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. BERNS, NINETTE SUNN, MARY MARTINETTO, CHARLOTTE M. SCHMIDT and ESTHER PALSGROVE, and 57 other named individuals, 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 99 No. 23535 MP-892 Dec. No. 18408-H
WALTER J. JOHNSON, MARSHALL M. SCOTT, GERALD LERANTH, OLIVER J. WALDSCHMIDT, ERNA BYRNE, CHRISTINA PITTS, MILDRED PIZZINO, JOHN P. SKOCIR, HELEN RYZNAR, ANNABELLE WOLTER, CHERRY ANN LE NOIR, DORIS M. PIPER, LYNN M. KOZLOWSKI, EDWARD L. BARLOW, IRVING NICOLAI, and ANNE C. TEBO, and the 12 additional complainants whose joinder was moved 11-16-83 and not opposed by Respondents, Complainants, vs. COUNTY OF MILWAUKEE, a body Corporate; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; DISTRICT COUNCIL 48, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, and JOSEPH ROBISON, its Director; LOCAL 594, AFSCME, affiliated with District Council 48; LOCAL 645, AFSCME, affiliated with District Council 48; LOCAL 882, AFSCME, affiliated with District Council 48; LOCAL 1055, AFSCME, affiliated with District Council 48; LOCAL 1654, AFSCME, affiliated with District Council 48; and Local 1656, AFSCME, affiliated with District Council 48, Respondents.	Case 161 No. 29581 MP-1322 Dec. No. 19545-H

Appearances:

Mr. Raymond J. LaJeunesse, Jr., National Right to Work Legal Defense Foundation, Inc., 8001 Braddock Road, Suite 600, Springfield, Virginia, 22160, on behalf of the Complainants.

Kirschner, Weinberg & Dempsey, Attorneys at Law, by Mr. John J. Sullivan and Mr. Larry P. Weinberg, 1615 L Street, N.W., #1360, Washington, D.C., on behalf of Respondent Unions.

Lawton & Cates, Attorneys at Law, by Mr. John H. Bowers, 214 West Mifflin Street, Madison, Wisconsin, 53703, on behalf of Respondent Unions.

ORDER GRANTING IN PART, AND DENYING IN PART, PETITIONS FOR REHEARING

The Wisconsin Employment Relations Commission having, on April 24, 1987, issued its Findings of Fact, Conclusions of Law and Order in the above-captioned matters; and the Complainants and Respondent Unions in those matters having, on May 14, 1987, filed their separate petitions requesting that the Commission grant a rehearing pursuant to Sec. 227.49, Stats.; and in their petition Complainants having alleged that the Commission:

1) made a material error of law in concluding that the Respondent Board and Respondent County did not commit a prohibited practice by complying with the terms of their respective fair-share agreements where neither those Respondent Employers nor the Respondent Unions established the procedures required by the U.S. Supreme Court's decision in Chicago Teachers Union v. Hudson; 1/

2) made a material error of fact and of law by failing to make any findings or to reach any conclusions regarding the legality of the language of the fair-share agreements on the basis that the issue was not raised;

3) made a material error of law by failing to incorporate Initial Conclusions of Law 1 and 2, made in these respective cases, in its final Conclusions of Law in its decision in these cases issued on April 24, 1987;

and the Respondent Unions having alleged in their petition that the Commission:

1) made a material error of law in concluding that the U.S. Supreme Court's decision in Chicago Teachers Union v. Hudson is to be applied retroactively;

2) made material errors of law in concluding that Respondent District Council 48's "Notice to All Nonmember Fairshare Payors" and its procedures were deficient because of: (a) requiring payment of a $5.00 fee by individuals who challenged the Union's calculation of the fair-share fee amount, (b) requiring that objections and challenges be sent by registered mail, (c) the treatment of audits of local unions' financial records, (d) the escrow arrangement established by the Unions, and (e) the lack of clarity in the Notice regarding the challenge procedure;

3) made a material error of law in concluding that because of the deficiencies it found in the "Notice" the impartial determination by Arbitrator Weisberger is invalid and a new arbitration is required for the period from the date of Hudson to the end of the new dissent period;

4) made a material error of fact and of law in concluding that the Municipal Employment Relations Act requires that a union must first establish and implement the procedural safeguards of Hudson before it may lawfully exact a fair-share fee from nonmembers it represents;

5) made material errors of fact and of law in concluding that the Respondent Unions committed prohibited practices within the meaning of Sec. 111.70(3)(b)1, Stats., in these cases by exacting fair-share fees; and

6) made a material error of fact and of law in concluding that Respondent Unions must escrow in an interest-bearing account all fair-share fees deducted from, and not advance rebated to, all fair-share fee payors in the bargaining units represented by the Respondent Locals;

and the Respondent Unions and Complainants having, on May 29 and June 1, 1987, respectively, filed statements in support of their respective positions; and the Commission having considered the matters raised and the arguments of the parties and being satisfied that with the exception of the matter set forth in 1(a) below, the matters cited in the petitions are not material errors of fact or law;

1/ 106 S.Ct. 1066 (1986).

NOW, THEREFORE, it is

ORDERED 2/

1. That Complainants' petition for rehearing is granted only to the extent set forth in (a) below and is denied as to the remainder of the matters raised in said petition:

2/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

(a) That the Examiner's Initial Conclusions of Law 1 and 2 in Johnson v. Milwaukee County are hereby affirmed and the Commission's Conclusions of Law 9 and 10 issued in these matters on April 24, 1987 are hereby amended to read as follows:

9. That the Respondent Unions in Browne v. Milwaukee Board of School Directors, AFSCME, District Council 48 and Local 1053, having directly or indirectly expended sums of monies from fair-share fees paid by Complainants, and other nonmember fair-share fee payors employed in the bargaining unit represented by Respondent Local 1053, for the activities set forth in Initial Conclusions of Law 1 and 2 in that case, which Conclusions of of Law are incorporated by reference herein; that the activities set forth in Initial Conclusion of Law 1 are related, and that the activities set forth in Initial Conclusion of Law 2 are not related, to the ability of said Respondent Unions to carry out their representational interest as the exclusive collective bargaining representative of the employes of Respondent Board in the bargaining unit represented by Respondent Local 1053 in the collective bargaining process and contract administration with Respondent Board within the meaning of the Muncipal Employment Relations Act; and that therefore, expenditures by the Respondent Unions for the activities set forth in Initial Conclusion of Law 1 in Browne can be, and the expenditures by the Respondent Unions for the activities set forth in Initial Conclusion of Law 2 cannot be, properly included in determining the cost of collective bargaining and contract administration for the purpose of establishing the sums of money required to be paid to Respondent Unions by dissenting fair-share payors pursuant to a fair-share agreement existing between Respondent Local 1053 and Respondent Milwaukee Board of School Directors, within the meaning of Sec. 111.70(1)(f) of the Municipal Employment Relations Act.

10. That the Respondent Unions in Johnson v. Milwaukee County, AFSCME, District Council 48 and the Locals, have directly or indirectly expended sums of monies from fair-share fees paid by Complainants, and other nonmember fair-share fee payors employed in the bargaining unit(s) represented by Respondent Locals, for the activities set forth in Initial Conclusions of Law 1 and 2 in that case, which Conclusions of Law are incorporated by reference herein; that the activities set forth in Initial Conclusion of Law 1 are related, and that the activities set forth in Initial Conclusion of Law 2 are not related, to the ability of said Respondent Unions to carry out their representational interest as exclusive collective bargaining representative of the employes in the bargaining unit(s) represented by Respondent Locals in the collective bargaining process and contract administration with Respondent Milwaukee County within the meaning of the Municipal Employment Relations Act; and that therefore, expenditures by the Respondent Unions for said activities set forth in Initial Conclusion of Law 1 in Johnson can be, and the expenditures by the Respondent Unions for the activities set forth in Initial Conclusion of Law 2 cannot be, properly included in determining the cost of collective bargaining and contract administration for the purpose of establishing the sums of money required to be paid to Respondent Unions by dissenting fair-share payors pursuant to a fair-share agreement existing between Respondent Locals and Respondent Milwaukee County, within the meaning of Sec. 111.70(1)(f) of the Municipal Employment Relations Act.

2. That Respondent Unions' petition for rehearing is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 12th day of June, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner