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, MINNETTE 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

Appearances:

Hugh L. Reilly, Staff Attorney, National Right to Work Foundation, Inc.; 8316 Arlington Blvd., Fairfax, Virginia 22038, and 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 Patrick B. McDonnell and Theophilus C. Crockett, Principal City Attorneys, 800 City Hall, Milwaukee, Wisconsin 53202, appearing on behalf of Respondent Board.

Lawton and Cates, Attorneys at Law, by John H. Bowers and Bruce M. Davey, 110 East Main Street, Madison, Wisconsin 53703, appearing on behalf of Respondents Council 48, Robison, Local 1053, Silkey and Tefelske.

Zwerdling and Mauer, Attorneys at Law, by Michael T. Leibig, 1211 Connecticut Avenue, N.W., Washington, D.C. 20036, and Zubrensky, Padden, Graf and Bratt, Attorneys at Law, by James P. Maloney, 606 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, appearing on behalf of Respondent AFSCME.

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 March 19 and 20, 1979, the full Commission being present, 1/ during which the parties were afforded the opportunity to present evidence and argument in the matter; and post

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1/ At that time consisting of Chairman Morris Slavney and Commissioners Herman Torosian and Marshall Gratz.

hearing briefs having been filed by August 9, 1979; 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 Complainants Phyllis Ann Browne, Beverly Engelland, Eleanore Peliska, Betty C. Bassett, Yetta Deitch, Virginia Lemberger, Donna Schlaefer, Katherine L. Hanna, Lorraine Teske, Judith D. Berns, Minnette Sunn, Mary Martinetto, and Charlotte M. Schmidt, are individuals residing in Milwaukee, Wisconsin; and that Complainant Esther Palsgrove is an individual residing in Cedarburg, Wisconsin.

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

3. That the Respondent American Federation of State, County and Municipal Employees, hereinafter referred to as AFSCME, is a labor organization and has its principal offices at 1155 15th Street, N.W., Washington, D.C.

4. That the Respondent District Council 48, AFSCME, hereinafter referred to as District Council, is a labor organization chartered by AFSCME and has its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin; that Respondent Joseph Robison, hereinafter referred to as Robison, is the Director of District Council, and that Robison maintains his office at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.

5. That the Respondent Local 1053, AFSCME, hereinafter referred to as Local 1053, is a labor organization, subordinate to and affiliated with the District Council, and subordinate to, chartered by and affiliated with AFSCME, and has its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin; and that Respondents Margaret Silkey and Florence Tefelske, hereinafter referred to as Silkey and Tefelske, 2/ are respectively President and Treasurer of Local 1053, and they maintain their offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.

6. That at all times material herein the Respondent affiliated labor organizations, hereinafter jointly referred to as the Union, represent employes of the Board in a bargaining unit consisting of secretarial, clerical and technical employes, for the purposes of collective bargaining on wages, hours and conditions of employment; that at all times material herein the individual Complainants identified in para. 1, supra, have been employed in said bargaining unit; and that, further, the Union and the Board have been parties to successive collective bargaining agreements covering the wages, hours and conditions of employment of the employes in said bargaining unit.

7. That on March 9, 1972 the Union and the Board entered into their initial fair share agreement, effective March 1, 1972, which provided in relevant part that all employes in the bargaining unit:

2/ Any reference hereinafter to Silkey and Tefelske, as well as Robison, are intended to include said individuals in their representative capacity unless the context implies or requires a different meaning.

who have completed sixty calendar days of service and are not members of the Union, shall be required, as a condition of employment, to pay to the Union each month a proportionate share of the cost of the collective bargaining process and contract administration. Such charge shall be deducted from the employe's paycheck in the same manner as Union dues and shall be the same amount as the Union charges for regular dues, not including special assessments or initiation fees.

8. That since entering into said agreement the Union and the Board have entered into successor agreements containing a similar provision; and that the agreement in existence at the time of the hearing herein contained language identical to that noted above, except that an additional condition was included affecting the application of such provision - namely that such deductions would be limited to only those employes in the unit who had not only completed 60 days of service, but who also were compensated for 20 or more hours in a bi-weekly pay period.

9. That, pursuant to said fair share agreements, the Board has deducted from the wages of employes in the bargaining unit covered by the aforesaid agreements, who are not members of the Union, sums of money denominated as fair-share deductions, in the same amounts as the amounts of dues paid by members of Local 1053, and has transmitted said sums to District Council, which has transmitted a portion of said sums to Local 1053 and to AFSCME, as well as to the Wisconsin State AFL-CIO, the Milwaukee County Labor Council, and to the Wisconsin Coalition of American Public Employees (CAPE), all consisting of organizations, which have among their affiliates various labor organizations representing employes throughout the State of Wisconsin.

10. That the individual Complainants designated in para. 1, supra, are representative of a class of approximately 60 employes employed in the bargaining unit involved herein, all of whom were not, and are not, members of the Union, which employes on February 1 and March 30, 1972 protested to the Board and to the Union with respect to the compulsory exaction from their wages sums of money for fair-share deductions, any portions thereof which had been, or which were to be, used for purposes other than collective bargaining and contract administration.

11. That during the course of the instant proceeding the parties agreed that the Union, directly or indirectly, expend sums of monies from membership dues, as well as from fair-share exactions from the earnings of Complainants and employes of the Board employed in the collective bargaining unit in which Complainants are employed, for the following activities engaged in by the Union, its officers and agents, with respect to the bargaining unit in which Complainants are employed, as well as with respect to bargaining units, and work locations where employes other than the Complainants are employed, as follows: 3/

(1) Gathering information in preparation for the negotiation of collective bargaining agreements.

(2) Gathering information from employes concerning collective bargaining positions.

3/ The numerical identification of the various categories corresponds to those set forth in the stipulation of the parties.

(3) Negotiating collective bargaining agreements.

(4) Adjusting grievances pursuant to the provisions of collective bargaining agreements.

(5) Administration of ballot procedures on the ratification of negotiated agreements.

(6) The public advertising of Respondent Unions' positions (a) on the negotiation of, or provisions in, collective bargaining agreements, and (b) on other subjects.

(7) Purchasing books, reports, and advance sheets used in (a) negotiating and administering collective bargaining agreements, (b) processing grievances, and (c) activities for purposes other than those identified in (a) and (b).

(8) Paying technicians in labor law, economics and other subjects for services used (a) in negotiating and administering collective bargaining agreements, (b) in processing grievances, and (c) in activities other than those identified in (a) and (b).

(9) Organizing within the bargaining unit in which Complainants are employed.

(10) Organizing bargaining units in which Complainants are not employed.

(11) Seeking to gain representation rights in units not represented by Respondents, including units where there is an existing designated representative.

(12) Defending Respondents against efforts by other unions or organizing committees to gain representation rights in units represented by Respondents.

(13) Proceedings regarding jurisdictional controversies under the AFL-CIO constitution.

(14) Seeking recognitions as exclusive representative of bargaining units in which Complainants are not employed.

(15) Serving as exclusive representative of bargaining units in which Complainants are not employed.

(16) Training in voter registration, get-out-the vote, and campaign techniques.

(17) Supporting and contributing to charitable organizations.

(18) Supporting and contributing to political organizations and candidates for public office.

(19) Supporting and contributing to idealogical causes.

(20) Lobbying for legislation or regulations or to effect changes in legislation or regulations before Congress, state legislatures, and state or federal agencies.

(21) Supporting and contributing to international affairs.

(22) Supporting and paying affiliation fees to other labor organizations which do not negotiate the collective bargaining agreements governing Complainants' employment.

(23) Membership meetings and conventions held, in part, to determine the positions of employes in Complainant's bargaining unit on provisions of collective bargaining agreements covering their employment or on grievance administration pursuant to the provisions.

(24) Membership meetings and conventions held, in part, for purposes other than those identified in (23).

(25) Publishing newspapers and newsletters which, in part, concern provisions of the collective bargaining agreement covering Complainants' employment, or grievance administration pursuant to its provisions.

(26) Publishes newspapers and newsletters which, in part, concern subjects other than those identified in (25).

(27) Impasse procedures, including factfinding, mediation, arbitration, strikes, slow-downs, and work stoppages, over provisions of collective bargaining agreements.

(28) The prosecution or defense of litigation or charges (a) to obtain ratification, interpretation, or enforcement of collective bargaining agreements, (b) concerning issues other than those identified in (a).

(29) Social and recreational activities.

(30) Payments for insurance, medical care, retirement, disability, death, and related benefit plans.

(31) Administrative activities allocable, in some part, to each of the activities described in categories (1) through (29).

12. That the activities of the Union, its officers and agents, described in categories numbered (16), (17), (18), (19) and (21), as set forth in para 11, supra, and the expenditures by the Union for such activities, do not relate to its representational interest in the collective bargaining process or to the administration of collective bargaining agreements.

13. That the activities of the Union, its officers and agents, described in the categories set forth in para. 11, supra, and numbered as follows:

(1)	(4)	(7)(a) & (b)	(10)	(13)	(23)
(2)	(5)	(8)(a) & (b)	(11)	(14)	(25)
(3)	(6)(a)	(9)	(12)	(15)	(28)(a)

tend to and do in fact, enhance, assist, and strengthen the Union in carrying out its responsibilities and function as the exclusive collective bargaining representative of the employes in the collective bargaining unit in which the Complainants are employed, and in the negotiation, administration and enforcement of collective bargaining agreements covering wages, hours and working conditions of the employes in said collective bargaining unit; and that therefore the expenditures of the Union in performing such permissible activities are related to its representational interest in the collective bargaining process and contract administration involving the Complainants and other employes in the collective bargaining unit involved herein.

14. That the activities of the Union, its officers and agents, described in the categories set forth in para. 11, supra, and numbered as follows:

(6)(b)	(20)	(26)
(7)(c)	(22)	(28)(b)
(8)(c)	(24)	(31),

only in part relate to the responsibilities and functions of the Union as the exclusive collective bargaining representative of the employes in the collective bargaining unit in which the Complainants are employed, and in the negotiation, administration and enforcement of collective bargaining agreements covering the wages, hours and working conditions of the employes in said collective bargaining unit; and that therefore that proportion of the expenditures of the Union in performing such permissible activities are related to its representational interest in the collective bargaining process and contract administration involving the Complainants and other employes in the collective bargaining unit involved herein.

15. That with respect to the activities described in categories (27) and (28b) as set forth in para. 11, supra, expenditures by the Union, its officers and agents, relating to illegal strikes and the concomitants thereof, engaged in by municipal employes, can not properly be related to the representational interest of the Union in the collective bargaining process and contract administration involving employes in the collective bargaining unit in which the Complainants are employed; but that, however, expenditures by the Union, its officers and agents, for the legal activities described in said categories are properly related to the representational interest of the Union in the collective bargaining process and contract administration involving the Complainants and other employes in the collective bargaining unit involved herein.

16. That expenditures of the Union for the activities set forth in categories numbered (29) and (30), as set forth in para. 11, supra, when constituting compensation to persons for services rendered in the representational interest of the Union, constitute costs incurred in the collective bargaining process and contract administration involving the Complainants and other employes in the collective bargaining unit involved herein.

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 the following activities relate to the ability of the Respondent Unions, Local 1053, District Council 48, AFSCME, AFL-CIO, to carry out their representational interest as the exclusive collective bargaining representative of secretarial, clerical and technical employes in the employ of the Respondent Milwaukee Board of School Directors, in the collective bargaining process and contract administration with Respondent Milwaukee Board of School Directors, within the meaning of the provisions of the Municipal Employment Relations Act:

(a) Gathering information in preparation for the negotiation of collective bargaining agreements;

(b) Gathering information from employes concerning collective bargaining positions;

(c) Negotiating collective bargaining agreements;

(d) Adjusting grievances pursuant to the provisions of collective bargaining agreements;

(e) Administration of ballot procedures on the ratification of negotiated agreements;

(f) The public advertising of positions on the negotiation of, or provisions in, collective bargaining agreements, as well as on matters relating to the representational interest in the collective bargaining process and contract administration;

(g) Purchasing books, reports, and advance sheets used in matters relating to the representational interest in the collective bargaining process and contract administration;

(h) Paying technicians in labor law, economics and other subjects for services used in matters relating to the representational interest in the collective bargaining process and contract administration;

(i) Organizing within the bargaining unit in which Complainants are employed;

(j) Organizing bargaining units in which Complainants are not employed;

(k) Seeking to gain representation rights in units not represented by Respondent Unions, including units where there is an existing designated representative.

(l) Defending Respondent Unions against efforts by other unions or organizing committees to gain representation rights in units represented by Respondent Unions;

(m) Proceedings regarding jurisdictional controversies under the AFL-CIO constitution;

(n) Seeking recognition as the exclusive representative of bargaining units in which Complainants are not employed;

(o) Serving as exclusive representative of bargaining units in which Complainants are not employed;

(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 employes generally before Congress, state legislatures, and state and federal agencies;

(q) 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;

(r) Membership meetings and conventions held, in part, to determine the positions of employes in Complainants' bargaining unit on provisions of collective bargaining agreements covering their employment or on grievance administration pursuant to the provisions thereof;

(s) Membership meetings and conventions held, in part, for the purposes relating to the representational interest in the collective bargaining process and contract administration;

(t) Publishing newspapers and newsletters which, in part, concern provisions of the collective bargaining agreement covering Complainants' employment, or grievance administration pursuant to its provisions;

(u) Publishing newspapers and newsletters which, in part, relate to activities which have been determined herein to constitute proper expenditures of fair-share deductions;

(v) Lawful impasse procedures to resolve disputes arising in collective bargaining and in the enforcement of collective bargaining agreements;

(w) The prosecution or defense of litigation or charges to enforce rights relating to concerted activity and collective bargaining, as well as collective bargaining agreements;

(x) Social and recreational activities, as well as payment for insurance, medical care, retirement, disability, death and related benefit plans for persons who receive same in compensation for services rendered in carrying out the representational interest in the collective bargaining process and contract administration; and

(y) Administrative activities allocable to each of the categories described in categories (a) through (x) above,

and that, therefore, expenditures by the Respondent Unions for said activities are properly included in determining the sums of money to be exacted from the earnings of the employes in the bargaining unit involved herein, pursuant to a fair-share agreement in existence, at all times material herein, between Respondent Unions and Respondent Milwaukee Board of School Directors, within the meaning of Sec. 111.70(1)(h) of the Municipal Employment Relations Act.

2. That the following activities do not relate to the ability of the Respondent Unions, Local 1053, District Council 48, AFSCME, AFL-CIO, to carry out their representational interest as the exclusive collective bargaining representative of the secretarial, clerical and technical employes in the employ of Respondent Milwaukee Board of School Directors, in the collective bargaining process and contract administration with Respondent Milwaukee Board of School Directors, within the meaning of the provisions of the Municipal Employment Relations Act:

(a) Training in voter registration, get-out-the-vote, and campaign techniques;

(b) Supporting and contributing to charitable organizations, political organizations and candidates for public office, idealogical causes and international affairs;

(c) The public advertising on matters not related to the representational interest in the collective bargaining process and contract administration;

(d) Purchasing books, reports, and advance sheets utilized in matters not related to the representational interest in the collective bargaining process or contract administration;

(e) Paying technicians for services in matters not related to the representational interest in the collective bargaining process and contract administration;

(f) Lobbying for legislation or regulations, or to effect changes therein, not related to the representational interest in the collective bargaining process and contract administration, or with respect to matters not related generally to wages, hours and conditions of employment, before Congress, state legislatures and federal and state agencies;

(g) 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;

(h) Membership meetings and conventions held, in part, with respect to matters which do not relate to activities which have been determined herein to relate to proper expenditures of fair-share deductions;

(i) Publishing newspapers and newsletters which, in part, do not relate to activities which have been determined herein to constitute proper expenditures of fair-share deductions;

(j) 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;

(k) Social and recreational activities for members where such activities are not related to the representational interest in the collective bargaining process and contract administration;

(l) Payments for insurance, medical care, retirement, disability, death and related benefits to persons who do not receive same as compensation for services rendered in carrying out the representational interest in the collective bargaining process and contract administration; and

(m) Administrative activities allocable to each of the categories described in categories (a) through (l) immediately above;

and that, therefore, expenditures by the Respondent Unions for said activities 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 pursuant to a fair-share agreement existing between Respondent Unions and Respondent Milwaukee Board of School Directors, within the meaning of Sec. 111.70(1)(h) of the Municipal Employment Relations Act.

Given under our hands and seal at the City of Madison, Wisconsin this 3rd day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Herman Torosian, Commissioner

_____
Gary L. Covelli, Commissioner

BROWNE et al v. MILWAUKEE BOARD OF SCHOOL DIRECTORS et al

MEMORANDUM ACCOMPANYING INITIAL FINDINGS OF FACT AND INITIAL CONCLUSIONS OF LAW

Prior Court Proceedings

Prior to the filing of the amended complaint initiating the instant proceeding before this Commission, the Complainants had initiated a proceeding involving the identical issues in the Milwaukee County Circuit Court. That court issued decisions which were appealed to the Wisconsin Supreme Court, which issued two decisions with respect to the issues presented to and determined by the Circuit Court. The factual and legal determinations made by both the Circuit and Supreme Courts were succinctly described by the Supreme Court in Browne v. Milwaukee Bd. of School Directors, (83 Wis. 2d 316, 5/77), in material part, as follows:

> The plaintiffs are fourteen non-union employees of the defendant Milwaukee Board of School Directors (hereafter board). On June 4, 1973 the plaintiffs brought suit in Milwaukee circuit court on behalf of themselves and similarly situated non-union employees. The complaint challenged, on a number of grounds, the facial and as applied constitutionality of secs. 111.70(1)(h) and 111.70(2), Stats. (1975), supra, authorizing compulsory fair-share agreements between the board and Local 1053. The complaint sought declaratory and injunctive relief and damages.
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> On August 15, 1973, the defendant unions demurred to the complaint on the grounds, inter alia, that the circuit court lacked jurisdiction over the subject matter because W.E.R.C. had exclusive jurisdiction and that the non-union employees had failed to allege exhaustion of administrative and contract remedies. The circuit court overruled the demurrer on all grounds on October 9, 1973. That order was subsequently affirmed by this court upon the unions' appeal. Browne v. Milwaukee Bd. of School Directors, 69 Wis.2d 169, 230 N.W.2d 704 (1975). This court upheld the circuit court's overruling of the demurrer on the issues of exclusive jurisdiction in W.E.R.C. and failure to allege exhaustion of administrative remedies.
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> On remand after the first appeal the plaintiffs moved, on November 23, 1976, for partial summary judgment. In a May 16, 1977 opinion and orders entered June 29, 1977 and August 22, 1977, the trial court denied the plaintiffs' motion for partial summary judgment and granted partial summary judgment for the unions as to the facial constitutionality of secs. 111.70(1)(h) and 111.70(2), Stats. The circuit court held that on their face the statutes authorizing the compelled exaction of "fair-share" funds did not violate freedom of speech, equal protection or due process of law guaranteed by the first and fourteenth amendments to the United States Constitution and similar provisions of the Wisconsin Constitution.

The trial court's holding of facial constitutionality was based on its interpretation that "by the statute the non-union monies are to be utilized only for '. . .their proportionate share of the cost of the collective bargaining process and contract administration. . . .'" Recognizing that "the uncontroverted affidavits relate numerous expenses unrelated to the confines of the statute," the court further held that "a strict accounting procedure should be instituted, if same has not already been accomplished, to ensure that any objecting nonmember is reimbursed for any of his dues which are not strictly related to the collective bargaining process or contract administration" and placed "the burden . . . on defendants to show valid expenditures . . ."

The trial court felt that this fact finding process could be more expeditiously accomplished by W.E.R.C. and suggested, in its opinion, that a motion be brought to accomplish this end. The unions subsequently made such a motion and on August 22, 1977 the trial court entered an order referring the case to W.E.R.C.

". . . to have that agency make its findings of fact and conclusions of law with respect to the practices and statutory rights of [the] parties under sec. 111.70, Stats."

On August 8, 1977 the plaintiffs filed a motion to escrow all fair-share deductions pending a determination of the validity of those deductions. The motion was denied in the same order that referred the case to W.E.R.C. The plaintiffs appealed from the order referring the case to W.E.R.C. and from the denial of temporary escrow relief.

On October 12, 1977 the plaintiffs petitioned this court for a writ of mandamus requiring the trial court to vacate its order of referral to W.E.R.C. and exercise jurisdiction in the case. On November 16, 1977 this court entered an order holding the mandamus petition in abeyance, pending the disposition of this appeal.

On January 5, 1978 the defendant unions filed a motion to dismiss the appeal for want of jurisdiction in this court. On February 1, 1978 this court denied the motion to dismiss the appeal from the order denying the motion to escrow. The decision on the appealability of the order to transfer the case to W.E.R.C. was held in abeyance until disposition of the merits of the appeal.

. . .

By the Court.--Order affirmed and cause remanded to the Milwaukee Circuit Court to transfer the cause to W.E.R.C. for further proceedings not inconsistent with this opinion.

The following opinion was filed June 30, 1978.

PER CURIAM (on motion for rehearing).

On their motion for rehearing the plaintiffs contend that the proceedings in the circuit court must be stayed pending W.E.R.C.'s factual determination or

they will be prejudiced by the inability of W.E.R.C. to hear class actions. Sec. 111.07(2)(a), Stats. (1975). A stay in the trial court pending administrative proceedings is proper where necessary to avoid possible prejudice to one of the parties. United States v. Michigan National Corp., 419 U.S. 1, 95 S. Ct. 10, 42 L. Ed.2d 1 (1974).

In this case, as in all cases where questions of primary jurisdiction occur, both the trial court and the administrative agency have concurrent jurisdiction. Browne v. Milwaukee Bd. of School Directors, 69 Wis.2d 169, 175, 230 N.W.2d 704 (1975). The trial court may therefore retain jurisdiction until W.E.R.C. makes its factual determination concerning fair share dues. The plaintiffs' claims may be maintained before W.E.R.C. in the form of the class action that has already been commenced in the circuit court.

When W.E.R.C. has determined all issues before it, both W.E.R.C. and the trial court will be precluded from any further action. The trial court may not retain jurisdiction of this case for purposes of ch. 227 review of W.E.R.C.'s decision.

The motion for rehearing is denied.

The Alleged Prohibited Practices

Following the issuance of the above noted Supreme Court decision, and after the matter had been transferred to the Commission, the Commission met with counsel for the parties on August 28, 1978, and it was agreed that Complainants would file an amended complaint to commence the proceeding before the Commission. The amended complaint, which was filed on September 18, 1978, alleged, in material part, that the Respondent Board had engaged in, and was engaging in prohibited practices within the meaning of Secs. 111.70(3)(a)1, 111.70(3)(a)3, and 111.70(3)(a)6 of the Municipal Employment Relations Act (MERA), by requiring Complainants to pay, and by deducting, without individual employe authorization, fair-share fees which were, and continue to be, in excess of their proportionate share of the cost of collective bargaining and contract administration. The amended complaint also alleged that the Respondent Union 4/ and its named Respondent officers had engaged in, and were engaging in, prohibited practices in violation of Secs. 111.70(3)(b)1, 111.70(3)(b)2, and 111.70(3)(c) of MERA, by requiring, and by inducing, the Respondent Board to require such fair-share deductions to be made, 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 Respondent Union, for which fair-share deductions are utilized, are unrelated to collective bargaining and contract administration, and are not necessary to the negotiation and administration of collective bargaining agreements with the Respondent Board, or to the adjustment and settlement of grievances and disputes of the employes in the bargaining unit involved herein, and, further, that such expenditures are not necessary or germane to the duty of the representation of employes in the unit, including the Complainants, which duty is imposed by the provisions of MERA.

4/ The Local and its affiliates, the District Council and the International.

The Complainants also allege that the provisions of MERA relating to fair-share agreements, as well as the fair-share agreements entered into between the Respondent Board and Respondent Union, are unconstitutional in that:

(1) The compelled exaction of money from Complainants and its use for purposes other than collective bargaining violates Complainants' rights to freedom of speech and association;

(2) Said provisions and agreements are not rationally related to a public purpose and thereby deny Complainants substantive and procedural due process of law;

(3) Said provisions and agreements involve a delegation of legislative power without reasonable standards or limitations; and

(4) Said provisions and agreements deny Complainants equal protection of law.

The Complainants would have the Commission issue an interlocutory order requiring the escrow of fair-share deductions of Complainants and all the employes in the class they represent pending a final determination in this matter. It further requests the Commission, in its final order, to require the Respondents (1) to cease and desist from requiring Complainants and members of their class to pay fair-share fees which are in excess of a proportionate share of the cost of collective bargaining and contract administration; (2) order the Respondent Union to return, with interest, all fair-share deductions made since March 1, 1972, 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 Respondent Union of entering into, and enforcing, any fair-share agreement covering the employes in the bargaining unit in which Complainants are employed; (4) require Respondent Board to cease and desist for a period of one year from making fair-share deductions from the earnings of the Complainants and class members; (5) require the Respondents to cease and desist from enforcing any fair-share agreement involving bargaining unit employes until Respondent Union has 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 Respondents

Separate answers to the amended complaint were filed by (1) Respondent AFSCME, and (2) District Council 48, Local 1053 and the individual officers. Respondent AFSCME admitted certain factual allegations set forth in the amended complaint, denied the various conclusions of law therein, and as to other allegations, put the Complainants on proof thereof. Respondent AFSCME also alleged that it was not a party to any of the collective bargaining agreements involved herein, namely those covering the collective bargaining units in which the Complainants are employed. As affirmative defenses Respondent AFSCME alleges that it has an internal rebate procedure, whereby members and non-members who object to expenditures have an opportunity to challenge same, and obtain rebate as a result thereof.

Respondent AFSCME avers that Complainants have not attempted to utilize such procedure, and further that the Complainants have not objected to it regarding their claims of impermissible expenditures, and that therefore the Complainants should be barred from any claim for relief requested. Respondent AFSCME would have the Commission dismiss the amended complaint.

The remaining Respondent Unions and the individual named Respondents also filed an answer, which was consistent with that filed by Respondent AFSCME.

The Respondent Board filed an answer wherein it admitted certain of the factual allegations contained in the amended complaint and put the Complainants on proof as to the remaining factual allegations contained in the amended complaint. As an affirmative defense, the Respondent Board alleged that it and District Council 48, AFSCME and Local 1053 in their collective bargaining agreements, agreed to hold Respondent Board harmless "from any damages arising out of any legal action brought by employes contesting the validity of the fair-share agreement" between them. Respondent Board requested the Commission to dismiss the amended complaint on its merits. During the hearing Respondent Board indicated that as a result of said agreement, and that because it had entered into the fair-share agreement in good faith, it "must join with the Unions' position with respect to any positions they have taken in this matter."

Nature of Activities Relating to Expenditures by Respondent Union

Prior to the commencement of the hearing herein the parties stipulated to some thirty-one types of activities which involve expenditures by the Respondent Union. Said categories of expenditures are set forth in para. 11 of the Initial Findings of Fact, and our rationale with respect to each of said categories is set forth subsequently in this memorandum.

Form of This Stage I Decision

At a pre-hearing conference the parties agreed that the proceeding should be bifurcated, and that the Commission, in Stage I of the proceeding, should initially determine the categories of expenditures from fair-share deductions, as contemplated by the pertinent provisions of MERA and other applicable law, and that thereafter, in Stage II of the proceeding, the Commission should proceed with the determination of the remaining issues. The Commission urged the two stage proceeding, in the interest of economy in litigation, as well as to the possible avoidance of requiring evidence not material to various categories of expenditures. However, the parties could not agree as to whether the Stage I decision of the Commission should be issued in a form which is appealable to the courts. By letters to the Commission, dated March 3 and 10, 1980, the parties expressed their views with regard thereto. The Respondents would have the Commission issue its Stage I decision in an appealable form, contending that a non-appealable decision may affect the presentation of evidence in Stage II of the proceeding should either party believe that any portion of the Stage I decision is erroneous, and further, that the Stage I decision might be acceptable to the parties, and thus would eliminate Stage II of the proceeding. The Respondents further argue that, in any event, the Stage II proceeding would not be delayed, and that the law does not prevent the issuance of the Stage I decision in an appealable form.

The Complainants are opposed to any appealable decision in Stage I, contending that separate appealable decisions in both Stage I and II would necessarily involve two appeals, and that it would ultimately result in a delay of the resolution of precedent setting litigation. 5/

We have decided to issue our determinations in Stage I of the instant proceeding by setting forth our Initial Findings of Fact and Initial Conclusions of Law, together with our supporting memorandum. In Stage II of the proceeding we intend to determine the procedure to be utilized for the purpose of establishing the exact amounts due and owing to the Complainants and to the members of their class who have previously objected, as well as the manner and method of payment of same, and if necessary, to determine the procedure and amounts for future permissible deductions from fair-share payors, and any other matters relating to this proceeding. We are hopeful that the parties may agree on the matters to be considered in Stage II, or at least to a procedure with regard to such determinations, which might not involve the participation of the Commission.

If, after a review of the initial Stage I decision, the parties agree that said decision should be appealable to the courts, the Commission will not oppose such appeal, and in that regard, should the parties deem it necessary, the Commission would re-issue same in the form of a declaratory ruling.

Complainants' Constitutional Claims

Sec. 111.70(1)(h), MERA defines a fair-share agreement as "an agreement between a municipal employer and a labor organization under which all or any of the employes in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members."

Sec. 111.70(2), MERA provides that municipal employes have the right to refrain from any concerted activities, including the right to refrain from forming, joining, or assisting labor organizations, as well as the right to refrain from collective bargaining "except that employes may be required to pay dues in the manner provided in a fair-share agreement". Complainants mount a constitutional challenge to said fair-share scheme, contending that:

1. The compelled exaction of money from Complainants and its use for purposes other than collective bargaining violates Complainants' rights to freedom of speech and association.

2. Said statutes and agreements are not rationally related to a public purpose and thereby deny Complainants substantive and procedural due process of law.

5/ In support of such argument Complainants cite BRAC et al v. Ellis et al, US Ct. of Appeals (Ninth Cir.), slip op., June 7, 1976, to the effect that the refusal to grant leave to appeal of a decision to the District Court on the grounds that no irreparable harm would result if the appeal were deferred, and because it would aid the Appeals Court by an exhaustive exploration of the facts and the careful segregation of the items of alleged damages.

3. Said statutes and agreements involve a delegation of legislative power without reasonable standards or limitations.

The Respondent Unions contend that the Legislature has concluded that collective bargaining and fair-share do serve a valuable public purpose and that the Commission is foreclosed from reviewing its judgment.

Our Supreme Court in its 1978 decision in Browne, which caused this proceeding to be initiated before the Commission, stated, in material part, with respect to the constitutional issues, as follows:

> The plaintiffs contend that the trial court decision still leaves open questions about whether the statute is being constitutionally applied to them, but at a June 29, 1977 hearing after the opinion was issued the trial court stated that,
>
> "Although the Court declared the Wisconsin Statute constitutional on its face, a further constitutional issue would normally be apparent in this case on First Amendment rights, but that issue really is moot since the statute itself indicates the expenditures by the unions of fair-share monies are limited to contract administration and collective bargaining, which gives greater rights to the plaintiffs than solely First Amendment rights."
>
> At an August 22, 1977 hearing the trial court referred to its previous decision and stated that,
>
> "There is no question that the issue before the Court in the May 16th decision was solely the question of whether or not that portion of the statutes was unconstitutional on its face. The Court did make referral in its opinion to certain expenditures that would be placed in the record by the plaintiffs concerning a number of different expenditures in both the Browne and Gerleman cases, and only for purposes of guidance for any agency or referee that will be adopted when it makes its determination on findings of fact and conclusions of law as to whether or not the expenditures come within the statute, which, as I have indicated on a number of occasions, is more restrictive of the union's rights than the plaintiffs' First Amendment rights. (emphasis added).
>
> Based on the above statements the trial court must have determined that the issue of the "as-applied" constitutionality of the statute was foreclosed by the statute itself. Sec. 111.70(1)(h), Stats. (1975), provides that fair-share employees are required to pay the costs of collective bargaining and contract administration. The trial court evidently reasoned that these costs determine the largest amount due from non-union employes and not the ". . . amount of dues uniformly required of all [union] members." Sec. 111.70(2), Stats., supra. Under this paragraph issues of constitutional application of the statute are settled because the statute is interpreted so that only money for constitutional purposes can be collected under it.

This approach complies with the rule that when,

> ". . . a legislative enactment . . . is attacked as being unconstitutional . . . the cardinal rule of statutory construction is to preserve a statute and to find it constitutional if it is at all possible to do so." Gottlieb v. Milwaukee, 33 Wis.2d 408, 147 N.W.2d 633 (1967).
>
> "'. . . the duty of this court is . . . if possible, to so construe the statute as to find it in harmony with accepted constitutional principles.'" State ex rel. Harvey v. Morgan, 30 Wis.2d 1, 13, 139 N.W.2d 585 (1966).

We agree with the trial court's interpretation of sec. 111.70(2), Stats. The statute itself forbids the use of fair-share funds for purposes unrelated to collective bargaining or contract administration.

The Supreme Court further held, at page 332, that Sec. 111.70(1)(h) is constitutional on its face, and by its terms the statute does not require the Complainants to contribute to political purposes in violation of their first amendment rights. We therefore reject the Complainants' general constitutional challenges.

Burden of Proof

While the parties are in agreement that the burden of proof in Stage II of the proceeding is on the Respondents, Complainants, contrary to Respondents, contend that the burden of proof in Stage I rests on the Respondents. The Respondents, without conceding that they have the burden of proof in establishing that the various categories of expenditures relate to the collective bargaining process and contract administration, agreed to accept the burden of going forward with the presentation of the evidence. Our Supreme Court in its 1978 Browne decision, at page 340b, made it clear that the Respondent Union has the burden of proving that the funds exacted from fair-share payments are being spent for purposes relating to the collective bargaining process and contract administration.

The Anderson Testimony

Prior to the hearing, before the Commission, the Complainants filed a Motion in Limine seeking an order excluding the testimony of the Respondents' sole witness, Arvid Anderson, Chairman of the Office of Collective Bargaining for New York City. In support of their motion the Complainant argued:

1. The agreed purpose of Stage I is to determine what categories of the Respondent Unions' expenditures are within and what categories thereof are outside the costs of the collective bargaining process and contract administration under MERA.

2. For purposes of this litigation the parties have agreed to an exhaustive list of all existing categories of expenditures made by the Respondent Unions.

3. Any testimony of Anderson, relevant to the actual expenditure practices of the Respondent Unions, should be rejected as being in derogation of the parties' stipulation.

4. Any testimony of Anderson relevant to the remaining issues in Stage I is irrelevant and incompetent, since:

   (a) What Unions in fact do with dues money is not relevant to the questions of law involved herein;

   (b) The question of what expenditures are related to the collective bargaining process and contract administration under Wisconsin Law is statutorily defined and needs no interpretation;

   (c) Even under the "membership obligation" imposed by the Railway Labor Act individuals who object to membership cannot be compelled to pay for many of the activities of Unions 6/ and that a fair share law, such as that involved in this procedure, is narrower in that it cannot be interpreted to allow for the taking of non-members money for expenditures beyond the direct cost of negotiating and administering the actual agreement covering such employes;

   (d) Wisconsin cases, and the law generally, preclude the use of such testimony as an extrinsic aid to statutory construction; and,

   (e) It is inappropriate to use expert testimony to help interpret terms which are statutorily defined.

At the hearing, the Complainants renewed their motion, and reasserted the arguments contained in their motion. The Respondents, in opposing the motion, argue that the purpose of the proffered testimony is to create a factual record for the Commission and courts concerning the matters involved in the collective bargaining process in the public employment sector. The Respondents deny that Anderson's testimony is for the purpose of determining the meaning of the statutory language. By way of example, the Respondents argue that expert testimony concerning the reasons why public sector unions advertise their positions, and how such advertising relates to the collective bargaining process, is relevant factual background in determining to what extent such advertising should be found to be properly chargeable to non-members pursuant to a fair share agreement. Finally the Respondents argue that the testimony was not being offered to "impeach the statute" or "impeach the stipulation" as alleged by the Complainants.

The Commission conditionally admitted Anderson's testimony, noting that the relevance of such testimony would be affected inter alia by the interpretation given the statutory definition of fair-share agreements. In so doing the Commission indicated its reluctance to exclude such evidence, and thereby create a possible procedural error which might necessitate a remand for further hearing upon court review. Further, the Commission made it clear that the admission of Anderson's testimony was not intended to grant the Respondents a license to depart from the joint submission agreed to by the parties,

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6/ The Complainants cite the holding of the District Court in the case of Ellis et al v. BRAC et al 91 LRRM 2339 (S.C. Cal 1976).

wherein they set out an exhaustive list of the categories of expenditures engaged in by the Respondent Unions. Finally the Commission noted that it was not determining the relative weight if any, that would be accorded this evidence.

Following the hearing, the Complainants, in their brief, repeated their objection to the admission of Anderson's testimony, and raised additional arguments, based on their voir dire of Anderson at the hearing. Specifically, the Complainants argue that his testimony is irrelevant and incompetent because Anderson did not have the requisite knowledge of the Respondents' activities to make him an expert, and that Anderson has "financial ties" to the Respondent Unions which impugn his neutrality.

The Respondent Union admits that Anderson possesses no specific knowledge of its expenditure practices, but contends that this fact is irrelevant since the intended purpose of his testimony is to provide expertise as to the collective bargaining process and contract administration in the public sector. With regard to Anderson's alleged "financial ties" to AFSCME, the latter argues that such ties are of an "institutional" nature, i.e. as head of the New York City Office of Collective Bargaining, a third party neutral body created pursuant to statute. Anderson receives part of his salary from the City, and part from unions, including AFSCME, since such partial support is required of labor organizations active in the representation of New York City employes.

In reconsidering our ruling at the hearing, we first note that Anderson's testimony was not offered, and has not been considered, for the purpose of determining what expenditures the Respondent Union makes of fair-share monies exacted from the Complainants. Furthermore, we do not deem the fact that Anderson derives part of his salary from monies paid by AFSCME to the Office of Collective Bargaining in New York City to be a basis for the disqualifying him as an expert witness. Such financial arrangements are conventional in the field of labor relations and are designed to insure neutrality, since Anderson's salary, in part, is contributed by the City of New York.

We are therefore left with the question as to whether Anderson's testimony is irrelevant and incompetent for the other reasons alleged by the Complainants. In this regard we note that Anderson's testimony is not being offered for the purpose of testifying as to the intent of the legislature, or any particular member or members of the legislature. Therefore most of the cases relied upon by the Complainants are deemed to be inapposite.

Anderson's testimony is not admitted for the purpose of determining any question of law involved in this proceeding. While the parties did stipulate to a list of categories relating to the expenditures by the Respondent Union, Anderson was the only witness who presented testimony relating to the possible relationship of such categories to the collective bargaining process and contract administration. While the members of this Commission have expertise in the field involved, such expertise is not reflected in the record made in this proceeding. Anderson's testimony furnishes such a record, and therefore we deem it admissible herein.

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

An issue has also arisen as to whether only the Respondent Local 1053 is entitled to that portion of fair-share deductions which only it expends for the purpose of the collective bargaining process and contract administration in servicing the employes in only the collective

bargaining unit which includes the Complainants. The Complainants urge the Commission to so conclude. On the other hand, Respondent Union argues that the activities of the Respondent Local, District and the parent national organization (AFSCME), as well as other affiliated organizations, in the collective bargaining process and contract administration, representing employes in other units, as well as the unit involving the Complainants, are properly chargeable against fair-share contributions by the Complainants and members of their class who have objected. The term fair-share agreement is defined in Sec. 111.70(1)(h), MERA as "an agreement between a municipal employer and a labor organization under which all or any of the employes in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members".

There is nothing in the definition cited above which limits the amount to be deducted as fair-share payments to that amount of dues retained only by Respondent Local 1053. The bargaining representative selected herein by a majority of the employes in the bargaining unit jointly consists of Respondent Local 1053 and Respondent District Council 48, AFSCME. 7/ Therefore, that portion of the dues paid by employes in the bargaining unit which constitute per capita dues to Respondent District Council and to Respondent AFSCME (the International) fall within the definition of "dues" expressed in the statutory provision above. Furthermore, other labor organizations with which the bargaining representative herein has affiliation receive per capita or other payments from dues, for services, directly or indirectly, which pertain to the representational interest of the bargaining representative herein, in the performance of such representative's function in the collective bargaining process and contract administration. The relationship of such organizations to the bargaining representative, in such regard, and the rationale with respect to such services, are discussed subsequently herein.

Scope of Chargeable Activity

Complainants would limit the scope of activity properly chargeable to fair-share employes to the following three categories: (a) meeting and conferring with the Respondent Board in reaching an agreement concerning wages, hours, and working conditions; (b) resolving issues arising under that agreement; and (c) reducing that agreement to a signed written document.

Complainants principally rely on two applicable statutes, namely, Sec. 111.70(1)(h), MERA, which defines a fair-share agreement as an agreement under which any or all employes in a unit must pay their proportionate share of the "cost of the collective bargaining process and contract administration", and Sec. 111.70(1)(d), MERA, which defines collective bargaining as performance of the obligation "to meet and confer . . . with respect to wages, hours and conditions of employment . . ., or to resolve questions arising under such an agreement . . . [and] the reduction of any agreement reached to a written and signed document."

In addition, Complainants argue that under broader language in other legislation, such as the National Labor Relations Act and the Railway Labor Act, narrowing constrictions have been imposed. Further,

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7/ Representative thereof executed the pertinent collective bargaining agreements.

Complainants argue that under Abood v. Detroit Bd. of Ed. 8/ where the U.S. Supreme Court construed a Michigan statute much like Wisconsin's, the Court determined that the amount chargeable is limited to services for collective bargaining, contract administration, and grievance adjustment. Finally, Complainants contend that the amount chargeable also is limited by what is necessary for a union to discharge its duty of fair representation.

Respondent Union contends that the cost of the collective bargaining process and contract administration includes all activity for which public sector unions reasonably and traditionally expend their membership dues. It emphasizes the words "process" and "administration", within Sec. 111.70(1)(h), MERA, as contemplating ongoing, institutional, rather than intermittent, ad hoc activities. Respondents further note the Legislature's overall policy to reduce labor disputes, Sec. 111.70(6), MERA, and the definition of "labor dispute" as including controversies concerning representation in negotiating, maintaining, changing or seeking to arrange wages, hours and conditions of employment, and that, municipal employes have the right to organize for "other mutual aid or protection," as set forth in Sec. 111.70(2), MERA.

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 9/ 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 employes, 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 employes 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. Abood 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 its representational interest in expending funds seeking the enactment of legislation beneficial to employes generally, and especially to municipal employes, and in opposing legislation which would tend to have an opposite effect.

8/ 421 U.S. 239, 81 LC 74,125.

9/ 83 Wis. 2d. 588.

On the other hand, Respondents too broadly construe the "fair-share agreement" provision when they would include expenditures for whatever unions traditionally and reasonably have done. The statutory language involved herein prohibits the Commission from accepting such an interpretation.

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 employes 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 employes in the bargaining unit involved, as well as the wages, hours and working conditions of other employes represented by said union and its affiliates, and that therefore such expenditures are properly included in the amount of fair-share payments by unit employes who are not members of said union.

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: 10/

> 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

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10/ Footnote references in opinion are omitted.

more influence in the decisionmaking process than is possessed by employees similarly organized in the private sector.

The distinctive nature of public-sector bargaining has led to widespread discussion about the extent to which the law governing labor relations in the private sector provides an appropriate model. To take but one example, there has been considerable debate about the desirability of prohibiting public employee unions from striking, a step that the State of Michigan itself has taken, Mich. Comp. Laws Subsec. 423.202. But although Michigan has not adopted the federal model of labor relations in every respect, it has determined that labor stability will be served by a system of exclusive representation and the permissive use of an agency shop in public employment. As already stated, there can be no principal basis for according that decision less weight in the constitutional balance than was given in Hanson to the congressional judgment reflected in the Railway Labor Act. The only remaining constitutional inquiry evoked by the appellants' argument, therefore, is whether a public employee has a weighter [sic] First Amendment interest than a private employee in not being compelled to contribute to the costs of exclusive union representation. We think he does not.

Public employees are not basically different from private employees; on the whole, they have the same sort of skills, the same needs, and seek the same advantages. "The uniqueness of public employment is not in the employees nor in the work performed; the uniqueness is in the special character of the employer." Summers, Public Sector Bargaining: Problems of Governmental Decisionmaking, 44 Cinn. L. Rev. 669, 670 (1976) (emphasis added). The very real differences between exclusive agent collective bargaining in the public and private sectors are not such as to work any greater infringement upon the First Amendment interests of public employees. A public employee who believes that a union representing him is urging a course that is unwise as a matter of public policy is not barred from expressing his viewpoint. Besides voting in accordance with his convictions, every public employee is largely free to express his views, in public or private, orally or in writing. With some exceptions not pertinent here, public employees are free to participate in the full range of political activities open to other citizens. Indeed, just this Term we have held that the First and Fourteenth Amendments protect the right of a public school teacher to oppose, at a public school board meeting, a position advanced by the teacher's union. City of Madison Joint School District No. 8 v. Wisconsin Employment Relations Comm'n, -- U.S. -- . In so ruling we recognized that the principle of exclusivity cannot constitutionally be used to muzzle a public employee who, like any other citizen, might wish to express his view about governmental decisions concerning labor relations, id., at --.

There can be no quarrel with the truism that because public employee unions attempt to influence governmental policymaking, their activities -- and the views of members who disagree with them -- may be properly termed

political. But that characterization does not raise the ideas and beliefs of public employees onto a higher plane than the ideas and beliefs of private employees. It is no doubt true that a central purpose of the First Amendment "was to protect the free discussion of governmental affairs." Post, at 15, citing Buckley v. Valco, 424 U.S. 1, 14, and Mills v. Alabama, 384 U.S. 214, 218. But our cases have never suggested that expression about philosophical, social, artistic, economic, literary, or ethical matters -- to take a nonexhaustive list of labels -- is not entitled to full First Amendment protection. Union members in both the public and private sector may find that a variety of union activities conflict with their beliefs. Compare, e.g., p. 12, supra, with post, at 12-14. Nothing in the First Amendment or our cases discussing its meaning makes the question whether the adjective "political" can properly be attached to those beliefs the critical constitutional inquiry.

The differences between public and private sector collective bargaining simply do not translate into differences in First Amendment rights. Even those commentators most acutely aware of the distinctive nature of public-sector bargaining and most seriously concerned with its policy implications agree that "[t]he union security issue in the public sector . . . is fundamentally the same issue . . . as in the private sector . . . . No special dimension results from the fact that a union represents public rather than private employees." H. Wellington & R. Winter, The Unions and the Cities 95-96 (1971). We conclude that the Michigan Court of Appeals was correct in viewing this Court's decisions in Hanson and Street as controlling in the present case insofar as the service charges are applied to collective bargaining, contract administration, and grievance adjustment purposes.

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Because the Michigan Court of Appeals ruled that state law "sanctions the use of nonunion members' fees for purposes other than collective bargaining," 60 Mich. App., at 99, 230 N.W. 2d, at 326, and because the complaints allege that such expenditures were made, this case presents constitutional issues not decided in Hanson or Street. Indeed, Street embraced an interpretation of the Railway Labor Act not without its difficulties, see 367 U.S., at 784-786 (Black, J., dissenting); id., at 799-803 (Frankfurter, J., dissenting), precisely to avoid facing the constitutional issues presented by the use of union-shop dues for political and ideological purposes unrelated to collective bargaining, id., at 749-750. Since the state court's construction of the Michigan statute is authoritative, however, we must confront those issues in this case.

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 star 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, Torcaso 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 Categories of Expenditures

As indicated previously herein the parties have stipulated to the categories of expenditures by the Respondent Union. The Complainants raise no objection to the propriety of the expenditures for the following purposes: 11/

(1) Gathering information in preparation for the negotiation of collective bargaining agreements.

(2) Gathering information from employees concerning collective bargaining positions.

(3) Negotiating collective bargaining agreements.

(4) Adjusting grievances pursuant to the provisions of collective bargaining agreements.

(5) Administration of ballot procedures on the ratification of negotiated agreements.

(7)(a & b) Purchasing books, reports, and advance sheets used in negotiating and administering collective bargaining agreements, and in processing grievances.

(8)(a & b) Paying technicians in labor law, economics and other subjects for services used in negotiation and administering collective bargaining agreements, and in processing grievances.

(23) Membership meetings and conventions held, in part, to determine the positions of employes in Complainants' bargaining unit on provisions of collective

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11/ The numerical identification of the various categories corresponds to those set forth in the stipulation of the parties, and where the term "Respondents" appears it refers to Local 1053, the District Council and the International.

bargaining agreements covering their employment or on grievance administration pursuant to the provisions.

(25) Publishing newspapers and newsletters which, in part, concern provisions of the collective bargaining agreement covering Complainants' employment, or grievance administration pursuant to its provisions.

(28)(a) The prosecution or defense of litigation or charges to obtain ratification, interpretation, or enforcement of collective bargaining agreements.

The following categories of expenditures not only relate to employes of the District, but to employes of other employers. The Complainants, contrary to the Respondent Union, contend that any expenditures incurred as a result of the activity of the Respondent Union therein are impermissible fair-share deductions:

(9) Organizing within the bargaining unit in which Complainants are employed.

(10) Organizing bargaining units in which Complainants are not employed.

(11) Seeking to gain representation rights in units not represented by Respondents, including units where there is an existing designated representative.

(12) Defending Respondents against efforts by other unions or organizing committees to gain representation rights in units represented by Respondents.

(13) Proceedings regarding jurisdictional controversies under the AFL-CIO constitution.

(14) Seeking recognitions as exclusive representative of bargaining units in which Complainants are not employed.

(15) Serving as exclusive representative of bargaining units in which Complainants are not employed.

The expenditures of the Respondent Union in organizing employes in the bargaining unit in which the Complainants are employed undeniably enhances the representative status of the Respondent Union involved in representing all employes in the unit. The more secure a union's majority status remains the more effectively it is able to carry out its responsibilities to those employes it represents in the unit involved.

Organizing employes in other units, involving employes of the same employer, or employes of other employers, seeking recognition or certification as the exclusive collective bargaining representative of employes 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 employes. The competitive wages of the unorganized impinge intimately on the extent of benefits which can be successfully negotiated for the instant bargaining unit employes. Increasing the overall size of its organization enables a union to afford better representation in servicing the employes in the instant bargaining unit.

Since January 1, 1978 Sec. 111.70(4)(cm), MERA has provided for binding "final offer" arbitration in the event a municipal employer and a union representing its employes are at impasse in their bargaining on a collective bargaining agreement. Said statutory provision requires the mediator-arbitrator to issue a final and binding award to resolve such impasse, and among the criteria to be considered by the mediator-arbitrator, are the following:

> Comparison of wages, hours and conditions of employment of municipal employes . . . with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

Thus it is apparent that, particularly in municipal employment, wages, hours and working conditions applicable to other employes of the same employer, as well as wages, hours and working conditions of employes of other employers, agreed upon in collective bargaining, impact on the results obtained in collective bargaining for the employes in unit involved herein, even prior to the enactment of the above statutory provision.

It is beyond cavil that defending itself against organizational activities by other labor organizations is essential if the majority representative is to be effective. Although Complainants understandably are offended to make proportionate payments in "civil war" strife between unions and between factions of employes within a unit, these disputes are a fact of life and the ability to exist is a condition precedent to the ability to represent effectively. Similarly, increasing its size by obtaining representation rights in other units enhances a union's ability to provide quality services to the employes it represents.

Participation in the AFL-CIO dispute resolution mechanisms reduces inter-union disputes and serves the objective of labor peace in public employment. The representation of employes in bargaining is big business, and it is sophisticated. It is simplistic to believe that the activity goes no farther than the bargaining table and includes no more than the bargaining unit employes involved herein, or a simple majority of them. The employes have conflicting interests and frequently assert them. The principle of exclusive representation itself is a jurisdictional dispute resolution: it commands the employer to deal only with the majority representative. Internal union dispute resolution devices within and among labor organizations serve the purpose of stabilizing labor relations. Thus, we conclude that expenditures for Respondent Union's activities relating to categories (9) through (14), and otherwise permissible expenditures relating to category (15), are properly chargeable to "fair-share" deductions.

The Complainants also object to the following categories of expenditures:

(16) Training in voter registration, get-out-the vote, and campaign techniques.

(17) Supporting and contributing to charitable organizations.

(18) Supporting and contributing to political organizations and candidates for public office.

(19) Supporting and contributing to idealogical causes.

interests in political, charitable, and ideological matters. The latter activities are not chargeable.

Complainants object to the chargeability of:

(21) Supporting and contributing to international affairs.

Respondent Union defends such expenditures as falling in an area traditionally and reasonably participated in by unions. The activity is too remote from Respondent Union's representational interest in the collective bargaining process and contract administration to warrant a conclusion that such sums are properly chargeable to "fair-share" deductions.

Also objectionable are monies expended for:

(22) Supporting and paying affiliation fees to other labor organizations which do not negotiate the collective bargaining agreements covering Complainants' employment.

Affiliations with other labor organizations, especially umbrella organizations, relate to the representational interest, in that such activity provides the exclusive representative with a supply of expertise in personnel and services to enhance the effectiveness of its representation in the collective bargaining process and in contract administration. Therefore, this category is chargeable to said extent, but not to the extent of any support or the payment of fees to other organizations for impermissible purposes, e.g. political, charitable, and ideological, or other activity unrelated to the representational interest in the collective bargaining process and contract administration.

While the Complainants agree that deductions for expenditures for meetings reflected for the purposes noted in category (23) 19/ are properly chargeable to fair-share payments, it objects to the chargeability of

(24) Membership meetings and conventions held, in part, for purposes other than those identified in (23).

To the extent that such meetings and conventions relate to impermissible categories, they are not chargeable. On the other hand, to the extent that they relate to the permissible activities, they are chargeable. We recognize that some conventions and meetings involve both permissible and impermissible categories of expenditures, thus requiring an apportionment of the expenditures therefore.

Complainants also oppose the chargeability of the following categories:

(6) The public advertising of Respondents' positions (a) on the negotiation of, or provisions in, collective bargaining agreements, and (b) on other subjects.

(26) Publishes newspapers and newsletters which, in part, concern subjects other than those identified in (25).

Where the advertising relates to the representational interest in the collective bargaining process and contract administration, in

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19/ See page 27.

the state legislature. Such enactments affect a union's position in seeking to obtain supplemental benefits relating thereto in collective bargaining with employers. 17/

Further, to be chargeable, a particular lobbying activity need not relate to a particular bargaining unit's benefits where it is part of an overall program with other units by which they pool their strength, in furtherance of their mutual aid or protection, to assist each other. Thus, a seasonal industry has unique interests in unemployment compensation benefits not shared by year-round employes, and the latter may have interests in relieving local taxpayer burdens not shared by the former. They assist each other, however, and thereby themselves, by pooling their lobbying efforts.

The U. S. Supreme Court has held that an employer may not discharge an employe for participating in a union sponsored effort of writing letters to legislators opposing "right-to-work" legislation and criticizing a Presidential veto of minimum wage legislation. In that case the employer argued that the activity was political in nature and not related to collective bargaining concerning unit matters. The Court disagreed, saying that employes are defined as not limited to any one employer, and that to confine "mutual aid or protection" as limited to unit bargaining matters would allow retaliation for activity "that could improve their lot as employees." This result would frustrate the objective to "protect the right of workers to act together" to improve their conditions. 18/

In the public sector, of course, different factors enter the calculus of which lobbying activities are chargeable to dissenting employes. Nevertheless, it must be recognized that certain lobbying activities for the mutual aid or protection of employes in different bargaining units frequently are integral, though ancillary, to effective representation in the collective bargaining process.

On the other hand, there may be lobbying activities which, rather than calculated to benefit working conditions, serve the union's other

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17/ The economic position of both labor and management their power at the bargaining table - is dependent upon many variables, not the least of which (at least in the short run) is ever changing federal and state law . . . . also important to the power of a union at the bargaining table, are minimum wage legislation, social security legislation, legislation dealing with unemployment and workmen's compensation, and the many other forms of welfare legislation which provide a foundation upon which unions may build in bargaining with management. Another factor that may be equally important to the union's economic position at the bargaining table is tariff legislation or other types of industry protecting or subsidizing enactments. More attenuated perhaps, but still important, are the general economic policies of an administration. (Is it then any wonder that business-minded unions are interested in politics and politicians?) [Footnotes omitted] H. Wellington, Labor and the Legal Process 247 (1968).

18/ Eastex, Inc. v. NLRB, 98 S. Ct. 2505 (1978).

Getting out the vote for candidates favorable to Respondent Union's interest and objectives, and contributions to them and their parties, ultimately may result in legislation and decisions which redound to the benefit of employes for the purposes of collective bargaining and contract administration. However, such categories of expenditures lack the proximity to the representational interest in the collective bargaining process and contract administration to clearly be able to override the core of the protections secured to employes as citizens generally by the first amendment. The right to identify with political parties and candidates "is an integral part of this basic constitutional freedom" of association. 12/ Contributing to an organization, for the purpose of spreading a political message is protected. 13/ Similarly, compelling a contribution for political purposes "works no less an infringement." 14/ The freedom to associate for charitable or ideological causes is so within the core of the first amendment protections that it is protected against even "subtle" interference. 15/ Such activity is also too remote from the representation function, as well as the collective bargaining process and contract administration to be permitted as a proper "fair-share" deduction. Thus we conclude that expenditures for the activities of Respondent Union and others utilizing fair-share funds collected by Respondent Union, in categories (16) through (19) are not permissible in determining proper "fair-share" contributions, since the constitutional freedoms involved therein are paramount to that of the representational interest in the collective bargaining process and contract administration.

The Complainants also contend that the following category involves non-permissible expenditures:

> (20) Lobbying for legislation or regulations or to effect changes in legislation or regulations before Congress, state legislatures, and state or Federal agencies.

Abood recognized that certain lobbying activities might be an integral part of the collective bargaining process in stating that approval of the collective bargaining agreement may be required by other public authorities. Further, it added that "related budgetary and appropriations decisions might be seen as an integral part of the bargaining process." 16/

As noted, although the representational interest is not confined to direct dealings with an employer, nevertheless it is confined to activities reasonably calculated to benefit bargaining unit employes in their wages, hours, and conditions of employment. Certain lobbying activities clearly come within this rule. For example, efforts to increase financial aids to local units of government directly affect the amount of funds available for salaries and fringe benefits. Benefits of worker's compensation and unemployment compensation, which certainly impact on working conditions, require enactment by

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12/ Kusper v. Pontikes, 414 U.S. 51 (1973).

13/ Buckley v. Valeo, 424 U.S. 1 (1976).

14/ Abood, supra.

15/ Bates v. City of Little Rock, 361 U.S. 516 (1960); NAACP v. State of Alabama, 357 U.S. 449 (1958).

16/ 97 S. Ct. at 1800.

other words, permissible categories, it is properly chargeable, especially in public employment, and the parties have so stipulated. Effective representation concerns not only a union's capacity to deal competently with an employer, but also goes to its responsibility to keep those it represents informed with respect to the collective bargaining process and contract administration. Of course, publishing of matters not relating to such representational interest are not chargeable to fair-share deductions. As in category (24), apportionment has to be made.

Complainants further object to the chargeability of expenditures for:

(27) Impasse procedures, including factfinding, mediation, arbitration, strikes, slow-downs, and work stoppages, over provisions in collective bargaining agreements.

Fact finding, mediation, grievance and interest arbitration are all grist for the mill of the collective bargaining process. Such procedures are intended to accomplish labor peace, and therefore costs in support thereof are properly chargeable. However, costs incurred in support of illegal activity attributable to a union, e.g. illegal strikes and concomitants therof, are not chargeable.

The Complainants have a split view with respect to the following category:

(28) The prosecution or defense of litigation or charges (a) to obtain ratification, interpretation, or enforcement of collective bargaining agreements; (b) concerning issues other than those identified in (a).

Complainants agree that items in subpara. (a) are chargeable. It opposes those in (b). Where any activity in (b) involves a union when it is acting in its representational interest in the collective bargaining process and contract administration, the expenditure for such action is chargeable, unless the activity by the union involves an illegal strike or concomitant thereof.

The following two categories of expenditures are joined for discussion since the chargeability of each is dependent on whose behalf the expenditure is made:

(29) Social and recreational activities.

(30) Payments for insurance, medical care, retirement, disability, death, and related benefit plans.

The Complainants object to the chargeability of both categories. Expenditures involving payments for such activities and benefits to union staff, or others providing services to a union in its representative interest in collective bargaining and contract administration are chargeable, since they are considered a form of compensation for services rendered to the union in carrying out such functions, otherwise such expenditures are not chargeable.

The parties are in essential agreement as to the chargeability of the final category:

(31) Administrative activities allocable, in some part, to each of the activities described in categories (1) through (30). To the extent that such categories are chargeable, so indeed is category (31).

We wish to note that in the initial proceeding before it the Milwaukee County Circuit Court, in its decision, opined as to some of the categories involved herein. The essential question before that court involved the facial constitutionality of statutory provision relating to fair-share agreements. Our Supreme Court, in causing the instant matter to be transferred to the Commission "for further proceedings not inconsistent with this opinion", indicated that the remaining issues involved "factual issues and statutory application: What portion of the fair-share dues are being used for purposes unrelated to contract administration or collective bargaining, in contravention of the statute." 20/ We believe we have followed the Supreme Court's mandate in said regard, and we do not deem to be bound by the Circuit Court's determination of any of the factual issues or legal conclusions with respect to the issues required to be determined by the Commission.

We wish to further note that we have reviewed the cases cited by Complainants in support of their positions on the issues involved herein. 21/ To the extent that our conclusions herein differ, we respectfully disagree with those decisions.

The Initial Conclusions of Law

Pursuant to the agreement of the parties our Stage I decision sets forth the categories of expenditures which we have concluded are permissible or impermissible under the provisions of MERA in determining fair-share payments required to be made by employes in the bargaining unit who are not members of Respondent Union, and who have objected to the amounts deducted. 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 proceeding.

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 employes 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.

Dated at Madison, Wisconsin this 3rd day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Herman Torosian, Commissioner

_____
Gary L. Covelli, Commissioner

20/ 83 Wis. 2d at 333.

21/ Ellis v. Railway Clerks (So. Dist. of California) 91 LRRM 2339; Beck v. CWA, U.S. Dist. Ct., Maryland, 8/18/80.