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-B

ORDER DENYING MOTION TO INTERVENE

The above-named Complainants having on September 25, 1978, 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 by collecting and utilizing fair share deductions which were in excess of the cost of collective bargaining and contract administration; and the Commission having conducted hearings in the matter and having, on May 24, 1982, issued Initial Findings of Fact and Initial Conclusions of Law, wherein it set forth various categories of activities for which fair share deductions could or could not permissibly be expended; and the Commission having subsequently scheduled a conference for August 17, 1982 for the purpose of discussing possible procedures for determining the actual amounts of money which were spent by the Respondent labor organizations for the impermissible purposes set forth in the May 24, 1982 decision; and Jo Ann Hewitt, an employe of Jt. School District No. 1, Villages of Menomonee Falls, Butler and Lannon, having on August 13, 1982 filed a Motion to Intervene in the above-entitled matters; and the parties having filed briefs in support of and in opposition to the Motion, the last of which was received on November 8, 1982; and the Commission being fully advised in the premises and being satisfied that the Motion to Intervene should be denied;

NOW, THEREFORE, it is

ORDERED

That the Motion to Intervene filed by Jo Ann Hewitt be, and the same hereby is, denied. 1/

Given under our hands and seal at the City of Madison, Wisconsin this 13th day of January, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary L. Covelli, Chairman

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Morris Slavney, Commissioner

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Herman Torosian, Commissioner

1/ See page two

1/ (Continued)

Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO INTERVENE

The pleadings herein reveal that in May, 1973, Hewitt and three other teachers employed by the Board of Education, Joint School District No. 1, Villages of Menomonee Falls, Butler and Lannon filed a lawsuit in Waukesha County Circuit Court against the above-noted District and the Menomonee Falls Education Association (MFEA), the Wisconsin Education Association (WEA), and the National Education Association (NEA) wherein they alleged, inter alia, that fair share deductions from their wages by said District were being utilized for impermissible purposes. On June 26, 1979 all parties to said lawsuit entered into the following Settlement Stipulation and Order for Dismissal:

> (1) Based upon the following terms, conditions and consideration and upon the filing of this Stipulation with the Court, the above captioned matter may be dismissed without additional costs to either party, without further notice and upon the merits, with prejudice.
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> (2) The defendant Menomonee Falls Education Association may terminate the existing escrow account and from the balance thereof as of October 10, 1978, shall pay over to the plaintiffs the total sum of $1,000 to be distributed among them at their discretion. The remaining balance of the escrow account as of October 10, 1978, may be distributed among the defendants at their discretion.
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> (3) The individual plaintiffs and defendants will execute full and complete releases of all claims against each other, copies of which are attached hereto and the terms of which are incorporated herein and made a part of this Stipulation.
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> (4) Retroactive to October 10, 1978, defendant Menomonee Falls Education Association will commence making monthly deposits into an escrow account in amounts equal to the fair share deductions received for plaintiffs Jo Ann Hewitt and Gertrude Wright; such deposits to be continued for so long as fair share deductions are received for those plaintiffs or until the date that the Wisconsin Employment Relations Commission renders it decision in the case of Gerleman v. Milwaukee Board of School Directors, whichever is shorter. Upon receipt of the Wisconsin Employment Relations Commission decision, the defendants shall rebate to plaintiffs Hewitt and Wright from the escrow account amounts to be determined by application of the standards adopted by the WERC prorated on a twelve (12) month basis. The escrow account shall then be terminated, and the remaining funds in the account may be distributed among the defendants at their discretion.
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> (5) If either or both of plaintiffs Hewitt and Wright are still employed in the bargaining unit represented by defendant Menomonee Falls Education Association after the date of distribution set forth in paragraph 4 above, upon the filing of timely objections as required by defendant unions' internal rebate procedure defendant unions shall make rebates to such plaintiff(s) in accordance with the percentage or standards established by the final determination of the WERC in Gerleman.
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> (6) Upon entry of an order based hereon, satisfaction of the terms of this stipulation shall constitute a complete and final disposition of the claims of the plaintiffs herein, except that plaintiffs Hewitt and Wright reserve the right to intervene and appeal the final determination of the WERC in Gerleman, and that defendants also reserve the right to object to such intervention and standing to appeal Gerleman.

(7) None of the parties shall advertise or publish any information relating to this litigation except for the actual terms of this Stipulation and the accompanying Releases of Claims.

Positions of the Litigants

When filing the instant Motion, Hewitt cites paragraph 6 of the above Stipulation, and argues that she must be allowed to intervene in the instant matter as a proper party in interest under Sec. 111.07(2)(a), Stats., and ERB 10.12(2), Wis. Admin. Code. In support of her Motion, Hewitt asserts that she is a municipal employe who has a substantial and concrete interest in the instant proceeding as her rebate pursuant to paragraphs 4 and 5 of the above Stipulation will be determined by the application of and in accordance with the percentage or standards established by the Commission in the instant case. Hewitt further alleges that her intervention is timely and is not burdensome to the Commission, nor prejudicial to the parties.

Respondent Milwaukee Teachers Association (MTEA) opposes Hewitt's Motion, asserting that Hewitt is not an employe of the Milwaukee School District and therefore she is not entitled to intervene under Sec. 111.07(2)(a), Stats. MTEA asserts that Hewitt's decision to tie her right of recovery in a separate lawsuit to the resolution of the instant matter gives her no status as a party herein. MTEA further argues that Hewitt's intervention is untimely and would, if allowed, be unduly burdensome. It also contends that MTEA's affiliation with WEA and NEA ended on or about August 31, 1974, and as a result issues as to the propriety of WEA and NEA expenditures after that date will not be resolved by this proceeding. Thus, Hewitt's concerns about the expenditures commencing October 10, 1978 of the two labor organizations (WEA and NEA) who were parties to both Hewitt's lawsuit and the instant matter will not be litigated herein.

Respondents WEA and NEA also oppose Hewitt's Motion. They echo MTEA's contention that the instant case litigates the propriety of expenditures of entirely different labor organizations in separate school districts than those involved in Hewitt's suit. Said Respondents further argue Hewitt's potential interest in the validity of the Commission's general categories, as set forth in its May 1982 decision, is too general to give her status as a party in the instant proceeding.

Discussion

Sec. 111.07(2)(a), Stats., which is made applicable herein by Sec. 111.70(4)(a), Stats., 2/ provides the following guidance:

> Upon the filing with the commission by any party in interest of a complaint in writing, on a form provided by the commission, charging any person with having engaged in any specific unfair labor practice, it shall mail a copy of such complaint to all other parties in interest. Any other person claiming interest in the dispute or controversy, as an employer, an employe, or their representative, shall be made a party upon application.

Section 111.70(1)(b), Stats., defines a "municipal employe" as:

> . . . any individual employed by a municipal employer other than an independent contractor, supervisor or confidential, managerial or executive employe.

ERB 10.12(2) specifies:

> (2) TO INTERVENE. Any person desiring to intervene in any proceeding, shall, if prior to hearing, file a motion with the commission. Such motions shall state the grounds upon

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2/ Sec. 111.70(4)(a) provides:

> Section 111.07 shall govern procedure in all cases involving prohibited practices under this subchapter . . .

which such person claims an interest. Intervention at the hearing shall be made by oral motion stated on the record. Intervention may be permitted and upon such terms as the commission or the individual conducting the proceeding may deem appropriate.

In Chauffeurs, Teamsters and Helpers v. WERC 51 Wis. 2d 391 (1970), the Wisconsin Supreme Court was confronted with a Commission conclusion that a labor organization, which did not represent or seek to represent the employes in question, was not a "party in interest" under Sec. 111.07(2)(a), Stats., for the purpose of alleging that the employer was committing an unfair labor practice by failing to pay prevailing wages to its employes. While the test utilized by the Commission and affirmed by the Court encompassed the statutory concept of a "controversy as to employment relations" under Sec. 111.06(1)(L), Stats., which is not directly applicable herein, the Courts discussion of the concept of "party in interest" and of the scope of the term "employe" is instructive. The Court commented:

. . .

Taking the definition of employee from the Peace Act to mean any employee, as did the trial court, means that any member of the public who is an employee may bring an unfair labor practice charge against a noncomplying employer once his demand for compliance is refused. Had the legislature intended such a result, it is hard to believe they would not have so stated in the Peace Act (as well as in the prevailing wage law) rather than specifying that charges could be brought by a "party in interest."

Obviously Local 200 has an interest in Gerovac's employment practices in this case. But is it of such a nature that it must bring an unfair labor practice charge before the WERC in order to protect it? And is it unreasonable for the WERC to hold that Local 200 may not do so?

The WERC holds that it interprets sec. 111.07(2)(a), Stats., a jurisdictional statute, as limiting "parties in interest" to those engaged in "controversy as to employment relations," defining such controversies as those involving an employer and his employees or their representational labor organization. Further, the WERC, under some circumstances, extends "party in interest" status to a labor union that is seeking representation. However, it will not extend such status to Local 200, who neither represents nor purports to represent Gerovac's employees. Despite Local 200's admitted interest in area standards, there are good reasons to uphold the WERC's position.

. . .

Third, to allow any interested union to follow the route here proposed by Local 200 raises the question of limitations discussed earlier. How strong must the interest be? Isn't all of labor somehow affected? Admittedly, the "interest" might be limited to the particular industry, but how does one distinguish between the various trades in this day of specialized skills with their complex interdependent functions in a particular industry? And a large union such as that of the Teamsters (of which Local 200 is a part) covers many industries, from supermarkets to highway construction. They then would be "interested" in the wages paid to retail clerks and street workers. It is clear that there is some value and reason for the WERC, with its expertise, to limit their jurisdiction as it has.

We conclude that the construction which the WERC has placed on its jurisdictional statute should be upheld.

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From the foregoing, it is clear that even under the Wisconsin Employment Peace Act's definition of an "employe" at Sec. 111.02(2), Stats., which specifies that the term "is not limited to the employes of a particular employer", there are limitations under Sec. 111.07(2), Stats., upon the right to file a complaint or to become a party to an existing dispute by intervention. Here, of course, the prohibited practice proceeding involves the provisions of the Municipal Employment Relations Act, and it is thus the definition of a "municipal employe" which is controlling under the language of Sec. 111.07(2), Stats. As Sec. 111.70(1)(b), Stats., does not contain language which parallels that quoted above from Sec. 111.02(2), Stats., it can be concluded that the definition of a "municipal employe" is restricted to those employes of the municipal employer involved in the prohibited practice proceeding. As Hewitt is not, and has never been, employed as a teacher by the Milwaukee Public Schools, her status as a "municipal employe" of the Menomonee Falls District does not give her a statutory right to intervene as a "party in interest."

As to Hewitt's argument that the resolution of her lawsuit gives her an "interest" which warrants intervention, Teamsters, supra, is again instructive when it states that the concept of "interest" means something more than to be affected by or interested in the outcome. 3/ Thus, it seems clear that Hewitt's decision to settle her lawsuit in part upon the basis of the outcome herein is insufficient to warrant intervention. Only Hewitt's claim of mutuality of parties might give her a colorable claim to a concrete interest in the instant dispute. However, even this argument fails. While the WEA and NEA are parties to both actions, their involvement in this proceeding is only for the period of the MTEA's affiliation with such state and national organizations which ended in 1974. By the terms of her Settlement Stipulation, Hewitt has settled the issue of WEA and NEA liability prior to October 10, 1978. Thus, any Commission conclusion as to the level of impermissible WEA or NEA expenditures is for a time period which is no longer at issue for Hewitt.

In summary, the Commission concludes that the Motion to Intervene must be denied, because Hewitt is not a "party in interest" within the meaning of Sec. 111.07(2), Stats.

Dated at Madison, Wisconsin this 13th day of January, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary L. Covelli, Chairman

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Morris Slavney, Commissioner

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Herman Torosian, Commissioner

3/ Consistent with this limited view, the Commission has, for instance, concluded that an individual employe is not a "party in interest" for the purpose of alleging that his employer is illegally refusing to bargain with his collective bargaining representative. City of Menasha, (13283-A) 2/77. While the employe obviously has an interest in bargaining, said interest does not transform him into a "party in interest".