thereof, was simply transferred from the four associations to the ULE and there was an assumption of assets and liabilities.

While the Commission is satisfied that a union can claim successorship status under any of the factual patterns described above if the other factors necessary for a determination of successorship status are present, 15/ the commission is satisfied that as a general proposition the claim of lack of successorship status due to a loss of identity or control is much less persuasive where the merged organization retains the same affiliations as that of the merging organization. 16/

While it is true that the four associations have, through the merger, sacrificed some measure of their individual autonomy 17/ their memberships have apparently determined that such sacrifice is appropriately made in exchange for the advantages they believe they will derive from the merger. The procedures followed for effectuating the mergers were not only democratic and in accordance with the constitution and by-laws of the four associations, but provided the employees with an adequate opportunity to become informed as to the consequences of the merger. The delay which occurred after the May 15, 1975, votes and the September 1976 demand for recognition was apparently related to a desire to provide for an orderly transfer of bargaining status and to avoid disrupting the negotiations for agreements covering the 1976-77 school year, and did not result because of disenchantment or organized opposition to the proposed merger. Any inference which might be drawn from the evidence of turnover at Mukwonago and Kettle Moraine, and to some extent at Hamilton and Muskego-Norway, is offset by: (1) that fact that a majority of the teachers subsequently signed the petitions seeking recognition for ULE 18/ and (2) the fact that no organized opposition to the proposed merger developed during said period. The only evidence of possible opposition to the merger did not develop until after the districts had refused to recognize ULE and legal proceedings were instituted, which proceedings dragged on for several months.

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15/ The NLRB has continued to find successorship status in cases involving the affiliation of independent local unions in spite of the courts' decisions in American Bridge and Gloekler. See, for example, Quemetco Inc. 225 NLRB No. 216, 94 LRRM 1040 (1977) and A. N. Winchester Inc. 226 NLRB No. 152, 94 LRRM 1245 (1977).

16/ Turtle Lake Consolidated School Dist., (11929-A) 4/74. The mergers in Bancroft Dairy Co. (6148-A) 6/63 and Milbrew Inc. (8926-A) 8/69 were, in this important respect, similar to the merger herein.

17/ In this regard, the commission does not dispute the districts' contention that the ULE constitution and by-laws do not compel the utilization of procedures which guarantee substantial input on decisions by the teachers in the four chapters and that Kelley's testimony with regard to the "political realities" and the "actual practice" thereunder is no substitute for such guarantees as a matter of law. However, the new constitution and by-laws were approved by the membership of the four associations and it must be assumed that they understood and agreed with this internal change. The mere dilution of control in itself is not a sufficient reason to find a lack of successorship. See Kentucky Power Co. 213 NLRB No. 105, 87 LRRM 1243 (1974). If it were, only name changes, not mergers, would be possible without an election.

18/ It is also significant in this regard that 105 of the 111 teachers who received checks for dues money which had been escrowed by Kettle Moraine voluntarily endorsed those checks over to ULE shortly before Christmas on December 15, 1976.

Subsequent Evidence of Possible  
Opposition to Merger at Hamilton

It is not clear on the record presented whether Harrington's letter and the May 18, 1977 election petition and showing of interest filed by Dencie Munns is evidence of belated opposition to the merger decision or dissatisfaction with the ULE's decision as to how best to proceed to establish itself as the bargaining representative of the Hamilton teachers in the face of Hamilton's refusal to recognize ULE. In either event, such belated opposition or dissent does not constitute evidence that the merger was not accomplished in a manner which reflected the desires of the employees of Hamilton at the time. It may be that a question concerning representation now exists at Hamilton. Because of this possibility and because there may be other issues raised by that petition, the commission's Declaratory Ruling finds successorship but makes the duty to recognize and bargain contingent upon the outcome of the election proceeding initiated by Hamilton's petition. Accordingly, the commission has ordered further hearing on Hamilton's petition and the May 18, 1977 election petition filed by Dencie Munns. 19/

Subsequent Evidence of Possible  
Opposition to Merger at Kettle Moraine

Likewise, the record does not establish what event prompted the 16 teachers at Kettle Moraine to express a belated desire for an election conducted by the commission. However, that belated expression of possible dissatisfaction with the merger decision of the four local associations does not constitute evidence that the merger decision was not accomplished in a manner which reflected the desires of the employees of Kettle Moraine at the time. However, because of the possibility that a question concerning representation may presently exist at Kettle Moraine, the commission's Declaratory Ruling finds successorship but makes the duty to recognize and bargain contingent upon the outcome of an election proceeding, if any is commenced by September 9, 1977. If the commission receives an election petition by that date from an organization claiming to represent the teachers at Kettle Moraine which is supported by the requisite 30 percent showing of interest, it will process same in accordance with its usual procedures.

Because there is no evidence of any question concerning representation at Muskego-Norway, Muskego-Norway's petition has been dismissed. 20/

Effect of the Merger on the  
Enforceability of the Agreements

As the lawful successor to its predecessor labor organizations, the ULE succeeds to all the rights and duties, except as noted below, of those predecessors under the collective bargaining agreements which they entered into with the respective employers. Such succession includes the right to enforce any union security provisions, including fair share.

In the absence of a fair share agreement, and where the collective bargaining agreement requires the employer to deduct "dues" from the earnings of employees should employees voluntarily authorize checkoff of dues to the labor organization which has executed the collective bargaining agreement, the employer must deduct the amount of said dues from the earnings of the employees executing said checkoffs. The ULE, however,

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19/ Decision No. 15770 and 15771, 8/24/77.

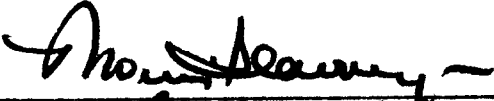
20/ Decision No. 15772, 8/24/77.

does not succeed to its predecessors' rights in respect to receiving monies withheld from earnings pursuant to a dues checkoff authorization running in favor of the predecessors. Dues checkoff is entirely a voluntary matter on the part of the individual employe which cannot be required by the terms of a collective bargaining agreement. Of course, if the dues checkoff authorizations expressly provide that they run to any successor of the named labor organizations, then ULE is such a successor and is entitled to receive monies withheld on the basis of said authorizations.

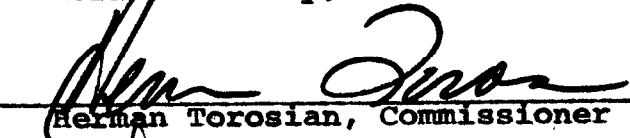
Dated at Madison, Wisconsin this 24<sup>th</sup> day of August, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

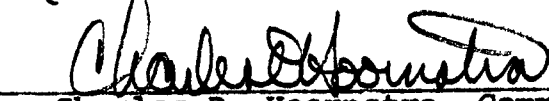
By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Charles D. Hoornstra, Commissioner