STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ERVIN HEWITT and DUANE PETERSON, Complainants, vs. BOARD OF EDUCATION FOR JOINT SCHOOL DISTRICT NO. 3, HARTLAND, WISCONSIN, HARTLAND EDUCATION ASSOCIATION, WISCONSIN EDUCATION ASSOCIATION COUNCIL and NATIONAL EDUCATION ASSOCIATION, Respondents.	Case I No. 26912 MP-1161 Decision No. 18577-B
KATHLEEN A. CHENTNIK, JANET M. D. HULBERT, GLADIES B. MUMM, BOBY J. FRINGS, PENELOPE L. NIESEN and DONNA F. WARD, Complainants, vs. RICHFIELD EDUCATION ASSOCIATION, Respondent.	Case I No. 27171 MP-1176 Decision No. 18578-B
JEAN EKBLAD, Complainant, vs. NORTHWEST UNITED EDUCATORS, Respondent.	Case III No. 29016 MP-1284 Decision No. 19307-B

ORDER CONSOLIDATING CASES AND GRANTING MOTION TO COMPEL DISCOVERY

Ervin Hewitt and Duane Peterson having filed a complaint with the Wisconsin Employment Relations Commission, alleging that the Board of Education for Joint School District No. 3, Hartland, Wisconsin, and Hartland Teachers Education Association, and Wisconsin Education Association Council, and National Education Association, have committed prohibited practices within the meaning of Section 111.70, Wis. Stats.; Kathleen A. Chentnik, Janet M. D. Hulbert, Gladies B. Mumm, Boby J. Frings, Penelope L. Niesen and Donna F. Ward having filed a complaint with the Wisconsin Employment Relations Commission, alleging that Richfield Education

Association has committed prohibited practices within the meaning of Section 111.70, Wis. Stats.; and Jean Ekblad having filed a complaint with the Wisconsin Employment Relations Commission, alleging that Northwest United Educators has committed a prohibited practice within the meaning of Section 111.70, Wis. Stats.; and the Commission having appointed Amedeo Greco of its staff as Examiner in the above-entitled matters; and because of the unavailability of Amedeo Greco, the Commission having, on August 16, 1982, appointed Christopher Honeyman in place of Examiner Greco; and the Examiner being satisfied that these matters present many similar issues for decision; and Complainants having filed, on April 19, 1982, a Motion to Compel Discovery in these matters; and Respondent Wisconsin Education Association Council having, on May 24, 1982, filed a response to said Motion; the Examiner, having considered the arguments of the parties, makes and issues the following

ORDER

1. That the above-entitled matters be, and the same hereby are, consolidated for purposes of hearing.

2. That the Complainants may for the purpose of preparation for hearing before the Examiner, take and preserve the following evidence:

> All of the Respondent Unions' accounting and other records with regard to their disbursements and activities for the period from July 1, 1980 to the present date;

and that said taking and preservation of evidence shall be in accordance with a timetable to be agreed to between the parties and submitted to the Examiner by January 15, 1983, or in the absence of any such agreement, upon the request of one of the parties in accordance with a timetable to be established by the Examiner.

Dated at Madison, Wisconsin this 6th day of December, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Christopher Honeyman, Examiner

JOINT SCHOOL DISTRICT #3, VILLAGE OF HARTLAND ET AL, I, Decision No. 18577-B
RICHFIELD EDUCATION ASSOCIATION, I, Decision No. 18578-B
NORTHWEST UNITED EDUCATORS, III, Decision No. 19307-B

MEMORANDUM ACCOMPANYING
ORDER CONSOLIDATING CASES AND GRANTING
MOTION TO COMPEL DISCOVERY

Each of these cases presents issues relating to the scope of activities, and the percentage of expenditures, of the Respondent Labor Organizations which are chargeable to fair share payors. Although the organizations involved are in part different, the issues presented are substantially similar to those discussed in the leading cases of this type in Wisconsin, Browne et al. v. Milwaukee Board of School Directors et al. and Gerleman et al. v. Milwaukee Board of School Directors et al., and certain of the Respondents, namely National Education Association and Wisconsin Education Association Council, are common to these cases and Gerleman. Both Gerleman and Browne are still in litigation before the Commission at this time; both of those cases, however, were divided into two phases by the Commission, with the line of demarcation being that issues relating to the functions performed by the Unions would be dealt with in "Stage 1" and issues relating to the monies actually expended for these functions would be reserved to "Stage 2".

At this time, the Stage 2 decisions in Browne and Gerleman have yet to issue. It is apparent, however, that each of the instant cases possesses numerous features in common with Browne and Gerleman and also with each other, sufficient to make it appropriate to consolidate these matters for purposes of economy at hearing. 1/

Complainants' Motion to Compel Discovery in these matters is similar in form and scope to a motion of Complainants in Browne. In Browne the Commission granted 2/ the motion, stating inter alia;

> We have previously notified the parties that we have determined to treat this a Class 2 proceeding. However, even if it is not properly classified as a Class 2 proceeding, the Commission has the discretion to allow for the taking of depositions in prohibited practice proceedings as set out in Section 111.07(2)(b), Wisconsin Statutes. While we do not ordinarily grant requests for the taking of depositions in prohibited practice proceedings except upon good cause shown, we believe that good cause exists in this case. Absent pre-hearing discovery we are concerned that the hearing in this case will be unnecessarily protracted and the record will be unduly burdened. For these reasons as well we have granted the Complainant's request that we allow pre-hearing discovery. However, we note that since our order in this regard is at the request of the Complainants, any expenses incurred in connection with such discovery, including witness fees and mileage, shall be paid by the Complainants.

In two respects, the Motion for Discovery herein presents issues not involved in Browne. First, the question is raised at a time when no record exists in these matters concerning the overall functions of the Respondent Unions. Although the motion in Browne was filed similarly at an early stage, a stipulation disposing of evidentiary questions at Stage 1 of that proceeding obviated the need to decide the question until the inquiry was clearly focused on the unions' actual expenditures. Second, in these matters Respondent Unions have offered to provide

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1/ Examiner Greco, by letter dated January 14, 1982, inquired of the parties as to objections to consolidation, and no objection was received.

2/ Decision No. 18408-A, October, 1981.

Complainants with "all information regarding . . . expenditures which is reasonably available". Unlike the situation in Browne, therefore, the undersigned is posed immediately with questions relating to the scope of discovery.

The applicable rule of the Commission is ERB 10.15, which states: "Upon application and good cause shown, the Commission or any individual authorized to take testimony, may order that the testimony of any person, including a party, be taken by deposition in the manner prescribed by and subject to the provisions of Chapter 326, (887), Stats." Nothing in the Commission's rules prohibits the taking and preserving of evidence other than testimony prior to hearing, and such a procedure, adopted by the Commission in Browne, is clearly consistent with the rule permitting depositions.

The use of depositions is well-known to be time-consuming and expensive. For these reasons, it is uncommon in Commission cases. But these matters, like Browne, involve an extraordinary complexity of fact which may well be simplified by extensive pre-trial preparation. It is thus exceptionally appropriate to provide discovery in cases such as these, in which the factual inquiry must of necessity extend to the Respondent Unions' entire structure, activities and financing. In the absence of procedures designed and used to limit the number of contested factual issues presented at hearing, a virtually interminable record is a real risk. But because the first stage of Browne and Gerleman has already been decided, and further because the decision in Gerleman 3/ may resolve large areas in these matters, the undersigned sees no advantage to deferring the discovery to a later stage. Indeed, it is not certain that valid purposes would be served by dividing the instant cases into two distinct stages in the manner of Browne and Gerleman, now that the Commission has made initial Findings of Fact and Conclusions of Law in those matters which may well be applied by the parties to reduce or eliminate the need for a "Stage 1" hearing herein.

With respect to Respondent Unions' contention that discovery should be limited to those items of information which are "reasonably available", the undersigned fully understands that not all of the information to which Complainants may be entitled may warrant the expenditure of funds and time required to retrieve it. The Commission, however, has clearly granted discovery on a broad basis in Browne, and the undersigned sees no compelling reason to depart from that precedent at this time. While it is possible that compliance with this order may be found adequate, in particular instances, with something less than a complete dismembering of the Union's records, to limit the discovery at this time would only add to the material likely to be presented eventually at hearing and reduce the possibility of fruitful stipulations of fact. Respondents are, furthermore, protected against unreasonable expenses involved in discovery herein by the requirement, consistent with the Commission's Order in Browne, that the expenses of discovery be paid by Complainants.

Dated at Madison, Wisconsin this 6th day of December, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Christopher Honeyman, Examiner

3/ No. 16635-A, May, 1982.