

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GILLIS W. GERLEMAN, CAROL
WEGNER, DYCIA HARDTKE, LEWIS
SNYDER, LA VERNE LANTZ, WILLARD
SCHULTZ, MARGARET BERG,

Complainants,

vs.

THE MILWAUKEE BOARD OF SCHOOL
DIRECTORS, NATIONAL EDUCATION
ASSOCIATION, HELEN WISE AS
PRESIDENT OF NATIONAL EDUCATION
ASSOCIATION, WISCONSIN EDUCATION
ASSOCIATION, LAURI WYNN AS
PRESIDENT OF WISCONSIN EDUCATION
ASSOCIATION, MILWAUKEE TEACHERS
EDUCATION ASSOCIATION, AND
EUGENE GUZNICZAK AS PRESIDENT
OF MILWAUKEE TEACHERS
EDUCATION ASSOCIATION,

Respondents.

Case C
No. 23558 MP-897
Decision No. 16635-A

Appearances:

Willis B. Ferebee, Attorney at Law, 411 East Mason Street, Milwaukee,
Wisconsin 53202, appearing on behalf of the Complainants.

James B. Brennan, City Attorney, by Theophilus C. Crockett, Principal
Assistant City Attorney, 800 City Hall, Milwaukee, Wisconsin 53202,
appearing on behalf of the Respondent Board.

Lawton and Cates, Attorneys at Law, by John C. Carlson, 110 East Main
Street, Madison, Wisconsin 53703, and

Bruce Meredith, Staff Counsel, WEAC, P. O. Box 8003, Madison, Wisconsin
53708, appearing on behalf of Respondents NEA, Wise, WEAC and Wynn.

Perry and First, S.C., Attorneys at Law, by Richard Perry, 222 East Mason
Street, Milwaukee, Wisconsin 53202, appearing on behalf of Respondents
MTEA and Guzniczak.

INITIAL FINDINGS OF FACT AND INITIAL CONCLUSIONS OF LAW

The above named Complainants having filed an amended complaint with the Wisconsin Employment Relations Commission alleging that the above named Respondents had committed, and were committing, prohibited practices within the meaning of the Municipal Employment Relations Act; and hearing in the matter having been conducted at Milwaukee, Wisconsin on April 30, May 1, 2, and 14, 1979 before the members of the Commission, during which the parties were afforded the opportunity to present evidence and argument in the matter; and post hearing briefs having been filed by February 26, 1980; and the Commission, having reviewed the entire record, the arguments and briefs of counsel, and being fully advised in the premises, makes and issues the following

INITIAL FINDINGS OF FACT

1. That Complainant Gillis W. Gerleman is an individual residing in Waukesha, Wisconsin; that Complainants Carol Wegner, Dycia Hardtke, Lewis Snyder, Willard Schultz, and Margaret Berg, are individuals residing in Milwaukee, Wisconsin; and that Complainant La Verne Lantz is an individual residing in Delafield, Wisconsin.

2. That Respondent Milwaukee Board of School Directors, hereinafter referred to as the Board, operates a K through 12 school system in Milwaukee, Wisconsin, and has its offices at 5225 West Vliet Street, Milwaukee, Wisconsin.

3. That Respondent National Education Association, hereinafter referred to as NEA, is a labor organization and has its principal offices at 1201 16th Street N.W., Washington, D.C.; that at all times material herein, Respondent Helen Wise was the President of the NEA, and that Respondent Wise maintained her office at the offices of NEA, 1201 16th Street N.W., Washington, D.C.; and that NEA represents teachers and other employees employed by various school districts throughout the various states of these United States, directly and through various state and local affiliates, for purposes of collective bargaining.

4. That Respondent Wisconsin Education Association, also known as the Wisconsin Education Association Council, hereinafter referred to as WEAC, is a labor organization and has its principal offices at 101 Beltline Highway, Madison, Wisconsin; that at all times material herein, Respondent Lauri Wynn was the President of WEAC, maintaining her principal office at the offices of WEAC; and that WEAC is a statewide labor organization representing teachers and other employees employed by school districts in Wisconsin, through various local affiliates, for purposes of collective bargaining.

5. That Respondent Milwaukee Teachers Education Association, hereinafter referred to as MTEA, is a labor organization and has its principal offices at 5130 West Vliet Street, Milwaukee Wisconsin; that at all times material herein Eugene Guzniczak was the President of MTEA, maintaining his principal office at the offices of MTEA, 5130 West Vliet Street, Milwaukee, Wisconsin; that prior to January 1, 1973, and continuing to August 31, 1974, MTEA had been affiliated with WEAC and NEA; and that on the latter date such affiliations were effectively terminated by MTEA.

6. That at least prior to January, 1973, and continuing at all times material thereafter, MTEA has been the exclusive collective bargaining representative of certain employees in the employ of the Board who are included in the following described appropriate collective bargaining unit, hereinafter referred to as the teacher unit:

. . . all regular teaching personnel (hereinafter referred to as teachers) teaching at least fifty percent (50%) of a full teaching schedule or presently on leave (including guidance counselors, school social workers, teacher-librarians, traveling music teachers and teacher therapists, including speech pathologists, occupational therapists, and physical therapists, community recreation specialists, activity specialists, music teachers 550N who are otherwise regularly employed in the bargaining unit, excluding substitute per diem teachers, office and clerical employees, and other employees, supervisors, and executives.

7. That on January 31, 1973, MTEA and the Board executed a collective bargaining agreement covering the wages, hours and conditions of employment of the employees in said teacher unit, which agreement, by its terms, became effective January 1, 1973 and continued in effect through December 31, 1974; and that said agreement contained, among its provisions, the following material herein:

DUES, FAIR SHARE AND PAYROLL DEDUCTIONS

1. Dues Deductions. The Board shall provide the MTEA with the opportunity to have its dues and the dues of its affiliates deducted from the checks of the teachers desiring such service. Any deduction in the hands of the Central Office prior to the 18th day of the month will become effective with the following paycheck.

2. Fair Share. All employees represented by Milwaukee Teachers' Education Association who have completed sixty calendar days of service and are not members of the MTEA shall be required, as a condition of employment, to pay to the MTEA each month a proportionate share of the cost of the collective bargaining process and contract administration. Such charge shall be deducted from the employee's paycheck in the same manner as MTEA dues and shall be the same amount as the MTEA charges for regular dues, not including any special assessment or initiation fee.

In consideration of this provision, the MTEA agrees:

a. That no employee who qualifies for membership under the constitution and by-laws shall be denied membership or have his membership terminated in the MTEA for reasons other than the failure of the employee to tender his dues required as a condition of acquiring membership in the MTEA. The MTEA agrees to furnish the Milwaukee Board of School Directors a current list of employees whose memberships are terminated, with grounds therefore, within five days after rejection or termination.

b. The MTEA further agrees to hold the Milwaukee Board of School Directors harmless for any damages arising out of any legal action by any employee contesting the above set forth deduction from his salary. The Board and the MTEA agree jointly to defend against any such action.

Changes in the amount of dues to be deducted shall be certified by the Association by August 1 of each year . . .

8. That MTEA and the Board have been parties to succeeding collective bargaining agreements covering the employees in the teacher unit, and containing provisions similar to those set forth in Finding of Fact 7; and that the agreements effective after January 1, 1975, contained the following provision relating to "fair-share":

No part of fair-share money may be used to any extent in a political campaign for or against any candidate for public office.

9. That, pursuant to said fair-share provisions, the Board has deducted from the wages of the employees in the teacher unit, who were not and who are not members of MTEA, sums of monies denominated as fair-share deductions, in amounts equal to the dues paid by MTEA members; that the amounts so deducted by the Board have been transmitted to MTEA; that at least from January 1, 1973 through August 31, 1974, during the period when MTEA was affiliated with WEAC and NEA, MTEA transmitted a portion of such fair-share contributions to WEAC, which in turn transmitted a portion thereof to NEA; and that since the latter date MTEA has retained all of said fair-share deductions.

10. That, following elections conducted by it, the Wisconsin Employment Relations Commission certified MTEA as the exclusive collective bargaining representative of additional employees of the Board in three separate collective bargaining units, namely substitute teachers, teacher aides, and accountants; and that in said relationship, at least since January 1, 1973, the parties have negotiated and executed collective bargaining agreements covering the wages, hours and working conditions of employees in said three collective bargaining units.

11. That at all times material herein the individual Complainants, identified in Finding of Fact 1 are representative of a class of fifty-six teachers who were in the employ of the Board at the time of the filing of the amended complaint initiating the instant proceeding, and who were also occupying positions in the teachers unit; that the individual Complainants and the members of their class, by December 31, 1977, pursuant to an Order issued by the Milwaukee County Circuit Court, filed protests with respect to the compulsory exaction from their earnings of fair-share deductions, any portions thereof which had been, or which were to be, utilized for purposes other than collective bargaining and contract administration; and that the members of said class who so protested were as follows:

Robert E. Adkins
8642 N. 51st St.
Brown Deer - 53223

Phyllis M. Banks
3018 N. 11th St.
Milwaukee - 53206

Becki M. Blazich
4161 N. Montreal St.
Milwaukee - 53216

Sarah Lee Grant
4510 N. 23rd St.
Milwaukee - 53209

Emily Ann Brauer
7120 W. Chambers Ct.
Milwaukee - 53210

Rosemary A. Green
3273 N. 51st St.
Milwaukee - 53216

Joe G. Brejcha
1235 W. Riverview Drive
Glendale - 53209

Raymond R. Brown
6551 W. Lauefield Drive
Milwaukee - 53219

Judith M. Busser
1626 N. Prospect Ave.
Milwaukee - 53202

Lynn M. Butenhoff
2139 N. 51st St.
Milwaukee - 53208

Ruby N. Cleveland
1805 W. Zeidler Lane
Mequon - 53092

Delores P. Collins
4546 N. 110th St.
Milwaukee - 53225

Robert L. Crawford
12144 N. Lake Shore Drive
Mequon - 53092

Ellen Crozier
20280 Glen Oaks Drive
Brookfield - 53005

Leonard P. Dale
4534 N. Teutonia
Milwaukee - 53209

Irene Edelstein
2500 E. Jarvis St.
Shorewood - 53211

Lucille A. Frisby
19135 Arlyne Court
Waukesha - 53186

Ann L. Gallagher
728 E. Lexington Ave.
Whitefish Bay - 53217

Shirley Genova
521 W. Daphne Rd.
Milwaukee - 53217

Roger H. Gifford
7250 S. 46th Street
Franklin - 53132

Barbara Louise Gonion
3034 N. 88th Street
Milwaukee - 53222

Margaret Mabel O'Connell
1626 N. Prospect Ave.
Milwaukee - 53202

Henry E. Ohly
2323 N. 117th St.
Wauwatosa - 53226

Philip Edward Pres
3942 N. Stowell Ave.
Milwaukee - 53211

Joyce F. Guinn
N100 W16450 Revere Lane
Germantown - 53022

Charles G. Hackney
4355 N. 69th St.
Milwaukee - 53216

Adele Hanson
8529 W. Chapman
Greenfield - 53228

Michael L. Heiderich
11610 W. Mt. Vernon
Wauwatosa - 53226

James L. Johnson
3848 N. 12th St.
Milwaukee - 53206

Jeanette M. Kloke
941 Glenview Ave.
Milwaukee - 53213

Karen B. Krause
1333 W. Orchard St.
Milwaukee - 53204

Leon A. Krueger
3976 Highway NN
West Bend - 53095

Richard F. Leitgeb
2526A W. Bolivar
Milwaukee - 53221

Gerald M. McGrath
3109 N. Sherman Blvd.
Milwaukee - 52316

Foyne Mahaffey
1729A N. Warren
Milwaukee - 53202

Teresa Malmer
820 E. Glenbrook Rd.
Bayside - 53217

John Mazurek
2345 S. 31st St.
Milwaukee - 53215

John Medla
4949 S. Lake Drive
Cudahy - 53110

Mary M. Norman
1229 Elm Lawn
Wauwatosa - 53213

Lewis W. Snyder
333 N. 72nd St.
Milwaukee - 53213

Robert G. Stark
101 Broad St.
Lake Geneva - 53147

Gloria L. Stone
5645 S. 92nd St.
Hales Corners - 53130

Josephine Z. Perleberg
13630 Thomas Drive
New Berlin - 53151

Mary A. Sworske
4572 N. 40th St.
Milwaukee - 53209

Billy M. Provine
3827 N. 9th St.
Milwaukee - 53206

Eunice G. Teichmann
2424 E. Shorewood Blvd.
Milwaukee - 53211

August Karl Ristow
2454 S. Green Links Drive
West Allis - 53227

Marilyn Verick
2367 S. 79th St.
West Allis - 53219

Evelyn R. Ruokomem
7204 W. Chapman Pl.
Milwaukee - 53216

Donald E. Wickland
7409 W. Carmen Avenue
Milwaukee - 53218

Marie J. E. Schumacher
913 E. Kilbourne Ave.
Milwaukee - 53202

Robert Wirth
2852 N. Frederick
Milwaukee - 53211

Robert Seiser
1618 Mountain Ave.
Wauwatosa - 53213

Federick J. Witter
4866 S. 19th St.
Milwaukee - 53221

Caroline L. Sikorski
7328 Burdich Ave.
Milwaukee - 53219

Donald A. Zanolelli
6070 Oriole Lane
Greendale - 53129

12. That since January 1, 1973, and continuing at all times material thereafter, MTEA has expended sums of monies from membership dues, as well as from fair-share exactions from the earnings of the Complainants and employees of the Board employed in the collective bargaining unit in which Complainants are employed, for various activities engaged in by MTEA, its officers and agents, with respect to the bargaining unit in which Complainants and members of their class are employed, as well as with respect to the other bargaining units of Board employees also represented by MTEA; and that at least from January 1, 1973 through August 31, 1974 WEAC and NEA have expended sums of monies from MTEA membership dues, as well as from fair-share exactions from the earnings of the Complainants and employees of the Board employed in the collective bargaining unit in which Complainants and members of their class are employed, for various activities engaged in by WEAC and NEA, their officers and agents, with respect to the bargaining unit in which Complainants are employed; as well as with respect to other bargaining units consisting of employees of employers other than the Board, which units are represented by affiliates of WEAC and NEA other than MTEA.

13. That the following activities have been engaged in by MTEA since January 1, 1973 and at all times material thereafter, and by WEAC and NEA between January 1, 1973 and August 31, 1974, in the following categories:

- (a) Gathering information in preparation for the negotiation of collective bargaining agreements,
- (b) Gathering information from employees concerning collective bargaining positions,
- (c) Negotiating collective bargaining agreements,
- (d) Adjusting and resolving grievances pursuant to the provisions of collective bargaining agreements,
- (e) Administration of ballot procedures on the ratification of negotiated agreements,
- (f) Advertising of union positions on the negotiation of, or with respect to provisions in, collective bargaining agreements,

- (g) Purchasing books, reports, and advance sheets relating to their representational interest in the collective bargaining process and contract administration,
- (h) Paying technicians in labor law, economics and other subjects for services rendered in supporting their representational interest in the collective bargaining process and contract administration,
- (i) Organizing employees within the bargaining unit in which Complainants are not employed,
- (j) Seeking to gain and/or retain representation rights in units in which Complainants are not employed, and serving as the bargaining representative of such employees,
- (k) Supporting and paying affiliation fees to other labor organizations which do not negotiate the collective bargaining agreements governing Complainants' employment, to the extent that such support and fees relate to the representational interest of unions in the collective bargaining process and contract administration,
- (l) Furnishing staff and financial assistance for the participation in procedures to resolve impasses in collective bargaining, including strikes and concomitants thereof when permitted by law,
- (m) Membership meetings, assemblies, and conventions held, in part, in support of their representational interest, to consider and determine matters relating to the collective bargaining process and contract administration,
- (n) Publishing newspapers, newsletters, reports, surveys, etc., which, in part, relate to the collective bargaining process and contract administration,
- (o) The prosecution or defense in litigation relating to the collective bargaining process and contract administration,
- (p) Lobbying for legislation or regulations relating to labor relations, the collective bargaining process, and contract administration, before Congress, state legislatures and local units of government, and before federal, state and local governmental agencies,
- (q) Expenditures for social and recreational activities, and payments for insurance, medical care, retirement, disability, death, and related benefits, when such activities and payments constitute compensation to persons for services rendered in the representational interest of labor organizations, and as such, constitute costs incurred in the collective bargaining process and contract administration, and
- (r) Administrative costs allocable to each of the categories set forth in (a) through (q) above,

did tend to and did in fact, and does tend to and does in fact, enhance, assist, and strengthen the MTEA in carrying out its responsibilities and functions as the exclusive collective bargaining representative of the employees in the collective bargaining unit in which the Complainants are employed, and in the negotiation, administration, and enforcements of collective bargaining agreements covering wages, hours and conditions of employment of the employees in said collective bargaining unit; and that therefore the expenditures of MTEA, WEAC and NEA, during the periods noted above, in performing such permissible activities are related to the representational interest of such labor organizations in the collective bargaining process and contract administration involving the Complainants and other employees in the collective bargaining unit in which the Complainants are employed.

14. That the following activities engaged in by MTEA, WEAC and NEA, during the periods noted above, were not, and are not, properly related to the representational interest of said labor organizations in the collective bargaining process and contract administration involving the collective bargaining unit in which the Complainants are employed:

- (a) Advertising on matters not related to the representational interest in the collective bargaining process and contract administration,
- (b) Purchasing books, reports, and advance sheets not relating to the representational interest in the collective bargaining process and contract administration,
- (c) Paying technicians for services rendered for purposes other than supporting the representational interest in the collective bargaining process and contract administration,
- (d) Lobbying for legislation or regulations not relating to labor relations, or the collective bargaining process or contract administration,
- (e) Membership meetings, assemblies, and conventions held, in part, for discussion and consideration of matters other than the representational interest, the collective bargaining process or contract administration,
- (f) Publishing newspapers, newsletters, reports, surveys, etc., which, in part, relate to matters other than the collective bargaining process or contract administration,
- (g) Unlawful strike activity and concomitants thereof, and the prosecution or defense of such activity, or on matters related thereto, and the prosecution or defense of activity not related to the representational interest in collective bargaining or contract administration,
- (h) Supporting and paying affiliation fees to other labor organizations which do not negotiate the collective bargaining agreements governing the employment of the Complainants to the extent that such support and fees do not relate to the representational interest of Respondent Unions in collective bargaining and contract administration involving Complainants, or for activities of such other labor organizations which do not relate to matters involving otherwise proper expenditures of fair-share deductions,
- (i) Expenditures for social and recreational activities, and payments for insurance, medical care, retirement, disability, death, and related benefits, when such activities and payments do not constitute compensation to persons for services rendered in the representational interest of said labor organizations, and as such do not constitute costs incurred in the collective bargaining process or contract administration,
- (j) Training in voter registration, get-out-the-vote techniques, as well as political campaign techniques,
- (k) Supporting and contributing to charitable organizations,
- (l) Supporting and contribution to political organizations and candidates for public office.
- (m) Supporting and contributing to ideological causes, and
- (n) Administrative costs allocable to each of the categories set forth in (a) through (m) above.

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

INITIAL CONCLUSIONS OF LAW

1. That expenditures by Milwaukee Teachers Education Association, Wisconsin Education Association Council, and National Education Association, for the following activities, during the pertinent periods involved herein, are properly included in determining the sums of money which should have been exacted from the earnings of the Complainants herein, and the members of the class they represent, pursuant to the fair-share agreements in existence, at all times material herein, between the Milwaukee Teachers Education Association and the Milwaukee Board of School Directors, within the meaning of Sec. 111.70(1)(h) of the Municipal Employment Relations Act:

- (a) Gathering information in preparation for the negotiation of collective bargaining agreements,
- (b) Gathering information from employees concerning collective bargaining positions,
- (c) Negotiating collective bargaining agreements,
- (d) Adjusting and resolving grievances pursuant to the provisions of collective bargaining agreements,
- (e) Administration of ballot procedures on the ratification of negotiated agreements,
- (f) Advertising of union positions on the negotiation of, or with respect to the provisions in, collective bargaining agreements,
- (g) Purchasing books, reports, and advance sheets relating to their representational interest in the collective bargaining process and contract administration,
- (h) Paying technicians in labor law, economics and other subjects for services rendered in supporting their representational interest in the collective bargaining process and contract administration,
- (i) Organizing employees within the bargaining unit in which Complainants are employed, and in units in which Complainants are not employed,
- (j) Seeking to gain and/or retain representation rights in units in which Complainants are not employed, and serving as the bargaining representative of such employees,
- (k) Supporting and paying affiliation fees to other labor organizations which do not negotiate the collective bargaining agreements governing Complainants' employment, to the extent that such support and fees relate to the representational interest of unions in the collective bargaining process and contract administration,
- (l) Furnishing staff and financial assistance for the bargaining process and contract administration.

- (o) The prosecution or defense in litigation relating to the collective bargaining process and contract administration,
- (p) Lobbying for collective bargaining legislation or regulations or to effect changes therein, or lobbying for legislation or regulations affecting wages, hours and working conditions of employees generally before Congress, state legislatures, and state and federal agencies,
- (q) Expenditures for social and recreational activities, and payments for insurance, medical care, retirement, disability, death, and related benefits, when such activities and payments constitute compensation to persons for services rendered in the representational interest of labor organizations, and as such, constitute costs incurred in the collective bargaining process and contract administration, and
- (r) Administrative costs allocable to each of the categories set forth in (a) through (q) above,

2. That expenditures by Milwaukee Teachers Education Association, Wisconsin Education Association Council, and National Education Association, for the following activities, during the pertinent periods involved herein, are not, within the meaning of Sec. 111.70(1)(h) of the Municipal Employment Relations Act, properly included in determining the sums of money which should have been exacted from the earnings of the Complainants herein, and the members of the class they represent, pursuant to the fair-share agreements in existence, at all times material herein, between the Milwaukee Teachers Education Association and the Milwaukee Board of Schools Directors:

- (a) Advertising on matters not related to the representational interest in the collective bargaining process and contract administration,
- (b) Purchasing books, reports, and advance sheets not relating to the representational interest in the collective bargaining process and contract administration,
- (c) Paying technicians for services rendered for purposes other than supporting the representational interest in the collective bargaining process and contract administration,
- (d) Lobbying for legislation or regulations not relating to labor relations, or the collective bargaining process or contract administration,
- (e) Membership meetings, assemblies, and conventions held, in part, for discussion and consideration of matters other than the representational interest, the collective bargaining process or contract administration,
- (f) Publishing newspapers, newsletters, reports, surveys, etc., which, in part, relate to matters other than the collective bargaining process or contract administration,
- (g) Unlawful strike activity and concomitants thereof, and the prosecution or defense of such activity, or on matters related thereto, and the prosecution or defense of activity not related to the representational interest in collective bargaining or contract administration,
- (h) Supporting and paying affiliation fees to other labor organizations which do not negotiate the collective bargaining agreements governing the employment of the Complainants to the extent that such support and fees do not relate to the representational interest of Respondent Unions in collective bargaining and contract administration,

tion involving Complainants, or for activities of such other labor organizations which do not relate to matters involving otherwise proper expenditures of fair-share deductions,


- (i) Expenditures for social and recreational activities, and payments for insurance, medical care, retirement, disability, death, and related benefits, when such activities and payments do not constitute compensation to persons for services rendered in the representational interest of said labor organizations, and as such do not constitute costs incurred in the collective bargaining process or contract administration,
- (j) Training in voter registration, get-out-the-vote techniques, as well as political campaign techniques,
- (k) Supporting and contributing to charitable organizations,
- (l) Supporting and contribution to political organizations and candidates for public office.
- (m) Supporting and contributing to ideological causes, and
- (n) Administrative costs allocable to each of the categories set forth in (a) through (m) above.

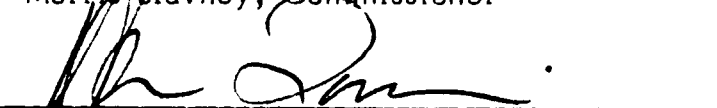
Given under our hands and seal at the City of Madison, Wisconsin this 24th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
INITIAL FINDINGS OF FACT AND INITIAL CONCLUSIONS OF LAW

The Complainants, prior to the initiation of the instant proceeding before the Commission by the filing of an "amended complaint", had previously initiated the proceeding by the filing of the original complaint in the Milwaukee County Circuit Court during the summer of 1973. That proceeding was treated, by said Court, as a companion case to a case 1/ initiated by a complaint filed by certain clerical, secretarial and technical employees in the employ of the Milwaukee Board of School Directors, hereinafter identified as the Board, which employees were included in collective bargaining units represented by Local 1053, affiliated with District Council 48, which was affiliated with the American Federation of State, County and Municipal Employees, AFSCME, AFL-CIO. The complaint in that case, hereinafter referred to as Browne, alleged the fair-share exactions from the earnings of said complaining employees (and the class they represent) were utilized for purposes not permitted by law, and in that respect the Board, the labor organizations, their officers and agents, had committed, and were committing prohibited practices in violation of the Municipal Employment Relations Act (MERA). Initially in the Browne case the Circuit Court overruled a demurrer filed by the Respondents therein, which decision was appealed to the Wisconsin Supreme Court, which in June, 1975 issued its decision in the matter, and among other things remanded the cases to the Circuit Court. 2/ On March 10, 1976, the instant matter, which was then pending in said Circuit Court, was consolidated with the Browne case. The trial court issued its decision in Browne in August, 1977, holding that the fair-share provisions in MERA were facially constitutional, and on motion of the Respondent Unions, referred the case to the Commission to "make its findings of fact and conclusions of law with respect to the practices and statutory rights of (the) parties under" MERA. Said decision also found its way to the Wisconsin Supreme Court, which in its decision issued on May 2, 1978, 3/ among other matters, indicated that the "plaintiffs' claims may be maintained before WERC in the form of the class action that has already been commenced in the circuit court."

The Amended Complaint

Prior to the filing of any pleadings with the Commission in either the Browne or the instant matter, and because of the similarity of issues in both cases, involving employees of the same employer, albeit represented by different labor organizations, and because some of the parties in both cases were represented by common counsel, the Commission conducted a prehearing conference in August, 1978, wherein the parties, in both cases agreed, inter alia, to bifurcate the proceedings in each case "so that before the issue of how much the unions spent on particular types of expenditures is addressed, the Commission will have determined what categories thereof are outside the costs of the collective bargaining process and contract administration under MERA." The amended complaint was filed by the Complainants herein on September 25, 1978, wherein they alleged, in material part, that, since January 1, 1973, and continuing thereafter, the Board, pursuant to provisions in collective bargaining agreements between it and MTEA, covering the wages, hours and working conditions of employees in the teacher

1/ Browne v. Milwaukee Board of School Directors, et.al.

2/ 69 Wis. 2d 169.

3/ 83 Wis. 2nd 316.

bargaining unit represented by MTEA, had engaged in, and was engaging in, prohibited practices within the meaning of Secs. 111.70(3)(a)1, 3, and 6 of MERA, by requiring Complainants to pay, and by deducting, without individual employee authorization, fair-share fees which were, and continued to be, in excess of their proportionate share of the cost of collective bargaining and contract administration. The Complainants also alleged that MTEA, as well as WEAC and NEA, and their named officers, had engaged in, and were engaging in, prohibited practices since June 1, 1973, in violation of Secs. 111.70(3)(b)1 and 2, and Sec. 111.70(3)(c), all of MERA, by requiring, and by inducing, the Board to make such fair-share deductions, which were in excess of the proportionate share of the cost of collective bargaining and contract administration.

The Complainants further alleged that a significant number of activities of the Unions involved herein, for which fair-share deductions were and are utilized, were, and are, unrelated to collective bargaining and contract administration, and were not, and are not, necessary to the negotiation and administration of collective bargaining agreements with the Board, or to the adjustment and resolution of grievances and disputes of the employees in the bargaining unit involved herein, and, further, that such expenditures were not, and are not, necessary or germane to the duty of representation owed such employees, including the Complainants, imposed by the provisions of MERA.

The amended complaint also alleged that the use of fair-share funds by the Unions herein for political and ideological purposes, unrelated to collective bargaining and contract administration, is contrary to the rights and freedoms guaranteed Complainants under both the federal and state constitutions.

The Complainants would have the Commission issue an interlocutory order requiring the escrow of fair-share deductions of the Complainants and of all the employees in the class they represent, pending a final determination of the issues in the instant matter. They further request the Commission, in its final order, to (1) require the Unions to cease and desist from requiring Complainants and members of their class to pay fair-share fees which are in excess of the proportionate share of the cost of collective bargaining and contract administration; (2) order the Unions to return, with interest, all fair-share deductions made since January 1, 1973, or at least that amount which the Commission is able to determine was in excess of the proportionate share of the cost of collective bargaining and contract administration; (3) suspend for one year the privilege of the Unions of entering into, and enforcing, any fair-share agreement covering the employees in the bargaining unit involved; (4) require the Board to cease and desist for a period of one year from making fair-share deductions from the earnings of the Complainants and their class members; (5) require the Unions and the Board to cease and desist from enforcing any fair-share agreements involving bargaining unit employees until the Unions have reported the establishment of a system of maintaining records from which can be determined, with reasonable accuracy, the proportionate share of the cost of collective bargaining and contract administration; and (6) make any other order which the Commission deems proper.

The Answers of the Respondents

MTEA and its named president filed a separate answer where, in general, they denied the prohibited practices alleged, put the complainants on proof with respect to the allegations in the amended complaint, and specifically alleged that MTEA had disaffiliated from the WEAC and the NEA in May 1973.

Discussion

The Commission conducted its hearing in Browne prior to its hearing in the instant proceeding. In the Browne hearing the parties stipulated to the categories of expenditures by the unions involved therein. The Commission issued its initial decision in the latter case on February 3, 1981, 4/ wherein it determined which categories of expenditures of fair-share exactions were permissible or impermissible under MERA. Following the issuance of our initial decision in Browne the Commission has held further action in that matter in abeyance pending efforts by the parties to resolve issues as to the sums due and owing the Complainants therein, as well as due and owing the class of employees represented by the individual Complainants.

As the parties herein were initially advised, we have determined to follow the Browne format in the instant proceeding - that is, to issue an initial decision (Stage I of the proceeding), setting forth the categories of expenditures which the Commission finds to be permissible and impermissible. Unlike Browne, the parties herein could not agree on the categories of expenditures by the labor organizations involved. The accounting systems of each of the organizations differ, as do their categories of expenditures in certain respects. However, the categories stipulated to in Browne provide the primary background for the determination of the categories of expenditures by the labor organizations involved herein. In this memorandum we shall, among other matters, attempt to clarify the various categories of expenditures by the unions involved with the evidence adduced during the course of the hearing through witness and exhibits. Suffice it to say, that unless the parties can agree on the means to determine the exact amounts of monies, if any, due and owing the Complainants and members of their class, further hearing will be necessary herein to determine the remaining issues, including the means by which such sums shall be determined.

The Expenditures by Respondent Unions

It should be noted that prior to the hearing in Stage I of this proceeding, and at the suggestion of the Commission, each of the Unions involved herein forwarded lists of their expenditures in writing to the Counsel for Complainants and to the Commission, and that said Counsel responded thereto. During the course of the hearing each Union presented single witnesses with regard to their expenditures generally, and it appears to the Commission that Stage II of this proceeding will require much more testimony and physical evidence, to establish with any degree of specificity the exact amount of fair-share deductions which were spent for impermissible purposes. Nevertheless, we deem it appropriate to include in this memorandum the category of expenditures of the three Unions and the Complainant's position as to whether such expenditures were or were not permissibly chargeable to fair-share deductions.

The MTEA Categories of Expenditures

Categories Claimed Permissible by MTEA

1. Standing Committees

Retirement and Insurance, Program (Special Events), Membership, Legislative (Joint), Budget (Joint), Collective Bargaining, Human Relations, TEPS

2. Special Ad Hoc Committees

Curriculum and Instruction, Constitution, Early Childhood, Nominating, Balloting, Reading, Testing, Semester & Final Exams, Crisis (Joint), Unitized Schools,

Response of Complainants

1. and 2.

Permissible only to the extent that the activity of said committees are related to the collective bargaining process and contract administration.

4/ Dec. No. 18408.

Bilingual, Mainstreaming, Proficiency, Standards, Pre-Service Council, Minority Educators, Exceptional Education, Teacher Work Load, MTEA Loan Collection

3. Programs and Activities Involving Teacher Aides, Substitute Teachers, and Accountants Bargaining Units (Not set forth in detail herein)
4. Associate Retired Members
5. Conferences, Clinics, Conventions
Conducted by universities, organizations, MTEA, governmental agencies, etc.

Membership training workshops and conferences -
 - a. Legislative action and lobbying
 - b. Political education
 - c. Contract enforcement
 - d. Union education
 - e. Bargaining law education
 - f. Grievance processing
 - g. Membership governance
 - h. Other
6. MTEA Convention
7. Legal Services and Contract Enforcement
8. Public Relations
9. Membership Promotion, Maintenance
(Sixteen items or subjects not set forth herein)
10. Affiliations and Memberships
COAID, UEDA, NOLPE, CAPE, Chamber of Commerce, Zoological Society, etc.
11. Sub-group Promotion and Activities
Music Directors, Counselors, Driver Education, Audio-Visual, Coaches, Speech Pathologists, Social Workers, Industrial Education, exceptional Education, Kindergarten, Art Specialists, Physical Education, Music Specialists, Science Teachers, Equipment Managers, Athletic Directors

3.

All impermissible on grounds that said programs and activities do not apply to "teacher" bargaining unit.

4.

Impermissible - not related to collective bargaining process or contract administration.

5.

Permissible to the extent related to collective bargaining and contract administration.

Objects to all but c., e., and f.

6. and 7.

Permissible to the extent related to collective bargaining and contract administration.

8. and 9.

Claimed not permissible.

10.

Apparently claims impermissible.

11.

Permissible to the extent related to collective bargaining and contract administration.

12. MTEA Crisis Fund

12.

Impermissible - Relates to illegal strike activity by MTEA and other employe organizations.

13. MTEA Salaries and Associated Expenses

13. and 14.

Professional Staff, Field Staff, Secretarial Staff, Interns, Part-time Office Help, Accountant, Cleaning and Maintenance Staff, Miscellaneous Support Personnel

Permissible to the extent related to collective bargaining and contract administration.

14. Communications

Printing Supplies, Paper Supplies, Printing Equipment Maintenance and Agreements, Bindery, Special Out-Plant Printing, Layout and Negative Work, Communications Equipment, Addressograph, Elliott Plates Preparation

15. Office Operations

15. a.

a. Equipment Leases, Equipment Maintenance and Agreements, Office Supplies, Postage, Replacement and/or Additional Equipment Payments

Permissible to the extent related to collective bargaining and contract administration.

b. Hospitality Expenses, Advertising, Subscriptions, Audit Expenses, Insurances -

15. b.

Impermissible except for "pro rata" of (2).

- (1) Fidelity Bond
- (2) Buildings, contents, boiler, fire & theft, vandalism, liability
- (3) Staff liability insurances

16. Property Holdings

16.

Mortgage, Utilities, Trash Removal, Snow Removal, Property Maintenance, Improvements, and Modifications, Supplies, Taxes

Permissible to the extent related to collective bargaining and contract administration.

17. Political Expenditures

MTEA contends no such expenditures.

WEAC and NEA Expenditures

Permissible Expenditures of Fair Share Funds

Response of Complainants

A. Negotiations Process

- 1. Negotiations between the employer and employe organization.

- a. Meetings of union negotiations team.
- b. Bargaining sessions.
- c. Ratification of the contract, including union meetings and other related union activities.
- d. The printing of the contract for bargaining unit members.

A(1) a. b. and d.

All permissible.

A(1) c.

Probably permissible.

2. Research.

- a. Preparation and analysis of proposed contract provisions.
- b. Recording and storing of information relating to all current and prior collective bargaining agreements.
- c. Analysis of economic, educational or other trends in matters relating to collective bargaining which may have an impact on the terms and conditions of employment of bargaining unit employees.
- d. The gathering of information or conducting of studies to assist the union in making various contractual proposals.

A(2) a. b. and d.

Permissible.

A(2) c.

Impermissible to extent trends have no imminent relationship to collective bargaining.

- 3. Preparation and presentation of the union's case in interest arbitration and related proceedings.

A(3)

Impermissible since procedure not in effect at time of MTEA affiliation with WEAC and NEA.

- 4. Strike defense fund.

Payment of funds to striking bargaining unit members or into a reserve fund to be used for that purpose.

A(4)

Impermissible as strikes were illegal during times at issue.

- 5. Communications

- a. Communication to bargaining unit employees regarding the negotiations process.
- b. Survey of employees regarding objectives of negotiations.

A(5) a. b. c. and d.

Permissible to the extent related to collective bargaining and contract administration.

6. Training of staff and members to carry out negotiations functions.

A(6)

Permissible.

B. Enforcement of Employee Rights

1. Costs of resolving disputes under the contract, including processing of grievances.
2. Court actions and other legal proceedings designed to protect the legal rights of employees in employment-related matters.
3. Monitoring enforcement of employee rights by the employer or by government agencies with responsibilities for providing employee benefits or protecting other employees rights.
4. Communication to bargaining unit employees regarding contractual, constitutional, statutory, or other rights and benefits related to employment.
5. Training of union staff and members to enforce employee rights.

B(1)

Permissible if related to grievances arising from Complainant's bargaining unit.

B(2) (3) and (4)

Impermissible as outside scope of collective bargaining.

B(5)

Permissible to extent related to collective bargaining and contract administration.

C. Legislation and political action

C(1) through (9)

1. Review of proposed and newly-enacted legislation to determine the legislation's impact on employees.
2. Monitoring and review of governmental agency actions to determine impact of agency action on terms and conditions of employment.
3. Activities designed to secure ratification of a proposed collective bargaining agreement and/or to secure the necessary funding or financing to support the administration of such an agreement by the appropriate governmental unit.
4. Activities designed to secure passage or defeat of legislation which affects the collective bargaining process or the power of the collective bargaining representative.
5. Activities designed to secure passage or defeat of legislation which has a direct or indirect effect on the terms and conditions of employment of bargaining unit employees.

All impermissible.

6. Activities designed to influence agency or other governmental action which has a direct or indirect effect on the terms and conditions of employment of employees.
7. Contributions to political candidates or parties which further the employment-related interest of members of the bargaining unit.
8. Political education of members.
9. Contributions to organizations or causes which are directly related to the union's or employee's bargaining interests.

D. Other Membership Services

1. Purchase of services designed to procure any economic benefit for employees where such benefit is provided to all bargaining unit members.
2. Programs designed to help the employee become more effective on the job or eliminate employer/employee friction.

D(1) and (2)

Impermissible as unrelated to collective bargaining.

E. Maintenance of Organization

1. Governance
 - a. Representative assemblies and election of officers.
 - b. Other meetings of the membership and officers relating to performance of the collective bargaining and negotiation functions of the organization.
 - c. Ensuring the rights of members in union-related matters.
 - d. Ensuring compliance of members or constituent labor organizations with union policies.
2. Administrative expenditures necessary to pay the labor and other costs necessary to run the organization, including staff salaries, accounting services, building expenses, etc.
3. Communications to members and staff to make them aware of the activities of the organization and to enable them to participate in the functions of the organization.

E(1) a. and b.

Permissible to the extent related to collective bargaining and contract administration.

E(1) c. and d.

Impermissible as related to internal union procedures.

E(2) and (3)

Permissible to the extent related to collective bargaining and contract administration

4. Communications designed to recruit new members in current bargaining units and/or to obtain the support of non-members for association collective bargaining activities.

E(4) and (5)

Impermissible as unrelated to bargaining or administration of contract covering Complainants.

5. Organizing new bargaining units.

6. Legal Services

- a. Protection of the rights of the collective bargaining representative under the collective bargaining contract.

E(6) a. and b.

Permissible.

- b. Protection of the organization in its role as collective bargaining agent. e.g., defending or bringing unfair labor practice charges.

E(6) c.

Impermissible as unrelated to collective bargaining.

- c. Advice to help the organization to comply with all legal requirements.

7. Cooperation with other labor organization where such cooperation is designed to advance the collective bargaining position of the individual bargaining agents.

E(7)

Impermissible to extent related to political activity.

Categories of WEAC and NEA Admitted Impermissible

1. Expenditures for political action to secure the passage of legislation unrelated to collective bargaining and contract administration.
2. Contributions to candidates whose support of causes unrelated to collective bargaining and contract administration is the major reason for their endorsement.
3. Contributions to charitable causes or organizations unrelated to collective bargaining and contract administration.

The Anderson Testimony

On the first day of the hearing herein, Counsel for WEAC and NEA sought to introduce into evidence the testimony of Arvid Anderson, the Chairman of the New York City Office of Collective Bargaining, who had previously testified in the Browne hearing, and whose testimony was included in the transcript of the record in the matter. Counsel for the Complainants herein objected to the admission thereof on the same grounds cited by Counsel for the complainants in the Browne matter, and for the additional reason that instant Counsel, although present during the Browne hearing, did not have the opportunity to cross-examine Anderson.

MTEA moved for admission of the Anderson testimony. Counsel for WEAC and NEA noted that although Anderson's testimony related to the expenditure practices of the unions involved in Browne, Anderson claimed no personal knowledge of whether the unions in the matter engaged in those practices, and based his testimony on his general knowledge of the expenditure practices of public sector unions generally. In this respect counsel for WEAC and NEA acknowledged that the offer of the Anderson testimony into evidence was only relevant to the extent that said organizations engaged in such expenditure practices.

At the conclusion of the second day of hearing, the Commission indicated its intent to exclude Anderson's testimony unless the Complainant's objections with regard to its lack of the opportunity to cross-examine Anderson with the knowledge that his testimony would be offered into evidence in this matter, was somehow overcome either by further testimony from Anderson or by stipulation of the parties. Counsel for Complainants agreed to review Anderson's testimony for the purpose of determining whether cross-examination was desirable should the Commission determine to receive same over the objection, as it did in Browne.

At the conclusion of the third day of hearing Complainants advised that they were willing to waive cross-examination of Anderson, however that they did not intend to waive their objections to said testimony, especially that portion of his testimony relating to developments in the law and otherwise which occurred after MTEA had severed its affiliation with WEAC and NEA in August, 1974. Finally, consistent with one of the objections raised in the Browne case, the Complainants pointed out that Anderson had no specific knowledge of the actual expenditure practices of the particular unions involved in this proceeding.

For the reasons stated in our Browne decision, we have determined to admit the Anderson testimony into evidence. Further, we do not deem the two arguments raised in the context of the facts in this case to require a different conclusion. First of all, to the extent that Anderson's testimony may relate to "matters of recent concern", such as interest arbitration, it may, to that extent have diminished relevance, vis a vis WEAC and NEA. However, as noted by Counsel for MTEA, this testimony clearly relates to MTEA's situation, since it has continued to receive and retain fair-share monies throughout the period in question. Secondly, it is undisputed that Anderson does not enjoy any expertise as to the specific expenditure practices of the Respondent unions in this proceeding. As we noted in our Browne decision, his testimony is deemed relevant and competent in relation to the question of how, if at all, specific expenditures for activities by public sector unions (which the Respondents also engage in) related to the collective bargaining process and contract administration.

The Organization or Organizations Entitled to the Benefit of Fair-Share Deductions

As we indicated in Browne there is nothing in Sec. 111.70(1)(h) of MERA, or in any other provision thereof, which limits the amount to be deducted as fair-share payments to that amount of dues retained only by the immediate collective bargaining representative, herein MTEA. Therefore, that portion of the dues paid by bargaining unit employees herein to WEAC and NEA, as a result of MTEA's affiliation with said state and federal organizations, falls within the definition of "dues" expressed in the above noted statutory provision.

Scope of Chargeable Activities

During the course of the hearing herein testimony was adduced with respect to the various categories of expenditures by the three Unions involved herein from James R. Colter, Executive Director of MTEA; Donald E. Krahn, Director of Legal Services, WEAC; and Michael F. Dunn, Assistant Executive Director for Administration and Budget Director, NEA. Their testimony in some respects related in detail the nature of various expenditures, and in other respects there was insufficient testimony and evidence for the Commission to determine, with any degree of specificity, whether the category related in whole or in part to permissible expenditure of fair-share exactions. Therefore, except where the record contains sufficient evidence to make such a determination during this Stage of the proceeding, such determinations will be reserved to Stage II.

In the memorandum accompanying our Browne decision we set forth certain general principals with respect to fair-share expenditures relating to certain categories thereof existent in that matter. Most of the activities of the Unions involved herein fall directly within, or are related to said categories of expenditures. To the extent that a parallel analysis is appropriate, the Commission hereby adopts the rationale set forth in Browne as to the various permissible and impermissible expenditure categories. We see no need to repeat said rationale herein. However, we do deem it appropriate to repeat certain of our Browne rationale in this memorandum. With respect to the "representative" function of unions generally and fair-share agreements we stated as follows:

Our Supreme Court has had the opportunity to comment on the meaning of fair-share agreements as defined in MERA. In Milw. Fed. of Teachers, Local No. 252 v. WERC 5/ the Court stated: "Fair-share agreements are generally regarded as devices whereby all public employees in the bargaining unit are compelled to pay . . . his or her 'fair-share' of the (certified) union's actual cost of negotiations and representation Its validity rests on the theory that all employees who benefit from the majority union's representative efforts should financially support those efforts; the fair-share agreement is . . . related to the functioning of the majority organization in its representative capacity . . ."

We cannot accept the Complainants' narrow interpretation of the term "collective bargaining process" to include only those functions relating to the negotiation of collective bargaining agreements, to the contract administration, and to the resolution of grievances arising under such agreements. The Complainants' position completely ignores the efforts of unions leading up to obtaining status as bargaining representatives. A union can only obtain its representative capacity by organizing employees, protecting their rights to engage in such activity, and in obtaining voluntary recognition or certification as an exclusive collective bargaining representative, after it has demonstrated, informally or formally, that it represents a majority of the employees in an appropriate bargaining unit. The collective bargaining process is broader than negotiating an agreement and reducing it to written form, and in processing grievances thereunder. Aboud 6/ held that the process of establishing an agreement itself may also require "subsequent approval by other public authorities; related budgetary and appropriations decisions might be seen as an integral part of the bargaining process." As discussed subsequently herein a union performs (sic) its representational interest in expending funds seeking the enactment of legislation beneficial to employees generally, and especially to municipal employees, and in opposing legislation which would tend to have an opposite effect.

. . .

Our Supreme Court in the Milw. Fed. of Teachers case has given the term "fair-share agreement" a meaning which goes beyond a narrow interpretation of the statutory provision. It refers to a union functioning as the "majority organization in its representative capacity". We deem that a union, which is the collective bargaining representative of employees in a collective bargaining unit, is pursuing its representative interest by expending sums of money, either directly, or by payments to others, for activities, other than those found to be impermissible herein, relating to improving the wages, hours and working conditions of the employees in the bargaining unit involved, as well as the wages, hours and working conditions of other employees represented by said union and its affiliates, and that therefore such expenditures are properly included in the amount of fair-share payments by unit employees who are not members of said union.

5/ 83 Wis. 2d 588.

6/ Aboud v. Detroit Bd. of Ed., 421 U.S. 239, 81 LC 74, 125.

In determining the propriety of the various categories of expenditures in issue herein, we must determine whether the particular category or activity involved is related to the representational interest in the collective bargaining process and contract administration. If it is not, the Complainants are correct in their assertion that the expenditure for such purposes, over their objection, constitutes an impermissible infringement on their first amendment rights. Because this fact finding process will often involve competing considerations, it may be necessary in some instances to balance the alleged infringement on constitutional rights against the considerations going to the representational interest in the collective bargaining process and contract administration.

Our determinations herein are also guided by the opinion of the majority of the Court in the Abood case, and especially the following portions of the majority opinion:

Finally, decisionmaking by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electorate, which for this purpose can be viewed as comprising three overlapping classes of voters -- taxpayers, users of particular government services, and government employees. Through exercise of their political influence as part of the electorate, the employees have the opportunity to affect the decisions of government representatives who sit on the other side of the bargaining table. Whether these representatives accede to a union's demands will depend upon a blend of political ingredients, including community sentiment about unionism generally and the involved union in particular, the degree of taxpayer resistance, and the views of voters as to the importance of the service involved and the relation between the demands and the quality of service. It is surely arguable, however, that permitting public employees to unionize and a union to bargain as their exclusive representative gives the employees more influence in the decisionmaking process than is possessed by employees similarly organized in the private sector.

Our decisions establish with unmistakable clarity that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments. E.g., Elrod v. Burns, 427 U.S. 247, 355-357 (plurality opinion); Cousins v. Wigoda, 419 U.S. 477, 487; Kusper v. Pontikes, 414 U.S. 51, 56-57; NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460-461. Equally clear is the proposition that a government may not require an individual to relinquish rights guaranteed him by the First Amendment as a condition of public employment. E.g., Elrod v. Burns, *supra*, at 357-360, and cases cited; Perry v. Sindermann, 408 U.S. 593; Keyishian v. Board of Regents, 385 U.S. 589. The appellants argue that they fall within the protection of these cases because they have been prohibited not from actively associating, but rather from refusing to associate. They specifically argue that they may constitutionally prevent the Union's spending a part of their required service fees to contribute to political candidates and to express political views unrelated to its duties as exclusive bargaining representative. We have concluded that this argument is a meritorious one.

One of the principles underlying the Court's decision in Buckley v. Valeo, 424 U.S. 1, was that contributing to an organization for the purpose of spreading a political message is protected by the First Amendment. Because "(m)aking a contribution . . . enables like-minded persons to pool their resources in furtherance of common political goals," id., at 22, the Court reasoned that limitations upon the freedom to contribute "implicate fundamental First Amendment interests," id., at 23.

The fact that the appellants are compelled to make, rather than prohibited from making, contributions for political purposes works no less an infringement of their constitutional rights. For at the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State. See Elrod v. Burns, *supra*, at 356-357; Stanley v. Georgia, 394 U.S. 557, 565; Cantwell v. Connecticut, 310 U.S. 296, 303-304. And the freedom of belief is no incidental or secondary aspect of the First Amendment's protections.

If there is any fixed start in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or matters of opinion or force citizens to confess by word or act their faith therein." West Virginia Board of Education v. Barnette, 319 U.S. 624, 642.

These principles prohibit a State from compelling any individual to affirm his belief in God, Torcase v. Watkins, 367 U.S. 488, or to associate with a political party, Elrod v. Burns, *supra*; see id., at 363-364, n.17, as a condition of retaining public employment. They are no less applicable to the case at bar, and they thus prohibit the appellees from requiring any of the appellants to contribute to the support of an ideological cause he may oppose as a condition of holding a job as a public school teacher.

We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or towards the advancement of other ideological causes not germane to its duties as collective bargaining representative. Rather, the Constitution requires only that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment.

There will, of course, be difficult problems in drawing lines between collective bargaining activities, for which contributions may be compelled, and ideological activities unrelated to collective bargaining, for which such compulsion is prohibited. The Court held in Street, as a matter of statutory construction, that a similar line must be drawn under the Railway Labor Act, but in the public sector the line may be somewhat hazier. The process of establishing a written collective bargaining agreement prescribing the terms and conditions of public employment may require not merely concord at

the bargaining table, but subsequent approval by other public authorities; related budgetary and appropriations decisions might be seen as an integral part of the bargaining process.

The MTEA Categories

Among the categories of expenditures reported by the MTEA are those relating to bargaining units represented by MTEA other than "teachers", namely teacher aides, substitute teachers, and accountants. Further MTEA set forth a category entitled "Associated Retired Members". With respect to employees in other units, we stated in Browne the following:

Organizing employees in other units, involving employees of the same employer, or employees of their employers, seeking recognition or certification as the exclusive collective bargaining representative of employees in said other units, and maintaining said status, also undeniably enhances a union's capacity to deal effectively with the employer of the instant bargaining unit employees. The competitive wages of the unorganized impinge intimately on the extent of benefits which can be successfully negotiated for the instant bargaining unit employees. Increasing the overall size of its organization enables a union to afford better representation in servicing the employees in the instant bargaining unit.

Thus, expenditures permissible for teachers are also deemed permissible to other employees represented by MTEA. With respect to retired members, if in fact MTEA and the Board have bargained benefits for retired teachers formerly in the bargaining unit, then those expenditures for services rendered by MTEA and its agents, in obtaining those benefits are proper expenditures.

To the extent that the following activities are related to the permissible categories set forth in Finding of Fact 13, the expenditures therefore are deemed appropriately made from fair-share exactions: 7/

- | | |
|--|---|
| 1. Standing Committees | 11. Sub-Group Promotions and Activities |
| 2. Special Ad Hoc Committees | 13. MTEA Salaries and Associated Expenses |
| 5. Conferences, Clinics, Conventions | 14. Communications |
| 6. MTEA Conventions | 15. Office Operations |
| 7. Legal Services and Contract Enforcement | 16. Property Holdings |
| 8. Public Relations | |

To the extent that any portion of expenditures for the above categories were, and are, for any of the purposes set forth in Finding of Fact 14, such portion of expenditures were impermissibly made from fair-share exactions.

MTEA expends sums of monies from dues and fair-share deductions for a category identified as "Membership Promotion, Maintenance", 8/ which included the following items:

- | | |
|---|--|
| 1. Social Activities for Members | 9. Book Ordering |
| 2. New Teacher Luncheon | 10. Tax Hints |
| 3. Membership Forms | 11. Sunshine Fund-Flowers and contributions to Harold Vincent Fund |
| 4. Housing Program | 12. Income Protection Insurance |
| 5. Century Hardware | 13. Members Liability Insurance |
| 6. Wedding Announcements, Invitations, etc. | 14. Influenza Immunization |
| 7. Discount Guide | 15. Group Legal Services |
| 8. Travel and Tour Program | 16. Interest Free Loans |

7/ Said categories maintain the identifying number set forth previously in this memorandum.

8/ Numbered 9 in the MTEA categories.

Except for the cost of the printing of membership applications, we deem that any expenditures for the above items cannot be permissibly made from fair-share deductions inasmuch as the listed items appear on their face to be unrelated to the costs of collective bargaining and contract administration.

Expenditures of fair-share funds have been included to pay affiliation fees to various organizations noted in category 10, such as COAID, UEDA, NOLPE, CAPE, Chamber of Commerce, Zoological Society, etc. To the extent that said organizations perform functions related to permissible categories noted in Finding of Fact 13, such expenditures are permissible, otherwise not.

Although in its original listing of expenditure categories, MTEA set forth that it expended no monies for political activity, various of its publications indicated that it formed certain "organizations" such as PACE (Politically Active and Concerned Educators), EPIC (Educators Politically Involved Council) and a "voter registration drive". Any use of the MTEA facilities and equipment, and paid time for staff and officers cannot be properly charged to fair-share payors for such activities and purposes.

Throughout the years since 1973 MTEA has assisted other organizations financially, in one way or other, while the members of such organizations engaged in illegal strike activities. Membership of MTEA themselves engaged in such activity in 1975 and 1977. Any fair-share exactions expended to support such activity were impermissibly used by MTEA, and any of the facilities and equipment, staff, etc. of MTEA utilized for such purposes were impermissibly utilized therefore. The proportionate share of funds to be returned by MTEA to those paying fair-share will have to be determined in a later stage of this proceeding. MTEA also maintains a "Crisis Fund", (MTEA category 12) which at the time of the hearing had a balance of some \$250,000. Portions of fair-share payments have been included in said fund. Evidence in Stage I of this proceeding was insufficient in order for the Commission to make any definite conclusions as to what proportion of said fund would be required to be returned to the fair-share contributors.

WEAC and NEA Expenditures

It appears to the Commission that the following categories of expenditures by WEAC and NEA, during the period in which MTEA was affiliated with said organizations, on their face involve proper expenditures of fair-share contributions by the individual Complainants and members of the class they represent:

A. Negotiations Process

1. Negotiations between the employer and employe organization.
 - a. Meetings of union negotiations team.
 - b. Bargaining sessions.
 - c. Ratification of the contract, including union meetings and other related union activities.
 - d. The printing of the contract for bargaining unit members.
2. Research.
 - a. Preparation and analysis of proposed contract provisions.
 - b. Recording and storing of information relating to all current and prior collective bargaining agreements.
 - c. Analysis of economic, educational or other trends in matters relating to collective bargaining which may have an impact on the terms and conditions of employment of bargaining unit employes.
 - d. The gathering of information or conducting of studies to assist the union in making various contractual proposals.
3. Preparation and presentation of the union's case in interest arbitration and related proceedings.

5. Communications

- a. Communication to bargaining unit employees regarding the negotiations process.
- b. Survey of employees regarding objectives of negotiations.
- c. Communications to the general public regarding the matters relating to negotiations or the union's positions in the negotiations process.
- d. Communications to the general public of the union's position on matters affecting the collective bargaining process between the employer and union.

6. Training of staff and members to carry out negotiations functions.

B. Enforcement of Employee Rights

1. Costs of resolving disputes under the contract, including processing of grievances.
2. Court actions and other legal proceedings designed to protect the legal rights of employees in employment-related matters.
3. Monitoring enforcement of employee rights by the employer or by government agencies with responsibilities for providing employee benefits or protecting other employees rights.
4. Communication to bargaining unit employees regarding contractual, constitutional, statutory, or other rights and benefits related to employment.
5. Training of union staff and members to enforce employee rights.

C. Legislation and political action

1. Review of proposed and newly-enacted legislation to determine the legislation's impact on employees.
2. Monitoring and review of governmental agency actions to determine impact of agency action on terms and conditions of employment.
3. Activities designed to secure ratification of a proposed collective bargaining agreement and/or to secure the necessary funding or financing to support the administration of such an agreement by the appropriate governmental unit.
4. Activities designed to secure passage or defeat of legislation which affects the collective bargaining process or the power of the collective bargaining representative.
5. Activities designed to secure passage or defeat of legislation which has a direct or indirect effect on the terms and conditions of employment of bargaining unit employees.
6. Activities designed to influence agency or other governmental action which has a direct or indirect effect on the terms and conditions of employment of employees.

D. Other Membership Services

2. Programs designed to help the employee become more effective on the job or eliminate employer/employee friction.

E. Maintenance of Organization

1. Governance 9/
 - a. Representative assemblies and election of officers.
 - b. Other meetings of the membership and officers relating to performance of the collective bargaining and negotiation functions of the organization.
 - c. Ensuring the rights of members in union-related matters.
 - d. Ensuring compliance of members or constituent labor organizations with union policies.
2. Administrative expenditures necessary to pay the labor and other costs necessary to run the organization, including staff salaries, accounting services, building expenses, etc. 10/
3. Communications to members and staff to make them aware of the activities of the organization and to enable them to participate in the functions of the organization.
4. Communications designed to recruit new members in current bargaining units and/or to obtain the support of non-members for association collective bargaining activities.
5. Organizing new bargaining units.
6. Legal Services
 - a. Protection of the rights of the collective bargaining representative under the collective bargaining contract.
 - b. Protection of the organization in its role as collective bargaining agent. e.g., defending or bringing unfair labor practice charges.
 - c. Advice to help the organization to comply with all legal requirements.
7. Cooperation with other labor organization where such cooperation is designed to advance the collective bargaining position of the individual bargaining agents.

The Commission concludes that expenditures for the following categories of activity by WEAC and/or NEA, during the period in which MTEA was affiliated with WEAC and NEA, as hereintofore noted, which have been funded in any part from fair-share contributions, appear on their face to have been impermissibly so funded:

A. Negotiations Process

4. Strike defense fund.

Payment of funds to striking bargaining unit members or into a reserve fund to be used for that purpose.

C. Legislation and political action

7. Contributions to political candidates or parties which further the employment-related interest of members of the bargaining unit.

9/ To the extent that said activities are related to collective bargaining and contract administration.

10/ Ibid.

8. Political education of members.

D. Other Membership Services

1. Purchase of services designed to procure any economic benefit for employees where such benefit is provided to all bargaining unit members.

E. Maintenance of Organization

1. Governance II/

- a. Representative assemblies and election of officers.
- b. Other meetings of the membership and officers relating to performance of the collective bargaining and negotiation functions of the organization.
- c. Ensuring the rights of members in union-related matters.
- d. Ensuring compliance of members or constituent labor organizations with union policies.

2. Administrative expenditures necessary to pay the labor and other costs necessary to run the organization, including staff salaries, accounting services, building expenses, etc. 12/

Categories of WEAC and NEA Admitted Impermissible

1. Expenditures for political action to secure the passage of legislation unrelated to collective bargaining and contract administration.
2. Contributions to candidates whose support of causes unrelated to collective bargaining and contract administration is the major reason for their endorsement.
3. Contributions to charitable causes or organizations unrelated to collective bargaining and contract administration.

The Commission also concludes that contributions to charitable causes and organizations, regardless of their relationship to collective bargaining and contract administration, cannot be assessed to fair-share contributions.

The Initial Findings of Fact and Initial Conclusions of Law

As in Browne, the Commission is not granting the Complainants' request that it issue an interlocutory order requiring the escrowing of fair-share deductions of the Complainants and the class of employees that they represent pending final determination of the issues herein, for the same reason given by the trial court in the proceeding before it, and which was approved by the Supreme Court, namely, that it would be pure speculation to determine what percentage of fair-share funds have been spent for impermissible activities, and therefore, we are unable to determine "the required danger of irreparable injury" justifying such an order.

It is apparent from the review of the categories of expenditures by MTEA, as set forth previously in this memorandum, and by WEAC and NEA, especially at such time that MTEA was affiliated with the latter organizations, are, in most part, too general for the Commission to make definite and certain findings of fact

11/ To the extent that such activities are unrelated to collective bargaining or contract administration.


12/ Ibid.

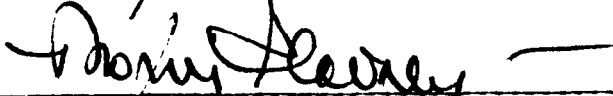
relating to whether the various categories are related to permissible, partly permissible, or impermissible expenditures of fair-share contributions. We hope that prior to the hearing in Stage II of this proceeding Counsel for all parties will be able to reduce the number of issues remaining for the Commission's determination. Following the hearing in Stage II of this proceeding, the Commission will issue the remaining Findings of Fact and Conclusions of Law, as well as an Order with respect to the issues involved in both stages of the proceedings.

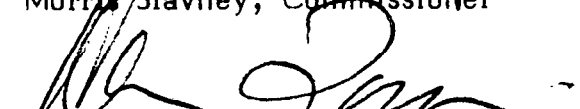
Dated at Madison, Wisconsin this 24th day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner