

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----

In the Matter of the Petition of	:	
	:	
WISCONSIN COUNCIL OF COUNTY AND	:	
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO,	:	Case LX
LOCALS NOS. 1365, 2490 & 2494	:	No. 25855 DR(M)-146
	:	Decision No. 18818
Requesting a Declaratory Ruling	:	
Pursuant to Section 227.06, Wis.	:	
Stats., Involving a Petition Between	:	
Said Petitioner and	:	
	:	
WAUKESHA COUNTY	:	
	:	

-----

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Bruce Ehlke, 110 East Main Street, Madison, Wisconsin 53703, for the Union.  
Michael, Best & Friedrich, Attorneys at Law, by Mr. Marshall R. Berkoff, 250 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, for the Employer.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, and its Locals No. 1365, 2490 and 2494, having, on December 10, 1979, in writing, requested the Wisconsin Employment Relations Commission to determine whether Waukesha County was required to implement a fair-share provision contained in a collective bargaining agreement existing between said Union and said County; and prior to hearing in the matter the parties having agreed that the Commission should issue a declaratory ruling in the matter, pursuant to Section 227.06, Wis. Stats., and hearing in the matter having been conducted on May 9 and 19, 1980, at Waukesha, Wisconsin, Timothy E. Hawks, a member of the Commission's staff being present, and following the receipt of the transcript the parties having filed their briefs by July 25, 1980, and the Commission, having reviewed the entire record, argument and briefs of counsel, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, and its Locals No. 1365, 2490 and 2494, hereinafter jointly referred to as AFSCME, are labor organizations having their offices at 2216 Allen Lane, Waukesha, Wisconsin 53186.
2. That Waukesha County, hereinafter referred to as the County, is a municipal employer and has its offices at 515 West Moreland Boulevard, Waukesha, Wisconsin 53186.
3. That at all times material herein AFSCME has been and is the exclusive collective bargaining representative of certain employees of the County employed in the following collective bargaining units, which are represented by the AFSCME Locals indicated:

Local No. 1365 - County Park and Planning Department employees occupying the classifications of Park Maintenance Men and Greenskeepers.

Local No. 2490 - County Institutions employees, including all clerical employees, Occupational Therapy Aides, Licensed Practical Nurses, and Laboratory Technicians.

Local No. 2494 - All clerical, maintenance and custodial employes employed in the Courthouse; all maintenance and custodial employes employed in the University of Wisconsin facility; Sanitarians, Sanitarian Aides, Laboratory Technician Aides, and Bacteriologists employed in the Health Department; and all Social Workers, Homemakers and Case Aides employed in the Department of Social Services.

4. That AFSCME and the County were parties to a collective bargaining agreement covering wages, hours and working conditions of employes of the County included in the bargaining units noted above, which agreement was in effect from January 1, 1978 through December 31, 1979; and that said agreement contained, among its provisions, the following:

Section 4.10

- . . .
- a. Representation: The Unions, as the exclusive collective bargaining representatives of all of the employees in the bargaining units covered by this Agreement, shall represent all such employees, both Union members and non-members, fairly and equally. All employees in said bargaining units who, at the time the Union demonstrates 60% membership, are members paying Union dues directly or through dues checkoff, as well as those employees who voluntarily become members after such date, shall be required to continue to pay their proportionate cost of such representation as set forth in this Article. All new employees hired after such date shall also be subject to the provisions of the modified fair share agreement.
  - b. Membership: No employee shall be required to join the Local Union that serves as his/her collective bargaining representative, but Union membership shall be made available to all employees who apply, consistent with the Constitution and By-Laws of the Union. No employee shall be denied Union membership on the basis of race, color, creed, religion, sex, national origin, handicap or age.
  - c. Payroll Deduction: The Employer shall deduct from the first paycheck of each month an amount, certified by the Treasurers of Locals 1365, 2490 and 2494 as the monthly dues of all such employees referred to in paragraph A above in the bargaining unit or units represented by such Local Unions.
    1. Newly Hired Employees: With respect to newly hired employees, the deduction noted above shall commence with the first payroll period normally used to make such deductions which represents wages paid for the month following the month in which such employees completed their probationary period.
    2. Periods of No-Pay Status: The Employer shall not be required to submit any amounts to the Local Unions under the provisions of this Article on behalf of employees otherwise covered who are on layoff, unpaid leave of absence, or other status in which they receive no pay for the pay period normally used by the Employer to make such deductions.

3. Inadvertence or Error: If, through inadvertence or error, the Employer fails to make a deduction which is properly due and owing from an employee's paycheck, such deduction shall be made from the next paycheck normally used to make such deductions, and shall be submitted to the Treasurer of the appropriate Local Union.
- d. Administration: The aggregate amount so deducted, along with an itemized list of the employees from whom such deductions were made, shall be forwarded to the Treasurer of the appropriate Local Union within ten (10) days of the date such deductions were made. Any changes in the amount to be deducted shall be certified to the Employer by the Treasurer of the appropriate Local Union at least thirty (30) days prior to the effective date of such change.
- e. Indemnification and Hold Harmless Provision: The collective bargaining representative shall indemnify and save the Employer harmless against any and all claims, demands, suits, orders, judgments or other forms of liability that shall arise out of, or by reason of, action taken by the Employer under the provisions of this Article.
- f. Validity of Fair Share: In the event that the modified Fair Share Agreement as set forth above becomes invalid, the Employer hereby agrees to deduct from the first paycheck of each month, dues from the pay of those employees who individually authorize in writing that such deduction be made. The amounts deducted shall be certified to the Employer by the Treasurer of each Local Union, and the dues so deducted shall be turned over to the Treasurer of each Local Union, along with an itemized list of the employees from whom such deductions were made, within ten (10) days of the date of such deductions. Any changes in the amount to be deducted shall be certified to the Employer by the Treasurer of the appropriate Local Union at least thirty (30) days prior to the effective date of such change.
- g. Rebate Provision: Any employee who may hereafter be subject to the provisions of the fair share agreement of Section 4.10 and who is not a member of such Union will, if they object, be reimbursed by the Union for any portion of the dues deducted not strictly related to the collective bargaining process or contract administration.

5. That on March 2, 1979 the County sent the following letter, over the signature of the Chairman of the County Board, to all employes in the collective bargaining units represented by the AFSCME Local Unions involved herein:

Dear Employee:

The labor contract now in effect following the recent arbitration decision contains a procedure which could affect you and requires some explanation.

It provides that if at some future time AFSCME can demonstrate that its membership constitutes 60% of the employees in this unit, then a "modified fair share" provision will go into effect at that time. If the provision becomes effective, all employees who were then paying dues to the Union (directly or by checkoff) would in the future have their dues automatically deducted by the County. Also, new employees hired after such time (as the Union demonstrated 60% membership) will also be subject to the automatic Union dues deductions beginning one month after the completion of their probationary period.

Any unit employees who are not paying dues to the Union at such time will, if they wish, be exempt from the "fair share" dues deductions in the future. Thus, any current employee or any person who is hired before a 60% membership is reached, has a right not to pay union dues and consequently will not be required to pay these union dues in the future.

As you know, the unit represented by AFSCME includes Park Maintenance and Greenskeepers, paraprofessional and professional employees of the Health Department, employees of Northview Home and Hospital, paraprofessional and professional employees of Social Services, all clerical and maintenance employees. The 60% will be figured on all employees in these groups, including probationary employees.

Of course, if a modified fair share system became effective, the County would be required to continue making deductions in the future from those employees who were already paying dues.

If you have any other questions regarding this matter, please don't hesitate to contact the Personnel Department.

6. That in the spring of 1979 Local 2490 considered assessing an initiation fee of \$25.00 on new members, however neither District Council 40 nor the International Union of AFSCME ratified such a fee; that in November, 1979 said Local posted a notice, where employees represented by it could observe same, indicating that no initiation fee would be imposed since neither the District Council nor the International had approved same; that nevertheless on November 30, 1979 two employees in the unit represented by Local 2490 executed check-off authorizations in favor of said Local on the belief that failure to do so would subject them to an initiation fee; and that no employee in any of the three bargaining units involved herein were intimidated, coerced, or misled in any manner, into executing dues check-off authorizations.

7. That on November 27, 1979 representatives of AFSCME met with representatives of the County for the purpose of establishing that AFSCME had met the requirement that at least 60% of the employees employed in the aforesaid collective bargaining units had become members of one of the three Locals involved herein; that at said meeting the parties agreed that a total of 742 employees were included in said three collective bargaining units; and that in order to require the implementation of the fair-share provision, at least 446 employees had to be members of said Locals, said figure constituting 60% of the total complement of employees employed in said units; that during the course of said meeting AFSCME demonstrated that, based on a computer printout dated November 14, 1981 and prepared by the County from dues authorization checkoff cards in its possession, 395 employees had voluntarily executed written authorizations requiring the County to deduct, from their bi-weekly pay, an amount equal to union dues, which amount had previously been certified to the County by AFSCME, and remitted by the County to AFSCME; that also at said meeting AFSCME representatives advised the County that 31 employees, not included on said printout, had submitted executed cards authorizing the County to make deductions from their pay, equal to dues, and submit same to AFSCME, and that the names of said individuals were not included on said printout noted above since said 31 authorizations had been executed and received after said printout; that as of the date of said meeting said 31 authorizations were in the possession of the County; that as of the date of the meeting AFSCME had in its possession an additional 38 dues deductions authorizations, which had not as yet been submitted to the County; and that on said date AFSCME also established that three additional employees were paying dues directly to AFSCME.

8. That the dues check-off authorizations executed by a total of 464 employees were contained on the following form:

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

AUTHORIZATION FOR PAYROLL DEDUCTION

By \_\_\_\_\_  
PLEASE PRINT LAST NAME FIRST NAME MIDDLE NAME

To \_\_\_\_\_  
NAME OF EMPLOYER DEPARTMENT

Effective \_\_\_\_\_ I hereby request and authorize you to deduct  
DATE from my earnings

each \_\_\_\_\_ an amount sufficient to provide for the regular payment  
PAYROLL PERIOD  
of the current rate of monthly union dues established by AFSCME Local Union  
No. \_\_\_\_\_, Council No. \_\_\_\_\_. The amount shall be certified by Local Union  
No. \_\_\_\_\_, Council No. \_\_\_\_\_ and any change in such amount shall be so  
certified. The amount deducted shall be paid to the treasurer of Local  
Union No. \_\_\_\_\_, Council No. \_\_\_\_\_ AFSCME. This authorization shall  
remain in effect unless terminated by me during the two week period \_\_\_\_\_  
to \_\_\_\_\_ of any year.

\_\_\_\_\_  
EMPLOYEE'S SIGNATURE  
\_\_\_\_\_  
STREET ADDRESS  
\_\_\_\_\_  
CITY AND STATE

9. That the County, following the above described meeting of November 27, 1979, refused, and continues to refuse, to acknowledge said dues check-off authorization cards as evidence of membership in the AFSCME Locals involved herein, contending that the only valid indicia of such membership would be evidence that the employees who had executed such authorizations had taken the membership oath as required in the constitution of the International of AFSCME, and that, therefore, according to County, the condition required for the implementation for fair-share deductions, as set forth in the collective bargaining agreement, has not been met.

10. That, although the constitution of the International of AFSCME provides that those joining AFSCME take a membership oath, none of the AFSCME Locals involved herein require the taking of such an oath by an individual prior to acceptance into membership; that both Locals 1365 and 2494 usually require that candidates for membership execute both an application for membership and an authorization for dues check-off, and that in addition, Local 2494 issues the person a temporary membership card; that Local 2490 does not require a signed application for membership, but merely authorization for dues check-off; that generally the names of new and reinstated membership are forwarded to AFSCME District Council 40 and to the International, and the latter then issues the membership cards; and that therefore the Locals do not require the taking of a membership oath prior to admitting persons to membership, and that all three AFSCME Locals have granted all benefits of membership to individuals who have executed dues check-off authorization cards.

11. That the 464 dues check-off authorizations executed by 464 employees of the County, employed in the three collective bargaining units involved herein, as of November 27, 1979, evidenced that said 464 employees were members of the specific AFSCME Local designated on each of said cards, as well as membership in District Council 40 and the International of AFSCME; and that as a result the conditions precedent set forth in Section 4.10, paragraph a., for the initiation of fair-share deductions from the earnings of those employees of the County set forth in said provision, were met by AFSCME as of November 27, 1979.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

That had the issues in the instant proceeding been brought before the Wisconsin Employment Relations Commission in a prohibited practice proceeding, rather than in a declaratory ruling proceeding, the Commission would have found that Waukesha County committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act, by failing and refusing to implement fair-share deductions after November 27, 1979, pursuant to Section 4.10 of the collective bargaining agreement in effect on said date, between Waukesha County and Locals No. 1365, 2490 and 2494, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law the Commission makes and enters the following


DECLARATORY RULING

That, since the conditions precedent for the initiation of fair-share deductions from those employes of Waukesha County, as set forth in Section 4.10, paragraph a., of the 1978-1979 collective bargaining agreement existing between Waukesha County and Locals No. 1365, 2490 and 2494, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, had been met on November 27, 1979, Waukesha County has, since the latter date, been obligated to make fair-share deductions from the employes covered by said provision, from at least the first payroll period following the latter date.

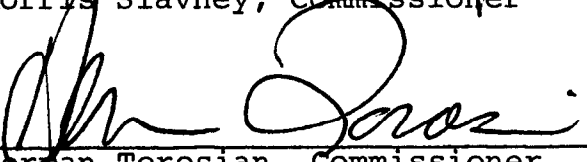
Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
\_\_\_\_\_  
Gary L. Covelli, Chairman

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

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

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND DECLARATORY RULING

Nature of Proceeding

As indicated in the preface to the Commission's decision, the parties agreed that the issue as to whether AFSCME had met the conditions set forth in the collective bargaining agreement between the parties for the initiation of the "modified" fair-share provision contained in said agreement, and whether the County was obligated to initiate fair-share deductions pursuant to said provision, should be determined by the Commission in a declaratory ruling proceeding, pursuant to Section 227.06, Wis. Stats. Thus, the parties agreed that the Commission should determine whether the required number of the employes in the three collective bargaining units represented by the three separate Locals of AFSCME became members of said Locals in order to require the County to implement said fair-share provision and the resultant fair-share deductions.

Position of the County

The County contends that, in order for AFSCME to require the County to implement fair-share deductions, AFSCME must establish that the required number of employes became members of the various Locals, and that AFSCME must establish same by clear and unmistakable proof, and further that such membership was voluntary and uncoerced. According to the County the executed dues check-off authorization only reflects that the employes executing same were merely authorizing deductions equal to the sum union dues to be taken from their earnings and remitted to the various Locals. Further, the County argues that, should fair-share deductions be implemented, employes executing same would not be able to voluntarily cease paying dues, although the check-off authorizations do provide for termination of same upon timely notice. The County claims that the only valid indicia of membership in AFSCME is the taking of the membership oath as required in the constitution of its International, and since such evidence was not adduced during the course of this proceeding the County had no obligation to the fair-share deductions in the manner set forth in the collective bargaining agreement.

The County also asserts that 39 authorizations executed by employes in the unit represented by Local 2490, which employes were employed at the County's Northview health care facility, were tainted by coercion, in that representatives of that Local had threatened to impose an initiation fee as a condition of membership, and that non-members were of the opinion that they would be assessed such fee if they were subject to the modified "union security" provision set forth in Section 4.10 of the collective bargaining agreement. Finally, the County argues, even assuming that the executed check-off authorizations can be construed as evidencing membership, they cannot be considered as such until actual dues deductions are made pursuant to such authorizations and since no dues deductions had as yet been made for those 31 employes whose authorizations had not as of that date been submitted to the County, such employes could not be considered to have become members as of November 27, 1979. On the basis set forth above the County claims that AFSCME has not established the contractual requirements necessary for the initiation of the fair-share deductions in accordance with the terms of the agreement.

The Position of AFSCME

Contrary to the County, AFSCME contends that employes were not coerced or misled into executing the dues check-off authorizations, nor that the possible future revocation of same is material to the conditions set forth in the applicable provision. AFSCME contends that said dues check-off authorizations are inherently reliable indication of membership in the various Locals involved, and that since more than the required number of employes had executed same,

as demonstrated to the County, the County was obligated to implement fair-share deductions as of December 1, 1979.

### Discussion

The number of dues check-off authorization cards executed by employees in the three bargaining units involved, and submitted, or offered to be submitted, to the County by the date noted, were sufficient in number to warrant the implementation of fair-share deductions, provided the authorizations were not obtained through fraud, coercion, misrepresentation, etc., and further provided that such authorizations, on their own, are sufficient to establish Local membership. The fact that the authorizations could have been terminated in accordance with the terms set forth therein is of no consequence, for the contractual provision requiring the implementation of fair-share deductions does not require perpetual membership for the entire period of an individual's employment.

The fact that no dues deductions had been commenced for some 69 employees who had executed check-off authorizations is irrelevant as to whether such cards were effective. Thirty-one of the cards had already been delivered to the County as of November 27th. On the latter date AFSCME had in its possession an additional 38 cards which it was ready to deliver to the County. Thus, the employees who had executed said 69 cards had completed the steps necessary by them to make such authorizations valid.

Assuming arguendo, 1/ that threats, etc., were made by representatives of Local 2490 that unless employees became AFSCME members by mid-December they would be subject to an initiation fee, as contended, ranging from \$25 to \$100, the fair-share provision involved herein does not require "Union" membership, or any necessity to execute a dues check-off authorization by an employee. As explained to the employees by the County, in its letter of March 2, 1979 -- "any current employee or any person who is hired before a 60% membership is reached, has a right not to pay union dues and consequently will not be required to pay these union dues in the future."

The only real and pertinent issue in this matter involves a determination as to whether the dues check-off authorization cards constitute evidence of membership so as to require the implementation of fair-share deductions in accordance with the applicable provision in the collective bargaining agreement existing as of November 27, 1979. An employer has no standing to interfere with the internal affairs of any organization representing its employees for the purposes of collective bargaining. Here the County would impose a greater, or more stringent requirement for membership than have herein been imposed by the AFSCME Locals. We are satisfied that the record establishes that once an employee has executed a check-off authorization he has been considered a Local member and that he can exercise the privilege of such membership regardless of whether he has taken the oath set forth in the constitution of the International. Almost forty years ago the Federal Circuit Court of Appeals for the District of Columbia was confronted with the identical issue in Lebanon Steel Foundry v. NLRB. 2/ In said decision the Court stated, in part, as follows:

The checkoff is distinctively a union arrangement. It exists only where there is a union. It is one of the objects unions seek, for their own as well as their members' benefit. It is unique to unionism and union membership. It is abnormal, if it ever exists, in any other application than to a union member. The nonunion man does not pay dues. He has no reason for the checkoff.

---

1/ We have found to the contrary.

2/ No. 7990, 6/29/42 (6 Labor Cases 63,387)

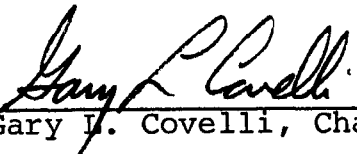


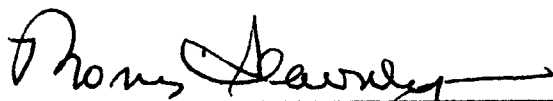
The man who authorizes it has no object or motive other than to have his dues paid at the source of his income. He would not intend, except in most abnormal circumstances, to make a donation to the union, or a payment for benefit received apart from membership. If in advance of payment he promises to pay if and when the union secures a collective agreement, he authorizes them to secure it, as well as promises to pay for the benefit, which includes securing it. In short, the institution of checkoff is itself a badge of membership, and a checkoff card evidence of intention to be a member. The checkoff card therefore carries on its face the clear presumption of membership or intention to become a member. If evidence can overcome this, it must be strong indeed.

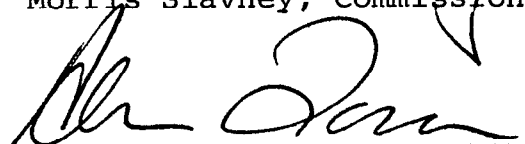
Any additional rationale on our part would constitute unnecessary surplusage for our conclusion that on November 27, 1979 AFSCME met the contractual conditions requiring the implementation of fair-share deductions by the County.

Dated at Madison, Wisconsin, this 8th day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary J. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner