

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PHYLLIS ANNE BROWNE, BEVERLY
ENGELLAND, ELEANORE PELISKA,
BETTY C. BASSETT, YETTA DEITCH,
VIRGINIA LEMBERGER, DONNA
SCHLAEFER, KATHERINE L. HANNA,
LORRAINE TESKE, JUDITH D. BERNIS,
NINETTE SUNN, MARY MARTINETTO,
CHARLOTTE M. SCHMIDT and ESTHER
PALSGROVE,

Complainants,

vs.

THE MILWAUKEE BOARD OF SCHOOL
DIRECTORS; THE AMERICAN
FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES,
AFL-CIO; DISTRICT COUNCIL 48,
AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO; JOSEPH ROBISON,
DIRECTOR OF DISTRICT COUNCIL 48;
LOCAL 1053, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO; MARGARET
SILKEY, as President of Local 1053;
and FLORENCE TEFELSKE, as Treasurer
of Local 1053;

Respondents.

Case XCIX
No. 23535 MP-892
Decision No. 18408-B

ORDER GRANTING MOTION TO COMPEL DISCOVERY

Counsel for Respondents having, on November 5, 1982, notified the Wisconsin Employment Relations Commission, in writing, that Respondents District Council 48 and Local 1053 had implemented a new recordkeeping system; and Complainants and Respondents having, on December 14, 1982, filed a Stipulation Re Past-Years' Fair-Share Deductions and Protest Dates wherein the parties agreed the Respondents would make certain refunds to Complainants and class members in lieu of litigation regarding that portion of Complainant's fair-share fees paid during the period of January 1, 1980 to December 31, 1981, 1/ and spent for activities not chargeable to Complainants under the Commission's Initial Findings of Fact and Conclusions of Law 2/ in this case; and Complainants having, on January 17, 1983, filed a Motion for Interlocutory Findings and Order and to Compel Discovery wherein, in part, they requested that the Commission order discovery of all Respondents' accounting and other records regarding their disbursements and activities for the period of January 1, 1983 through December 31, 1983 3/; and Respondents having, on April 18, 1983, filed a reponse in opposition to Complainants' Motions and requested that

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- 1/ On July 18, 1983, the parties filed a similar stipulation with regard to 1982 fair-share deductions.
- 2/ 18408 (2/81).
- 3/ Complainants' Motion for Interlocutory Findings and Order remains pending before the Commission pending receipt of the parties' briefs regarding the impact on this case of the U.S. Supreme Court's recent decision in Ellis v. Brotherhood of Railway Clerks, No. 82-1150 (1984).

No. 18408-B

the Commission defer its decision on discovery until after a status conference; and the parties having filed written arguments in support of their respective positions; and the Commission having considered the arguments of the parties, makes and issues the following

ORDER

1. For the purpose of preparation for further hearing in this matter, the Respondents shall produce for Complainants' inspection and reproduction, the following evidence:

all of the Respondent Unions' accounting and other records with regard to their disbursements and activities for the period January 1, 1983 through December 31, 1983.

2. The timetable, location and other details concerning the production of evidence ordered above shall be in accordance with such arrangements as the parties can agree upon between themselves or arrangements established by the Commission at the request of either party if they are unable to reach such an agreement on or before July 1, 1984.

3. Any expenses incurred in connection with such discovery shall be paid by the Complainants. 4/

Given under our hands and seal at the City of
Madison, Wisconsin this 24th day of May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Chairman

Gary L. Covelli /s/
Gary L. Covelli, Commissioner

Marshall L. Gratz /s/
Marshall L. Gratz, Commissioner

4/ This order is one "issued by the commission at the request of a party" within the meaning of Sec. 111.07(2)(d), Stats.

MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTION TO COMPEL DISCOVERY

As indicated in the preface to our Order, the parties have been able to reach stipulations regarding 1982 and past years in lieu of litigating the amounts of Complainants' fair-share fees paid during those years and spent for activities not chargeable to Complainants. Also, as noted in the preface, Counsel for Respondent Unions notified the Commission, in writing, along with signed affidavits, that District Council 48 and Local 1053 implemented a new recordkeeping system in late 1982 that would permit the categorization of the Union's expenditures. Subsequent to Respondents' submission, Complainants filed their Motion for Interlocutory Findings and Order and to Compel Discovery. Our decision treats only the Complainant's Motion for Discovery.

Complainants contend that discovery as to the Respondents' accounting and other records for 1983 is necessary to their preparation for the hearing in Stage II. They assert that in addition to the issue of the amount of the Complainants' fair-share fees deducted in 1983 and spent for activities not chargeable to the Complainants, there is also the issue of the adequacy of the Respondent Unions' recordkeeping systems. According to the Complainants, in order for them to be able to address those issues, they must be granted discovery with regard to the Respondents' records.

The Respondents have suggested that a "status conference" be held prior to the hearing in Stage II. At that time, the Respondent Unions would present a summary of the operation of their accounting systems to date and the data generated to calculate the permissible and impermissible expenditures. Also, at that time the Commission could determine the relevancy of any additional records, in light of the new recordkeeping system. Respondents oppose Complainants' request for discovery of "all of the respondent unions' accounting and other records" for 1983. According to the Respondent Unions, their new recordkeeping systems "are generating data regarding actual union staff activities." (emphasis supplied) They are relying on that data to support their calculations of permissible and impermissible expenditures, and are not relying on financial records generated for accounting purposes. Hence, there is no need to grant Complainants discovery on the Unions' accounting and other records. Furthermore, granting discovery as to such records would be "unduly time-consuming, expensive and burdensome" for the Respondent Unions.

Discussion:

We have reviewed the parties' positions as to the Motion to Compel Discovery and have concluded that there is no basis for deviating from our earlier decision in this case granting discovery. 5/ As Complainants point out, not only are amounts of expenditures in issue in Stage II, but also the adequacy of the Unions' recordkeeping systems. As before, we are concerned that, absent pre-hearing discovery, the hearing in this case would be unnecessarily protracted and the record would be unduly burdened. For these reasons we have granted Complainants' Motion for pre-hearing discovery.

While we are not persuaded that a status conference is a satisfactory substitute for or appropriate pre-condition to the discovery ordered herein, we would encourage the parties to pursue Respondents' suggestion that they share with Complainants a summary of the operation of their new recordkeeping system and of the data it has generated. The latter step might well reduce the volume of records that Complainants would need to inspect and/or reproduce pursuant to this order.

5/ 18408-A (10/81).

As in our earlier discovery order, inasmuch as the Complainants have requested the instant discovery order, we have ordered that any expenses incurred in connection with the discovery ordered herein be paid for by the Complainants.

Dated at Madison, Wisconsin this 24th day of May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Chairman

Gary L. Covelli /s/
Gary L. Covelli, Commissioner

Marshall L. Gratz /s/
Marshall L. Gratz, Commissioner