

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES  
(AFSCME), COUNCIL 24, AFL-CIO,  
and its appropriately affiliated  
LOCAL #1,

Complainant,

vs.

STATE OF WISCONSIN,

Respondent.  
-----

Case CXLVIII  
No. 26294 PP(S)-72  
Decision No. 17901-B

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,  
AND ENLARGING EXAMINER'S CONCLUSIONS  
OF LAW AND ORDER

Examiner Stephen Pieroni having, on August 24, 1981, issued his Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above-entitled matter, wherein he concluded that the State of Wisconsin had interfered with employee's rights guaranteed by Sec. 111.82, and thereby violated Sec. 111.84(1)(a) of the State Employment Labor Relations Act (SELRA) by unilaterally withholding dues deductions of members of the American Federation of State, County and Municipal Employees (AFSCME), Council 24, AFL-CIO, and its appropriately affiliated Local #1, and by terminating the dues deductions of three named employees without proper written notification, and wherein the Examiner ordered the State to cease and desist therefrom, and reimburse said Union in the amount of dues improperly withheld or not deducted; and the State, on September 14, 1981, having timely filed a petition requesting the Wisconsin Employment Relations Commission to review the Examiner's decision; and written argument having been filed by Counsel for the parties, in support of, and in opposition to, the petition for review; and the Commission having reviewed the record, the Examiner's decision, and the written argument of Counsel, and being satisfied that the Examiner's Findings of Fact be affirmed, and that the Conclusions of Law and Order issued by the Examiner be enlarged;

NOW, THEREFORE, it is

ORDERED 1/

1. That the Findings of Fact made and issued by the Examiner in the instant matter be, and the same hereby are, affirmed.

2. That the Conclusions of Law made and issued by the Examiner in the instant matter be enlarged to read as follows:

---

1/ 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 (continued on Page Two)

## ENLARGED CONCLUSIONS OF LAW

1. That the State of Wisconsin, by the action of its officers and agents, including Lyle Hasenberg,

- a. By ceasing to honor the dues deduction check-off authorizations previously executed by employees Robert G. DuPont, Michael J. Beckwith and James H. Miller, requiring that the sum of said dues be submitted bi-monthly to the American Federation of State, County and Municipal Employees (AFSCME), Council 24, AFL-CIO, and its Local No. 1, in the absence of proper revocation of such authorizations by said three employees, and
- b. By failing to transmit, on or about April 22, 1980, to said labor organization a sum equivalent to bi-weekly dues from one payroll period, which had been deducted from the earnings of twenty-three employees represented by said labor organization,

has interfered, and continues to interfere, with the rights of employees represented by said organization as set forth in Sec. 111.82 of the State Employment Labor Relations Act, and thereby has committed, and continues to commit, unfair labor practices within the meaning of Sec. 111.84(1)(a) of said Act.

Upon the basis of the Examiner's Findings of Fact and the above Enlarged Conclusions of Law, the Commission makes and issues the following

---

1/ (continued)

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.

ENLARGED ORDER


IT IS ORDERED that the State of Wisconsin, its officers and agents, including Lyle Hasenberg, shall immediately


1. Cease and desist from
  - a. Refusing to honor dues check-off authorizations executed by employees requiring the submission of said dues to AFSCME, Wisconsin Council 24, AFL-CIO and its Local No. 1, or other affiliated Local thereof, except where such authorizations are properly revoked;
  - b. Failing to transmit sums reflecting the full amount of membership dues checked off from the salaries of employees on behalf of AFSCME, District Council 24, AFL-CIO and its Local No. 1, or other affiliated Local thereof, to said labor organization and its affiliated Local.
2. Take the following affirmative action to effectuate the policies of the State Employment Labor Relations Act:
  - a. Reimburse and transmit to AFSCME, District Council 24, AFL-CIO and its Local No. 1, sums equal to the dues which were unlawfully withheld and not submitted to said labor organization in April, 1980, as well as sums equal to that which should have been withheld as dues from the earnings of employees Robert G. DuPont, Michael J. Beckwith, and James H. Miller, in accordance with the check-off authorizations executed by said employees in favor of said labor organization;
  - b. Notify the Wisconsin Employment Relations Commission, within twenty (20) days from the date hereof as to what steps it has taken to comply with the instant Order.


Given under our hands and seal at the City of  
Madison, Wisconsin this 7th day of October, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
\_\_\_\_\_  
Gary J. Covelli, Chairman

  
\_\_\_\_\_  
Morris Slavney, Commissioner

  
\_\_\_\_\_  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER  
AFFIRMING EXAMINER'S FINDINGS OF FACT, AND  
ENLARGING EXAMINER'S CONCLUSIONS OF LAW AND ORDER

BACKGROUND

The facts in the instant complaint proceeding have been stipulated and they can be summarized as follows: For the past number of years AFSCME Council 24 and its Local No. 1, hereinafter referred to as AFSCME, has been and is the exclusive collective bargaining representative of employees of the State occupying classifications in a statewide collective bargaining unit statutorily set forth in Sec. 111.81(3)(a)5 of SELRA as the "Technical" unit. Since 1973 AFSCME and the State, in their collective bargaining agreements covering the employees in said unit, have included statutorily authorized fair-share agreements. Engineering Technicians 3 have been properly included in said Technical bargaining unit. Three employees occupying such classification, in June and August, 1977, executed dues deduction authorizations, requiring the State to deduct monthly dues and submit same to AFSCME. Said authorizations provided that they could be terminated at the end of any year of their life, provided written notice of the intent to terminate same was submitted in writing to the State and to AFSCME, within a designated period prior to their yearly anniversary date.

In January, 1979 2/ said three employees were reclassified to an Engineering Technician 4 classification, a professional position included in the professional employee bargaining unit of "Engineering", which unit, at all times material herein has been represented by the State Engineer's Association, hereinafter referred to as the Engineers. The State continued to honor the AFSCME dues check-off authorizations previously executed by said three employees. In January, 1980, without having attempted to revoke their AFSCME check-off authorizations in accordance with the terms thereof, and without notifying AFSCME, either orally or in writing, that they desired not to continue dues check-off, said employees requested agents of the State to cease honoring their AFSCME check-off authorizations, and at the same time indicated that they would like to recoup the dues deducted from the salaries from January, 1979 through January, 1980. During the following two months State's Chief of Payroll sent several letters to AFSCME, requesting such reimbursement, claiming that the amounts involved (\$120.45 for each of said three employees) were erroneously paid to AFSCME.

AFSCME did not make such reimbursement and during April, 1980 the Chief of Payroll instructed employees in his department to withhold one bi-weekly dues deduction from the salaries of 23 employees in AFSCME's bargaining unit. This was done, and the amount withheld totaled \$407. The State remitted, from this sum, \$180 to the Engineers, as fair-share contributions of said three employees from January 1979 through January 1980. Each employee received \$60.45 representing the balance of the difference between the AFSCME dues for that period and the sums submitted to the Engineers. \$45.65 was remitted to AFSCME. AFSCME took no action against the 23 employees from whom it did not receive dues in full.

THE PLEADINGS

AFSCME alleged that the State's action as described above constituted unfair labor practices within the meaning of Secs. 111.84(1)(a), (c), (e) and (f) of SELRA, namely (a) interference, restraint and coercion of employee rights, (c) employee discrimination because of the exercise of concerted activity, (e) violation of the collective bargaining agreement between it and the State, and

---

2/ While we have affirmed the Examiner's Findings of Facts, we hereby correct the apparent typographical error in his Finding of Fact 6 which inaccurately identifies June 28, 1979 instead of January 28, 1979 as the date of reclassification.

(f) improperly deducting dues from employees. During the course of the hearing AFSCME amended its complaint to include a violation of Sec. 111.84(1)(b), to the effect that the State's conduct constituted an interference with the internal affairs of a labor organization. AFSCME asked the Examiner to issue a cease and desist order, order reimbursement, attorney's fees, costs and punitive damages.

The State denied that its actions constituted any unfair labor practices under SELRA. Specifically, with respect to the alleged contractual violation, it argued that the collective bargaining agreement between it and AFSCME contains a provision for final and binding arbitration of contract disputes. 3/ The State also contended that its payroll system is not designed to distinguish between fair share deductions and dues check-off authorizations and that it should not be required to assume that an employee who transfers into another bargaining unit desires dual deductions. It argues that to do so could subject the State to a claim by the employees that it had violated Sec. 111.84(1)(f), Stats. Further, the State argued that the agreement between it and AFSCME contains a hold harmless provision.

#### THE EXAMINER'S CONCLUSIONS OF LAW AND ORDER

The Examiner concluded that the State unlawfully interfered with the rights of employees, in violation of Sec. 111.84(1)(a), Stats., by unilaterally withholding the dues deducted from the 23 employees in AFSCME's unit and by terminating, in the absence of "proper written notification", the check-off authorizations from the three employees who had been transferred into the Engineer's unit. The Examiner dismissed the remaining allegations in the complaint. The State was ordered to cease and desist from the unfair labor practices found to have been committed. The State was further ordered to reimburse AFSCME for the dues improperly withheld, as well as those dues which should have been deducted from the three employees who left the AFSCME unit, until such employees executed a proper revocation of their check-off authorizations. The request for attorney fees, costs and punitive damages was denied by the Examiner.

#### THE PETITION FOR REVIEW AND POSITION OF THE PARTIES

In its timely petition for review of the Examiner's decision, the State contends that the decision raises "substantial questions of law and policy". In its letter brief, the State raised no specific argument other than to restate its belief that if employees moving from one AFSCME unit to another must, by contract, affirmatively indicate a desire to have dues deductions continued, a similar requirement should be imposed herein. AFSCME, in its letter brief, relies upon the arguments made to the Examiner but asserts that the Examiner erred when not granting its request for attorney's fees.

#### DISCUSSION

We have reviewed the Examiner's decision and concluded that he correctly and adequately considered the arguments of the State. As he accurately concluded, and as we have previously found, 4/ dues check-off authorizations and the termination of same are governed by Secs. 20.921 and 111.84(1)(f), Stats. Neither individual employees nor the State can ignore the statutory provisions. Having been presented with no new argument in the Petition for Review, we need only state that we agree with the Examiner that the State's refusal to honor the check-off authorizations of the three reclassified employees constituted a violation of Sec. 111.84(1)(a) of SELRA, since such act interfered with the right of a majority of employees in the AFSCME bargaining unit to have their concerted activity supported by duly authorized dues check-off. Likewise, we agree with the Examiner that withholding of AFSCME dues from other employees, for the purpose of reimbursing the three employees and paying the employees "fair-share" to the Engineers also constituted an unlawful act of interference. The Examiner, citing Madison Metropolitan School District, 16471-D (5/81), correctly denied

---


3/ During the proceeding AFSCME withdrew its allegation of contract violation.

4/ State of Wisconsin (DILHR) 11979-B (11/75).

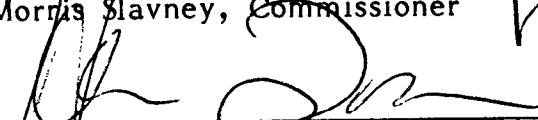
AFSCME's request that attorney's fees be levied against the State. Commissioner Torosian, for reasons stated in the Madison case, does not agree that attorney fees should be denied in all cases. He does agree, however, that such fees are not warranted in the instant case.

Dated at Madison, Wisconsin this 7th day of October, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner