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, VILLAGE OF HARTLAND, WISCONSIN; HARTLAND EDUCATION ASSOCIATION, WISCONSIN EDUCATION ASSOCIATION COUNCIL AND NATIONAL EDUCATION ASSOCIATION, Respondents.	Case 1 No. 26912 MP-1161 Decision No. 18577-D
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 1 No. 27171 MP-1176 Decision No. 18578-D
JEAN EKBLAD, Complainant, vs. NORTHWEST UNITED EDUCATORS, Respondent.	Case 3 No. 29016 MP-1284 Decision No. 19307-D
DALE POEPPEL, P. WILLIAM GREER, THOMAS J. VOGT, KATHRYN KUMMER, DEBRA HOLSCHBACH, JANE KLINZING, DONNA NICCOLAI, CATHY LADER, ELMER J. THOMPSON, MARLENE REEDER, DARLENE FREESE, LYNN WINTER, SUSAN J. REINKE, CHERYL L. PRICE, LINDA LERNBRICH, GENE TAYLOR, EVELYN PROPP, DENNIS DIDERICH, LINDA W. POLGLAZE, LAWRENCE HOOD, DONAVAN JONES, Complainants, vs. BOARD OF EDUCATION, CLINTON COMMUNITY SCHOOL DISTRICT, CLINTON, WISCONSIN; CLINTON EDUCATION ASSOCIATION, WISCONSIN EDUCATION ASSOCIATION COUNCIL AND NATIONAL EDUCATION ASSOCIATION, Respondents.	Case 11 No. 30570 MP-1397 Decision No. 20081-E

Nos. 18577-D, 18578-D
19307-D, 20081-E
No. 19467-F

SAUK PRAIRIE FAIR SHARE MEMBERS SAUK PRAIRIE SCHOOLS, WI, Complainants, vs. SAUK PRAIRIE SCHOOL BOARD, SAUK PRAIRIE EDUCATION ASSOCIATION, SOUTH CENTRAL UNITED EDUCATORS, WISCONSIN EDUCATION ASSOCIATION COUNCIL, Respondents.	:	Case 22 No. 29357 MP-1312 Decision No. 19467-F

Appearances:

Mr. David T. Bryant, Staff Attorney, National Right to Work Legal Defense Foundation, Inc., 8001 Braddock Road, Springfield, Virginia, 22160, on behalf of the Complainants in all of the cases except Sauk Prairie School District.

Mr. Walter L. Harvey, Attorney at Law, 221 East Indianola Avenue, Suite 215, Phoenix, Arizona, 85012, on behalf of the Complainants in Sauk Prairie School District.

Mr. Bruce Meredith, Staff Counsel, and Mr. William S. Sample, Attorney at Law, Wisconsin Education Association Council, P.O. Box 8003, Madison, Wisconsin, 53708, on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Complainants in the previously consolidated cases of Joint School District No. 3, Village of Hartland, Richfield Education Association, Northwest United Educators, and Clinton Community School District, 1/ having on May 20, 1986 filed a request in light of the decision of the U.S. Supreme Court in Chicago Teachers Union v. Hudson, 106 S. Ct. 1066 (1986), that, after hearing, the Commission issue final findings of fact, conclusions of law and order in these matters and along with said request Complainants having submitted proposed findings, conclusions of law and order and supporting written argument; and Complainants having further requested that said hearing be scheduled without delay; and the Respondent Wisconsin Education Association Council having on May 23, 1986 filed a Petition For Consolidation requesting that the Sauk Prairie School District case 2/ be consolidated with the four previously consolidated cases; and the Commission having, on May 28, 1986, given all of the affected parties the opportunity to respond to said request for consolidation; and Counsel for Complainants in the four previously consolidated cases having, on June 3, 1986, advised the Commission in writing that they did not object to said requested consolidation; and the Commission having, on June 16, 1986, issued its Order to Show Cause in the four previously consolidated cases; and Counsel for the Complainants in Sauk Prairie having, on June 18, 1986, advised the Commission in writing that they objected to said requested consolidation; and the Commission being satisfied that the requested consolidation was appropriate, and having, on June 20, 1986, issued its Order Granting Motion For Consolidation and Order To Show Cause in Sauk Prairie; and the Respondent Associations having, on June 30,

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1/ The Hartland, Richfield Education Association and Northwest United Educators cases were consolidated on December 6, 1982. Order Consolidating Cases and Granting Motion to Compel Discovery, Dec. No. 18577-B, 18578-B, 19307-B (Honeyman, 12/82). Clinton was consolidated with those cases on February 9, 1983, based on the stipulation of the parties. Dec. No. 20081-B (WERC, 2/83).

2/ At that time the Sauk Prairie case was indefinitely postponed pending the Commission's decision in Browne v. Milwaukee Board of School Directors. Dec. No. 19467-D (Crowley, 6/83).

1986, filed with the Commission their Response To Order To Show Cause; and the parties having appeared at the Commission's offices on June 30, 1986, for a hearing on the Orders To Show Cause, but prior to the start of said hearing they having reached a tentative settlement of the complaints, thereby causing the hearing to be adjourned pending acceptance of the settlement by the individual Complainants; and the Commission having been advised on August 13, 1986, by Counsel for Complainants in Sauk Prairie, and on August 14, 1986, by Counsel for the Complainants in the other cases, that the proposed settlement had been rejected; and a hearing having been held in the matters of the Orders to Show Cause on September 17, 1986 before the full Commission 3/ in Madison, Wisconsin; and prior to the close of the hearing on September 17, 1986 Complainants having moved that the Commission order the Respondent Associations to begin an advance rebate to Complainants and to place the remainder of their fair-share fees in an interest-bearing escrow account, and Complainants in Sauk Prairie having also moved the Commission to immediately order that Respondents immediately cease and desist from honoring/enforcing any fair-share agreement covering the bargaining unit involved in that case until after the Commission has determined, after hearing, that the Hudson requirements have been met, that the Respondent Associations immediately make Complainants whole with interest for all fair-share deductions taken from them since one year prior to the filing of the complaint in that case, and further, that the Commission order the Respondents to immediately escrow one hundred per cent (100%) of the fair-share fees collected from Complainants since the filing of these complaints and at least from the date of the decision of the U.S. Supreme Court in Hudson forward, order the Respondent Associations to produce for Complainants' Counsel and the Commission the names and addresses of all the fair-share teachers in Wisconsin, and to immediately require a CPA audit of the Respondent Associations' escrow account; and the Commission having prior to the close of the hearing denied all of Complainants' motions except to require the Respondent Associations to immediately escrow, retroactive to the date of Hudson (March 4, 1986), one hundred percent (100%) of the fair-share fees collected from Complainants until further notice and that Counsel for Complainants and the Commission be advised on a monthly basis of all transactions in the escrow accounts; and a stenographic transcript having been made of said hearing; and the Complainants in these cases having, on October 29, 1986, filed a post-hearing brief in support of their position on the matters raised at hearing; and the Respondent Associations having, on December 3, 1986, filed a post-hearing brief in reply to that of Complainants; and the Complainants having on December 26, 1986 filed a reply brief in response to that of the Respondent Associations; and both Complainants and the Respondent Associations having continued to submit further argument and case law in support of their respective positions; and the Respondent Wisconsin Education Association Council, hereinafter Respondent WEAC, having, on June 1, 1987, filed a motion for the Commission to accept a brief in support of a pending petition for rehearing in Browne v. Milwaukee Board of School Directors 4/ as well as a motion for the Commission to accept the brief as a discussion of the impact of the Commission's decision in Browne upon these consolidated cases; and the Commission having, on June 5, 1987, denied Respondent WEAC's motion to accept the brief as an amicus, but granted the motion to accept the brief as a discussion of the impact of its decision in Browne upon these cases; and the Complainants having, on July 1, 1987, filed a brief in response to Respondent WEAC's brief on the impact of Browne; and the Commission having considered the record, the applicable statutory law and case law and the arguments of the parties;

NOW, THEREFORE, the Commission makes and issues the following

FINDINGS OF FACT

1. That at times material herein, Complainants Ervin Hewitt and Duane

material herein said individuals have been employed by the Board of Education for Joint School District No. 3, Village of Hartland in a bargaining unit represented by the Hartland Teachers Education Association, hereinafter the HTEA; that at times material herein said individuals were not members of the Respondent HTEA; that at times material herein said individuals have been subject to fair-share deductions from their pay in an amount equal to the regular dues of an HTEA member; and that no later than October 10, 1980 5/ said individuals made known to the Respondent HTEA their objection to the compulsory exaction of a fair-share fee in excess of their proportionate share of the Respondent HTEA's costs of collective bargaining and contract administration and the use of any part of their fee for purposes unrelated to such costs.

2. That the Respondent Board of Education for Joint School District No. 3., Village of Hartland, hereinafter the Hartland Board, is a municipal employer and operates a public school system and has its principal offices located at 615 East Imperial Drive, Hartland, Wisconsin.

3. That the Respondent National Education Association, hereinafter the NEA, is a labor organization and has its principal offices located at 1201 Sixteenth Street, N.W., Washington, D.C.

4. That the Respondent Wisconsin Education Association Council is a statewide labor organization affiliated with the Respondent NEA and has its principal offices located at 101 West Beltline Highway, Madison, Wisconsin. 6/

5. That the Respondent HTEA is a labor organization subordinate to, and affiliated with, the Respondent WEAC and the Respondent NEA and has its offices located at 232 North Church Street, Hartland, Wisconsin.

6. That Complainants in Hartland have alleged that the following fair-share provision was contained in the collective bargaining agreement dated May 12, 1980 between the Respondent Hartland Board and the Respondent HTEA: 7/

ARTICLE IV

FAIR SHARE

> The Association will represent all of the employees in the bargaining unit, members and non-members, fairly and equally. Non-members, therefore, will be required to pay their proportionate share of the costs of the collective bargaining process and contract administration. Part time employees in the bargaining unit will also be required to pay their proportionate share. However, no employee shall be required to join the Association, but membership in the Association shall be available for all eligible employees embraced in the bargaining unit. Any employee on lay off or leave of absence or other status in which they receive no pay are excluded.
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> The Association shall notify the district of the amount certified by the Association to be the fair share of the costs of representation by the Association.
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> The Association agrees to certify to the District only such fair share costs as are allowed by law, and further

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5/ The date of the filing of the complaint in that case.

6/ Findings of Fact 3 and 4 and 25 through 39 apply to all of these cases.

7/ As is true in all of these cases except Sauk Prairie, the procedural posture of these cases is that no evidence has been taken, other than at the show cause hearing. However, for the purposes of this decision we are assuming that the facts pleaded by Complainants in these cases in this regard are true.

agrees to abide by the decisions of the Wisconsin Employment Relations Commission and/or courts of competent jurisdiction in this regard.

The Board agrees that, effective 30 days after the date of initial employment or 30 days after the opening of school, it will deduct from the monthly earnings of all employees in the collective bargaining unit an amount of money equivalent to the monthly dues certified by the Association as the current dues uniformly required of all members and pay said amount to the Treasurer of the Association on or before the end of the month in which such deduction was made.

Changes in the amount of dues to be deducted shall be certified by the Association 15 days before the effective date of change. Such dues will be deducted in eighteen (18) equal payments (October-June).

The Association shall provide employees who are not members of the Association with an internal mechanism within the Association which will allow those employees the opportunity, where appropriate, to receive a rebate of any monies determined to have been mistakenly collected by the Association.

The Association does hereby indemnify and shall save the District harmless against any and all claims, demands, suits, or other forms of liability, including court costs and attorney fees, that shall arise out of or by reason of action taken or not taken by the District, which District action or non-action is in compliance with provisions of this article: Provided that the defense of any such claims, demands, suits or other forms of liability shall be under the control of the Association and its attorneys.

and that Complainants allege that commencing October 1, 1980 the Respondent Hartland Board was to begin making fair-share deductions from Complainants' pay pursuant to said fair-share provision.

7. That at times material herein Complainants Gladies B. Mumm, Boby J. Frings, Penelope L. Niesen and Donna F. Ward have been, and are, individuals residing in Wisconsin; that at times material herein said individuals have been employed by the Board of Education of the Richfield School District No. 2 in a bargaining unit represented by the Respondent Richfield Education Association, hereinafter the REA; that Complainaints allege that since on or about June 15, 1980 said bargaining unit has been covered by a fair-share agreement pursuant to a collective bargaining agreement between said Board and the Respondent REA; that at times material herein said individuals have been subject to fair-share deductions from their pay in an amount equal to the regular dues of an REA member; and that no later than December 8, 1980 8/ the Complainants made known to the Respondent REA their objection to having a fair-share fee deducted from their pay that is in excess of their proportionate share of the Respondent REA's costs of collective bargaining and contract administration and the use of any part of their fee for purposes unrelated to such costs.

8. That on January 5, 1981 Complainants in Richfield filed an amended complaint adding Kathleen A. Chentnik and Janet M. D. Hulbert as complainants in that case and alleging that fair-share deductions from said individuals' pay commenced in September or October of 1980.

9. That the Respondent REA is a labor organization subordinate to, and affiliated with, the Respondent WEAC and the Respondent NEA and has its offices located at P.O. Box 126, Richfield, Wisconsin.

8/ The date of the filing of the complaint in that case.

10. That at times material herein Complainant Jean Ekblad has been, and is, an individual residing in Wisconsin; that at times material herein said individual has been employed by the Board of Education of the Frederick School District in a bargaining unit represented by the Respondent Northwest United Educators, hereinafter the NUE; that at times material herein said individual has been subject to fair-share deductions from her pay in an amount equal to the regular dues of an NUE member; that it is alleged by Complainant that said deductions were made pursuant to a fair-share agreement contained in the collective bargaining agreement between said Board and the Respondent NUE commencing on or about August 15, 1981 and paid to the Respondent NUE; and that no later than December 21, 1981 9/ Complainant made known to the Respondent NUE her objection to having a fair-share fee deducted from her pay that is in excess of her proportionate share of the cost of the Respondent NUE's costs of collective bargaining and contract administration and the use of any part of her fee for purposes unrelated to such costs.

11. That the Respondent NUE is a labor organization affiliated with Respondent WEAC and the Respondent NEA; and that Respondent NUE is a UniServ district and has its offices located at 16 West John Street, Rice Lake, Wisconsin.

12. That at times material herein Complainants Dale Poeppel, P. William Greer, Thomas J. Vogt, Kathryn Kummer, Debra Holschbach, Jane Klinzing, Donna Niccolai, Cathy Lader, Elmer J. Thompson, Marlene Reeder, Darlene Freese, Lynn Winter, Susan J. Reinke, Cheryl L. Price, Linda Lernbrich, Gene Taylor, Evelyn Propp, Dennis Diderich, Linda W. Polglaze, Lawrence Hood and Donovan Jones have been, and are, individuals residing in Wisconsin; that at times material herein said individuals have been employed by the Respondent Board of Education of the Clinton Community School District in a bargaining unit represented by the Respondent Clinton Education Association, hereinafter the CEA; that at times material herein said individuals have not been members of the Respondent CEA; that at times material herein said individuals have been subject to fair-share deductions from their pay in an amount equal to the regular dues of a CEA member; and that no later than October 28, 1982 10/ said Complainants made known to the Respondent CEA their objection to having a fair-share fee deducted from their pay that is in excess of their proportionate share of the Respondent CEA's costs of collective bargaining and contract administration and the use of any part of their fees for purposes unrelated to such costs.

13. That on December 17, 1984 Complainants in Clinton moved to amend their complaint to add Teresa A. Ellison, Julieann Kremer and Joyce Warne as complainants in that case.

14. That the Respondent Board of Education of the Clinton Community School District, hereinafter the Clinton Board, is a municipal employer operating a public school system and has its principal offices located at P.O. Box 566, Clinton, Wisconsin.

15. That the Respondent CEA is a labor organization subordinate to, and affiliated with, the Respondent WEAC and the Respondent NEA and has its offices located at Clinton, Wisconsin.

16. That Complainants in Clinton have alleged that the fair-share provision attached hereto as "Appendix A," and incorporated herein by reference, was contained in the 1980-1982 collective bargaining agreement between the Respondent Clinton Board and the Respondent CEA and was to be effective with the beginnining of the 1981-1982 school year; and that said Complainants have alleged that the fair-share provision attached hereto as "Appendix B," and incorporated herein by reference, was contained in the 1982-1984 collective bargaining agreement between the Respondent Clinton Board and the Respondent CEA and that the Respondent Clinton Board began making fair-share deductions pursuant to said provision commencing on or about October 15, 1982.

9/ The date of the filing of the complaint in that case.

10/ The date of the filing of the complaint in that case.

17. That at times material herein Complainants Ronald Jordi, Michael Kuss, Ronald Kostroski, Bill Rahl, James Jackson, Duane Woerpel, Shaughn Bannon, John Budd, Claire Richardson, Daniel Reierson, Joanne Zimmel, Lois Emberson and Milo Kilen have been, and are, individuals residing in Wisconsin; that at times material herein said individuals have been employed by the Respondent Board of Education of the Sauk Prairie School District in a bargaining unit represented by the Respondent Sauk Prairie Education Association, hereinafter the SPEA; that at times material herein said individuals have not been members of the Respondent SPEA; that at times material herein said individuals have been subject to fair-share deductions from their pay in an amount equal to the regular dues of an SPEA member; that Jordi informed the Respondent SPEA on or about October 4, 1979 that he objected to the amount of the fair-share fee being deducted from his pay; and that no later than February 24, 1982 11/ the rest of the aforesaid Complainants made known to the Respondent SPEA their objection to having a fair-share fee deducted from their pay that is in excess of their proportionate share of the Respondent SPEA's costs of collective bargaining and contract administration.

18. That on May 24, 1982 Complainants in Sauk Prairie filed a motion to amend their complaint to add Cindy Larsen, Marylee Lyon and Peggy Shalabi as complainants in that case, which motion was granted by Examiner Crowley at the hearing on June 9, 1982; and that on October 4, 1982 Complainants filed a motion to amend their complaint to add Charles Christopherson, Richard Conroy, John Freriks and Anne Nerenz as complainants in that case.

19. That Respondent Sauk Prairie School Board, hereinafter the Sauk Prairie Board, is a municipal employer and operates a public school system and has its principal offices at 213 Maple Street, Sauk City, Wisconsin 53583.

20. That Respondent SPEA is a labor organization affiliated with Respondents WEAC and SCUE, and is the exclusive bargaining representative for personnel enegaged in teaching in the Sauk Prairie School District and its president at the time of the filing of the complaint was Dennis Kahn, whose address is 213 Maple Street, Sauk City, Wisconsin 53583.

21. That Respondent South Central United Educators, hereinafter SCUE, is a labor organization affiliated with Respondent WEAC and is a support group for local affiliates in the south central area of Wisconsin; and that Respondent SCUE is a UniServ district and has its offices located at 207 West Cook Street, Portage, Wisconsin 53901.

22. That Respondents SPEA, SCUE, WEAC and the NEA are all affiliated with each other; that as a condition of membership in SPEA, a member must also be a member of Respondents SCUE, WEAC, and NEA; that Complainant Jordi applied for membership in Respondent SPEA but indicated he did not desire to be a member of the Respondents WEAC, NEA and SCUE; and that his membership in Respondent SPEA was denied.

23. That the Respondent SPEA and the Respondent Sauk Prairie Board have entered into a series of collective bargaining agreements covering the wages, hours and conditions of employment of employes in a bargaining unit described as all contracted and certificated teachers, head teachers, department heads, special teachers, guidance counselors, librarians, and teachers who are employes of the Sauk Prairie School System.

24. That pursuant to a referendum conducted by the Commission on May 2, 1979, in the bargaining unit represented by the Respondent SPEA, the Commission certified that the required number of employes (more than 66 2/3% of those voting) voted in favor of the implementation of a fair share agreement; that the Respondent SPEA and the Respondent Sauk Prairie Board entered into a fair-share agreement which was continued in successor agreements including the 1981-82

> and equally, and all employees in the unit will be required to pay, as provided in this article, their fair share costs of the collective bargaining process and contract administration as certified in a sworn statement by the Association. No employee shall be required to join the Association, but membership in the Association shall be made available to all employees who apply consistent with the Association constitution and bylaws. No employee shall be denied Association membership because of race, creed, color, sex, handicap or age.
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> The Employer agrees that effective thirty (30) days after the date of initial employment or thirty (30) days after the opening of school, it will deduct from the earnings of all employees in the collective bargaining unit, in equal installments from each paycheck, the amount of money certified by the Association. Such deductions shall be forwarded to the Association within thirty (30) days of such deductions.
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> The Employer will provide the Association with a list of employees from whom deductions are made with each remittance to the Association. The Association and the WEAC do hereby indemnify and shall save the Board harmless against any forms of liability that shall arise out of or by reason of action taken or not taken by the Board, which Board action or non-action is in compliance with the provisions of this Agreement, and in reliance on any list or certificates which have been furnished to bhe (sic) Board pursuant to this article, provided that any such form of liability shall be under the exclusive control of the WEAC and its attorneys. In no way shall this save-harmless provision be read so as to exclude or prevent the Board from tendering its own defense either through its own attorneys at Board expense or WEAC attorneys at WEAC expense.
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> The Association shall provide employees who are not members of the Association with an internal mechanism within the Association which allows those employees to challenge the fair share amount certified by the Association as the cost of representation and receive, where appropriate, a rebate of any monies determined to have been improperly collected by the Association pursuant to this section;

and that the Respondent SPEA certified an amount to be deducted pursuant to Section 3.4 which was equal to the dues required of members. 12/

25. That Complainant Jordi made his objection to the amount of his fair-share fee known to the Respondents SPEA and WEAC on or about October 4, 1979; that by December of 1980 Jordi and Respondent WEAC were attempting to agree on an arbitrator to hear and decide the fair-share fee dispute; that Jordi and Respondent WEAC ultimately selected Arbitrator Krinsky by alternately striking names from a panel of five arbitrators submitted by the American Arbitration Association, hereinafter the AAA, at the request of Respondent WEAC; that the arbitration hearing was held before Arbitrator Krinsky on July 23 and August 20, 1981, with briefs submitted to the Arbitrator by Jordi on March 22, 1982 and by Respondent WEAC on May 22, 1982; that Arbitrator Krinsky's award covering the 1979-80 and 1980-81 school years attached hereto as "Appendix C", and incorporated herein by reference, was issued on September 20, 1982; and that said arbitration was the only fair-share fee arbitration that Respondent WEAC has had other than the pending arbitration with Arbitrator Mueller.

26. That there are thirty UniServ districts in Wisconsin; that said UniServ districts are organizations affiliated with, and subject to, Respondents WEAC and NEA and are formed by a conglomeration of local associations banding together in

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12/ Findings of Fact 17 and 19 through 24 were made as Initial Findings of Fact in Sauk Prairie School District, Dec. No. 19467-B (Crowley, 3/83), aff'd by operation of law, Dec. No. 19467-C (WERC, 4/83).

order that their combined membership justifies employing a staff person, UniServ Director, to process grievances and aid them in contract administration and collective bargaining.

27. That pursuant to the fair-share agreements between the Respondent local associations, hereinafter the Respondent Locals, and the Respondent and nonrespondent Boards, hereinafter the Boards, the Boards deduct from the wages of the employes in the bargaining units covered by said agreements who are not members of said Respondent Locals, sums of money denominated as fair-share deductions, in the amounts certified by the Respondent Locals, which amounts are the same as the amounts of regular dues of members of the respective Respondent Locals, and transmit those sums to the Respondent Locals, which keep a portion of the fees for themselves and transmit a certain portion to the UniServ units to which they belong and a portion to Respondent WEAC, which also includes Respondent NEA's portion as well; that at no time material herein have the Respondent Locals, UniServs, WEAC or NEA presented their budgets to the Board; and that said fair-share agreements provide for no procedures to ensure that nonmember employes do not pay a fair-share equal to regular dues other than the internal mechanism referenced in those agreements for challenging the fair-share fee amount.

28. That the Respondent Locals and UniServs are bound by Respondent WEAC's constitution and by-laws to follow Respondent WEAC's fair-share procedures; that the Respondent Locals, UniServs, WEAC and NEA set their own dues amounts; and that Respondent WEAC administers the fair-share procedures on behalf of the Respondent Locals and UniServs.

29. That Respondent WEAC had no fair-share rebate procedures in operation prior to 1979-1980; and that Respondent WEAC's constitution and by-laws dated April of 1979 contained the following provision regarding its fair-share rebate procedure:

> 4-9 Any member of a local affiliate, or nonmember covered by a fair share agreement, shall have the right to object to the expenditure of a portion of his/her dues, or fair share payment for contributions or expenditures on behalf of political candidates, parties, or organizations. The approximate proportion of dues spent for such political purposes shall be determined by a panel of three members of the Board of Directors of the WEAC, which shall be appointed by the President, subject to the approval of the Board of Directors. Such person may perfect his/her objection and apply for a rebate of the proportion of dues spent for such political purposes by filing a written request with the President of the WEAC by mail, provided, however, that such objection shall be timely only if postmarked during the first sixty days of the membership year. September 1 through October 30. An objection may be continued from year to year by filing new written requests during such annual sixty day period. WEAC will return such rebate to the individual requesting it by November 30. WEAC shall also send a list of individuals receiving rebates to the local president by November 30.
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> If an objecting individual is dissatisfied with the approximate proportional allocation made by the panel or the disposition of his/her objection, he or she may appeal to the full Board of Directors. Should such individual be dissatisfied with the decision of the Board of Directors, the matter may be submitted to final and binding arbitration conducted in accordance with the voluntary labor arbitration rules of the American Arbitration Association;

and that prior to April 11, 1986 Respondent WEAC had in effect the "Non-Member Fair Share Rebate Procedure attached hereto as "Appendix D" and incorporated herein by reference.

30. That prior to April 24, 1986 fair-share payors in bargaining units represented by local associations affiliated with Respondent WEAC were not provided with any financial information for the Respondent Locals, UniServs, WEAC and NEA, hereinafter collectively referred to as Respondent Associations, nor were

they provided with any notice of a right to object to the amount of their fair-share fee; that only if a fair-share payor requested a rebate or otherwise made his/her objection known to the Respondent Associations, did he/she receive any information; that the letter and attached option selection form for the 1983-1984 school year attached hereto as "Appendix E," and incorporated herein by reference, is representative of the letters sent to fair-share payors by the Respondent Associations prior to April 24, 1986; and that said letter stated that if the fair-share payor requesting a rebate wished to proceed to arbitration on the issue, Respondent WEAC would escrow an amount equal to its proposed settlement in an interest-bearing account.

31. That prior to the decision of the U.S. Supreme Court in Hudson Respondent WEAC "escrowed" the fair-share fees of the Complainants in these cases in amounts consistent with the percentages found to be rebateable from the local association, UniServ, WEAC and NEA in the Krinsky Award, by placing those monies in segregated accounts that remained under the control of Respondent WEAC; that there was a time during that period when no monies were placed in said accounts due to a mix-up between Respondent WEAC's legal department and business office as to whom was responsible for maintaining said accounts; that in approximately February of 1986 said accounts were "updated" by adding amounts equal to the rebate offered by Respondent WEAC for the missed years based on the percentages in the Krinsky Award, plus interest at the rate of twelve percent (12%) per annum on said amounts, plus a five percent (5%) "cushion"; that for the 1985-1986 year, ending August 31, 1986, Respondent WEAC "escrowed" in these accounts an amount for each Complainants having fair-share fees deducted from his/her pay that was equal to the percentages found to be rebateable in the Krinsky Award, plus interest at the rate of twelve percent (12%) per annum on said amount, plus a five percent (5%) "cushion"; that those fair-share payors who requested to go to arbitration for the 1985-86 year have had one hundred percent (100%) of their fair-share fees placed in "escrow."

32. That the Respondent Associations have returned (usually by November 15th of each year) to all fair-share fee payors the amount equal to the political action contribution (PAC) that is deducted from the pay of all members and all fair-share payors over the year; that said PAC amount is automatically refunded to all fair-share fee payors without their having to request it; and that, with the exception of the PAC rebate, the Respondent Associations have not made any advance rebates to their fair-share fee payors, including Complainants, under their pre-Hudson fair-share rebate procedures.

33. That Respondent WEAC determines the amount to be rebated by itself, the local associations and the UniServs, to objecting fair-share fee payors; that Respondent NEA determines the amount it will rebate to objecting fair-share fee payors; that Respondents NEA and WEAC, the UniServs and local associations, set their budgets independent of one another; that Respondent WEAC's budget is adopted at its Representative Assembly in the end of April or first part of May each year; that Respondent NEA's budget is adopted at its convention of delegates over the July 4th weekend or week; that UniServs' budgets are adopted by their representative assemblies approximately two weeks after the adoption of Respondent WEAC's budget; that the budgets of the local associations may be adopted formally or informally; that Respondent WEAC's fiscal year runs from September 1st through August 31st; and that an annual audit of Respondent WEAC's finances for the prior fiscal year is generally commenced in November and completed in December of the following fiscal year.

34. That on or about April 11, 1986 the Respondent WEAC's Board of Directors met and acted to require that its legal staff prepare a revised fair-share procedure that would meet the requirements of Hudson; that a procedure was drafted and was put into place on or about April 21, 1986 by Respondent WEAC's Executive Director; and that said "Revised Non-Member Fair-Share Rebate Procedure" is attached hereto as "Appendix F" and incorporated herein by reference.

35. That Respondent WEAC sent the letter dated April 24, 1986, attached hereto as "Appendix G" and incorporated herein by reference, to all of the fair-share payors in bargaining units represented by its affiliates, except for those fair-share payors who had already requested and received rebates for the 1985-1986

year; 13/ that accompanying said letter was a copy of Respondent WEAC's "Budget Overview" for 1985-1986, attached hereto as "Appendix H" and incorporated herein by reference, and a copy of Respondent NEA's "Program Budget" for fiscal year 1985-1986, attached hereto as "Appendix I" and incorporated herein by reference, a copy of the Commission's decision in Gerleman v. Milwaukee Board of School Directors, Dec. No. 16635-A (WERC, 5/82), and a copy of Arbitrator Arvid Anderson's "Findings of Fact and Determination" In the Matter of Agency Fee Rebates for the National Education Association dated March 24, 1986 for the 1984-1985 fiscal year; that said mailing dated April 24, 1986 did not include any audited financial statements for any of the Respondent Associations and did not include any budgetary or financial information in regard to the local associations or UniServs; that said letter directed the fair-share fee payors to contact the president of the local association regarding the budgets of the UniServ and local association; and that pursuant to the letter fair-share payors were given until May 31, 1986 to submit their objection to Respondent WEAC.

36. That those fair-share payors that responded to said April 24, 1986 letter and requested a rebate were sent the following letter dated June 13, 1986:

> Dear Fair-share Employee:
>
> We have received your request for a fair-share rebate of monies based on the budgetary information we supplied you in May. This letter is to inform you that you have two options and they are outlined below.
>
> 1. We are estimating that the following amounts will be the amounts to be rebated and if you wish to accept these amounts, this will remove all claims you have for monies for the 1985-86 school year. We will mail you a check in the amount outlined below upon receiving your indication that you wish to choose this option.
>
> | | | | |
> |---|---|---|---|
> | NEA | $13.20 | | |
> | WEAC | $20.40 | | |
> | UniServ | $ 4.05 | | |
> | Local | $ 7.50 14/ | Total: | $45.15 |
>
> 2. The WEAC, if requested, will conduct an arbitration this summer with the arbitrator to be provided by the Wisconsin Employment Relations Commission. (It is possible that the WERC itself may agree to hear these disputes. If that is the case, the WERC may be used in lieu of an arbitrator. If this is the case, we will notify you.) You have a right to participate in that arbitration. The subject of the arbitration will be to determine the exact amount to be rebated for 1985-86 and this amount may be greater than or less than the estimated amount above. If you wish your rebate to be contingent upon this arbitration, then you should indicate option #2 on the form and return it to us. If you indicate option #2, we will escrow a sufficient amount of your dues to more than adequately cover any possible decision.
>
> Please indicate your option and return it to us in the enclosed envelope. If we do not hear from you by July 10, we will assume that you have chosen the arbitration option and make the appropriate dues escrow.

13/ According to Respondent WEAC's Counsel, the April 24, 1986 mailing also was not sent to Complainants, but was sent to Complainants' Counsel.

14/ The figures for the UniServ and local association vary depending on which ones the fair-share payor's bargaining unit is in.

If you have any questions regarding this, contact Robert Moeller or Bruce Meredith at the toll-free number 1-800-362-8034 (or if in the Madison area at 255-2971).

Sincerely,

Robert F. Moeller /s/
WEAC Business Director;

and that accompanying said letter was the following form on which the fair-share payor is to indicate his/her choice of option:

To: WEAC

From: _____

Re: Political/Ideological Rebate

I have chosen the following option as my resolution to the objection I filed regarding the certified fair-share amount: (I have checked my choice.)

_____ Option #1 in which I will receive a check in full payment of claims for the 1985-86 school year. That amount is $_____.

_____ Option #2 in which I will participate in the upcoming arbitration, with funds being escrowed until that arbitration is complete.

Signed:_____

Address:_____

Dated:_____

37. That pursuant to a request from Respondent WEAC for the appointment of an arbitrator to hear the fair-share fee arbitration the Commission sent the following letter dated July 2, 1986 to Counsel for Respondent WEAC:

Re: Fair-Share Arbitrator Appointment

Dear Mr. Meredith:

In response to your June 24, 1986 request for appointment of one or two arbitrators from this agency's panel of fair-share case arbitrators, please be advised that the following individual is appointed to hear both the 1985-86 and 1986-87 disputes to which your letter refers:

Mr. Robert J. Mueller
Attorney at Law
119 Monona Avenue
Madison, WI 53703

If your communications with that arbitrator reveal that he is unavailable to meet the time schedule that you have in mind, this agency is prepared, upon your request, to appoint a substitute or substitutes.

Very truly yours,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Herman Torosian /s/
Chairman

38. That under the Respondent Associations' "Revised Non-Member Fair Share Rebate Procedure" all fair-share fee payors in bargaining units represented by them will annually receive a notice which is to include Respondent WEAC's analysis of its budget and of the budgets of Respondent NEA, the UniServs and the local associations, if the budgets of the latter are available, the offered rebate based on that analysis, and budgetary information; that said revised procedure requires that an objection be filed annually, in writing, within thirty-three (33) days of the mailing of the notice, with a provision for waiving such time limit; that said revised procedure indicates that if the objecting fair-share fee payor does not accept the offered rebate, he/she may proceed to arbitration to determine the appropriate rebate, with the arbitration to utilize "budgeted expenditures and such expenditures as may have occurred;" that said procedure provides for an adjustment of the rebate awarded by arbitration based upon an audit of the actual expenses for that year, at the option of the challenging fair-share fee payor; that said revised procedure calls for a panel of arbitrators to be provided by either the Commission or the AAA with Respondent WEAC and the challengers to arrange a method of jointly selecting an arbitrator from such a panel, and if no such method is agreed upon, the agency will be asked to appoint the arbitrator; that said revised procedure requires that the arbitrator must agree to issue an award in an "expeditious manner" as a condition of his/her appointment; and that said revised procedure reserves to Respondent WEAC the right to consolidate the challenges into one arbitration for the same time period.

39. That effective September 1, 1986 Respondent WEAC is "escrowing" one hundred percent (100%) of the fair-share fees being deducted from the Complainants in these cases by placing them in interest-bearing segregated accounts that remain under Respondent WEAC's control; that generally for the 1986-1987 fiscal year Respondent WEAC has escrowed an amount equal to three full months' dues for the number of fair-share payors that is three times the total number of fair-share payors that requested a rebate in 1985-1986 (3 x 151 = 453 x 3 months' dues = amount escrowed) and based on an estimate of the locals' dues and an average for the UniServs' dues; that, other than the PAC rebate, the Respondent Associations have not determined an amount they concede to be rebateable; that Respondent Associations' revised fair-share procedures do not provide for any advance rebate of an amount conceded by the Respondent Associations to be rebateable; and that, other than the PAC rebate, Respondent Associations have not made any advance rebates to their fair-share fee payors, including Complainants, at any time material herein.

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

CONCLUSIONS OF LAW

1. That Teresa A. Ellison, Julieann Kremer and Joyce Warne are parties in interest in the proceedings in Clinton, within the meaning of Sec. 111.07(2)(a), Stats., and are appropriately added as co-complainants in that case effective December 17, 1984.

2. That Charles Christopherson, Richard Conroy, John Freriks and Anne Nerenz are parties in interest in the proceedings in Sauk Prairie, within the meaning of Sec. 111.07(2)(a), Stats., and are appropriately added as co-complainants in that case effective October 4, 1982.

3. That Respondent Board of Education of Joint School District No. 3., Village of Hartland, its officers and agents, have not committed prohibited practices within the meaning of the Municipal Employment Relations Act by deducting fair-share fees from the pay of Complainants and other nonmember fair-share fee payors in the bargaining unit represented by Respondent Hartland Teachers Education Association and turning those fees over to said Respondent pursuant to the fair-share agreement with Respondent Hartland Teachers Education Association.

4. That Respondent Board of Education of Clinton Community School District, its officers and agents, have not committed prohibited practices within the meaning of the Municipal Employment Relations Act by deducting fair-share fees from the pay of Complainants and other nonmember fair-share fee payors in the bargaining unit represented by Respondent Clinton Education Association and turning those fees over to said Respondent pursuant to the fair-share agreements with Respondent Clinton Education Association.

5. That Respondent Board of Education of the Sauk Prairie School District, its officers and agents, have not committed prohibited practices within the meaning of the Municipal Employment Relations Act by deducting fair-share fees from the pay of Complainants and other nonmember fair-share fee payors in the bargaining unit represented by Respondent Sauk Prairie Education Association and turning those fees over to said Respondent pursuant to the fair-share agreement with Respondent Sauk Prairie Education Association.

6. That because the Wisconsin Supreme Court has held that the fair-share provisions of the Municipal Employment Relations Act, Secs. 111.70(1)(f) and 111.70(2), Stats., are constitutional on their face and are to be interpreted in a manner consistent with the U.S. Constitution, those statutory provisions must be deemed to require that a union must first establish and implement the procedural safeguards, held by the U.S. Supreme Court in its decision in Chicago Teachers Union v. Hudson to be constitutionally required, before the union may lawfully exact (i.e., collect and use) a fair-share fee from nonmembers it represents.

7. That the decision of the U.S. Supreme Court in Chicago Teachers Union v. Hudson did not establish a new principle of law, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed, and hence, it does not constitute a clear break with existing law, and therefore applies retroactively.

8. That in the presence of a valid fair-share agreement and the constitutionally required procedural safeguards set forth in the decision of the U.S. Supreme Court in Chicago Teachers Union v. Hudson, Secs. 111.70(1)(f) and 111.70(2) of the Municipal Employment Relations Act permit a union to collect and spend a fair-share fee equal to regular dues from the nonmember employes it represents as the exclusive collective bargaining representative, if those nonmembers have not made their dissent known to the union in the manner and time the union may lawfully require.

9. That the fair-share procedure set forth in Findings of Fact 29 and 30 did not provide the constitutionally required procedural safeguards set forth in Chicago Teachers Union v. Hudson.

10. That by exacting a fair-share fee from Complainants and other nonmember fair-share fee payors prior to April 21, 1986 in the absence of any procedural safeguards other than the procedures referenced in Conclusion of Law 9, and therefore in the absence of the constitutionally required procedural safeguards, the Respondent Associations in these cases, their officers and agents, committed prohibited practices within the meaning of Sec. 111.70(3)(b) 1, Stats.

11. That the "Revised Non-Member Fair-Share Rebate Procedure" implemented on April 21, 1986 and set forth in Finding of Fact 34, and the letters sent to fair-share fee payors by Respondent Wisconsin Education Association Council on behalf of itself and the other Respondent Associations, dated April 24, 1986 and June 13, 1986, respectively, and set forth in Findings of Fact 35 and 36, provide some, but not all of the constitutionally required procedural safeguards set forth in Chicago Teachers Union v. Hudson and are constitutionally, and hence statutorily, deficient in the respects identified in our Memorandum in this decision; and that, therefore, since the establishment and operation of said procedures and notice, the Respondent Associations, their officers and agents, have committed, and continue to commit, prohibited practices within the meaning of Sec. 111.70(3)(b) 1, Stats., by continuing to exact fair-share fees from Complainants, and other nonmember fair-share fee payors in the bargaining units involved herein without having established the required procedural safeguards.

Based upon the foregoing Findings of Fact and Conclusions of Law,

NOW, THEREFORE, it is

ORDERED 15/

1. That the Motion to Amend the Complaint filed in Clinton Community School District to add Teresa A. Ellison, Julieann Kremer and Joyce Warne as complainants in that case is hereby granted effective December 17, 1984.

2. That the Motion to Amend the Complaint filed in Sauk Prairie School District to add Charles Christopherson, Richard Conroy, John Freriks and Anne Nerenz as complainants in that case is hereby granted effective October 4, 1982.

15/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

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

(Footnote 15 continued on page 16.)

3. That the Respondent Associations, their officers and agents, shall, to the extent they are not already doing so, immediately properly escrow in an interest-bearing account 16/ an amount equal to the fair-share fees deducted from the pay of Complainants since one year prior to the filing of the respective complaints 17/ up to March 4, 1986, the date of the U.S. Supreme Court's decision in Chicago Teachers Union v. Hudson, plus interest at the rate of twelve percent (12%) per annum 18/ from the dates said fees were taken to the date the proper amounts are properly escrowed. The monies are to remain in escrow until the Commission has determined the amount that was properly chargeable to Complainants as a fair-share fee for each of those years, at which time the Commission will order the escrow monies, including the bank interest earned, to be immediately disbursed in accord with its determination.

4. That the Respondent Associations, their officers and agents, shall, to the extent they are not already doing so, immediately properly escrow in an interest-bearing account 19/ any and all fair-share fees deducted from all fair share fee payors in the respective bargaining units in these cases represented by the Respondent Local Associations and Respondent NUE, including Complainants, from the date of the U.S. Supreme Court's decision in Chicago Teachers Union v. Hudson, March 4, 1986, plus interest at the rate of twelve percent (12%) per annum on the fees collected from all such fair-share fee payors from the date such fees were taken until they are placed in escrow, until the Commission has determined, by hearing had at the request of any of the Respondent Associations or by the agreement of the parties, that the Respondent Associations are prepared to provide adequate notice to all fair-share fee payors in the bargaining units and have established the proper fair-share procedures. Upon such a determination by the Commission, or agreement by the parties, and after the approved notice has been distributed and the time to dissent and to accept the offered rebate or to "challenge" has run: (1) the fees that have been collected from the fair-share fee payors who have not filed a "challenge" under the corrected notice and procedures, (plus any amount of the fees deducted from "challengers" not reasonably in dispute, provided the breakdown into chargeable and nonchargeable categories has been verified by an independent auditor) will be disbursed in accordance with the revised and approved procedures, (2) the fair-share fees thereafter collected shall be disbursed or escrowed in accordance with the revised and approved

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(Footnote 15 continued from page 15.)

. . .

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

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

16/ There will continue to have to be separate or segregated accounts for the respective cases so that it may be determined that the proper amounts are escrowed in each case.

17/ As to those Complainants who were added, it will be one year prior to the dates the respective motions to add complainants were filed or in Richfield, the date the amended complaint adding complainants was filed.

18/ The rate set forth in Sec. 814.04(4) Stats., at the times these cases were initially filed.

19/ This relief makes unnecessary any further response to the Complainants' Motion For Reconsideration of Order Denying Motion to Escrow Fair-Share Payments filed in Clinton Community School District.

procedures, and (3) the fees of those fair-share fee payors who have filed "challenges" under the corrected notice and procedures, as well as Complainants, shall remain in escrow until the impartial decisionmaker has rendered his/her decision on the amount of the fair-share fee chargeable to those who elected to challenge, with such determination to date back to the date of the decision of the U.S. Supreme Court in Chicago Teachers Union v. Hudson.

5. That the Respondent Associations in these cases shall notify the Commission, in writing, within twenty (20) days of the date of this Order as to what steps they have taken to comply herewith.

6. That this Order supercedes our order for interim relief issued at the close of the September 17, 1986 hearing in these cases.

7. That these cases shall remain consolidated for purposes of determining the adequacy of the revised notice and procedures, referred to in Order Paragraph 4 above.

8. That except as otherwise noted above, the Complaints filed in these matters and the requests for relief advanced herein by Complainants shall be, and hereby are, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 1st day of September, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld /s/
Stephen Schoenfeld, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

On March 4, 1986 the U.S. Supreme Court issued its decision in Chicago Teachers Union v. Hudson wherein it held that the First Amendment requires that a union's agency fee/fair-share procedures contain certain procedural safeguards before the union may exact a fair-share fee from the nonmembers in the bargaining unit(s) that it represents. Our Wisconsin Supreme Court had previously held in Browne v. Milwaukee Board of School Directors, 83 Wis.2d 316, 332-333 (1978), that the fair-share provisions of MERA 20/ are constitutional on their face and referred that case to the Commission for determination of the factual issues and how MERA is to be applied.

20/ SUBCHAPTER IV

MUNICIPAL EMPLOYMENT RELATIONS

111.70 Municipal employment.(1) DEFINITIONS. As used in this subchapter:

. . .

(f) "Fair-share agreement" means 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. Such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employes affected by said agreement and to pay the amount so deducted to the labor organization.

. . .

(2) RIGHTS OF MUNICIPAL EMPLOYES. Muncipal employes shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employes shall have the right to refraim from any and all such activities except that employes may be required to pay dues in the manner provided in a fair-share agreement. Such fair-share agreement shall be subject to the right of the municipal employer or a labor organization to petition the commission to conduct a referendum. Such petition must be supported by proof that at least 30% of the employes in the collective bargaining unit desire that the fair-share agreement be terminated. Upon so finding, the commission shall conduct a referendum. If the continuation of the

(Footnote 20 continued on page 19.)

As we noted in our Orders to Show Cause issued in these cases, in light of the U.S. Supreme Court's decision in Hudson, the Complainants in these cases, excepting Sauk Prairie, 21/ filed a request that the Commission, after a hearing within forty days of their request, issue final findings of fact, conclusions of law and orders. Those Complainants requested an order:

> (a) requiring respondent unions to return to Complainants with interest at a rate of 12% per annum from the date of deduction until the date of return, all fair-share monies received by them from said employees since one year prior to the filing of the complaints;
>
> (b) requiring the respondent employers to cease and desist from making fair-share deductions from the earnings of all nonunion employees in the respective bargaining units in which Complainants are employed that are in excess of a proportionate share of the costs of the collective bargaining process and contract administration within the meaning of Section 111.70(1)(h), Wis. Stats.;
>
> (c) requiring respondent unions to cease and desist from inducing the respective employers to make fair-share deductions from the earnings of all nonunion employees in the bargaining units in which Complainants are employed that are in excess of a proportionate share of the costs of the collective bargaining process and contract administration within the meaning of Section 111.70(1)(h), Wis. Stats.; and,
>
> (d) requiring the respondent employers to cease and desist from making any fair-share deductions from the earnings of all nonunion employees in the respective bargaining units in which Complainants are employed until the Commission, after hearing upon request of any respondent, has determined that respondents have provided for: an adequate advance explanation to all nonunion employees of the basis for the fair-share fee, verified by an independent certified public accountant; a reasonably prompt opportunity for employees to challenge the amount of the fee before an impartial decisionmaker; and an escrow, for at least the amounts determined by the impartial decisionmaker reasonably to be subject to dispute, while such challenges are pending.

(Footnote 20 continued from page 18.)

> agreement is not supported by at least the majority of the eligible employes, it shall be deemed terminated. The Commission shall declare any fair-share agreement suspended upon such conditions and for such times as the commission decides whenever it finds that the labor organization involved has refused on the basis of race, color, sexual orientation, creed or sex to receive as a member any employe of the municipal employer in the bargaining unit involved, and such agreement shall be made subject to this duty of the commission. Any of the parties to such agreement or any municipal employe covered thereby may come before the commission, as provided in s. 111.07, and ask the performance of this duty.

Note: Sec. 111.70(1)(f) was formerly (h).

21/ As noted in the preface, Sauk Prairie was consolidated with these cases upon the motion of the Respondent Associations and over the objection of Complainants in that case. Dec. No. 19467-E (WERC, 6/86).

We issued Orders to Show Cause in these cases and consolidated the cases for purposes of hearing on the Orders. In our Orders to Show Cause we ordered the Respondents to demonstrate "why the Commission ought not, in light of the Hudson decision (and the state of the record in this matter,) forthwith issue an order:

> a. requiring all Respondents to immediately cease and desist from enforcing/honoring any fair share agreement affecting the bargaining units involved in these matters;
>
> b. requiring Respondents to refrain from enforcing/honoring a fair share agreement affecting the bargaining units involved in these matters until the Commission has determined, after a hearing, that the Hudson conditions precedent to fair share collections have been met;
>
> c. requiring Respondent Unions to immediately make the Complainants whole with interest for all fair share deductions taken from them since one year prior to the filing of the respective complaints.

The Respondent Associations filed their Response To Order To Show Cause on June 30, 1986 on behalf of all of the Respondents in these cases and on that date a tentative settlement of the complaints was reached. The hearing scheduled for June 30, 1986 was adjourned pending notification to the Commission of acceptance or rejection of the proposed settlement by the individual Complainants. The Commission was notified in mid-August of 1986 that the proposed settlement had been rejected by the Complainants and the Show Cause hearing was held before the full Commission on September 17, 1986, at which time the Respondent Associations submitted evidence as to their fair-share rebate procedures and escrow arrangements prior to the decision in Hudson, and their revised fair-share rebate procedures, the notice and information sent to fair-share fee payors and their fair-share fee escrow arrangements subsequent to the decision in Hudson.

Summary of Issues and Decision

As was the case in Browne v. Milwaukee Board of School Directors, hereinafter Browne, and Johnson v. Milwaukee County, hereinafter Johnson, 22/ the primary issues decided in this decision are whether the Respondent Associations' post-Hudson notice, objection and rebate procedures and escrow arrangements meet the requirements of Hudson, whether Hudson is to be applied retroactively, and what, if any, relief is appropriate at this point in these proceedings. As might be expected, we have relied to a large extent on our recent decision in Browne and Johnson in deciding the legal issues. For the reasons set forth in this decision, we have held that certain aspects of the Respondent Associations' notice, procedures and escrow arrangement are legally deficient and that other aspects are legally sufficient; that Hudson is to be applied retroactively; and that certain relief is appropriate at this point. Specifically, we have held that:

(1) An "advance rebate" or "advance reduction" for fair-share fee payors who dissent is not necessarily required by the U.S. Constitution or by MERA, rather it is an alternative which may be used in conjunction with an escrow arrangement to avoid the temporary, but improper, use of a portion of the dissenters' fees. However, where, as here, the union has not conceded that any amount is rebateable and there has not been a determination by an independent auditor or an arbitrator as to what portion of the fees is clearly rebateable or clearly chargeable, it is necessary to escrow one hundred percent (100%) of the dissenters' fees;

(2) The Respondent Associations' notice to fair-share fee payors must at a minimum list the major categories of the respective associations' expenses, and those figures must be verified by an independent auditor. The notice must also indicate the amounts for the chargeable categories of expenses, but those amounts listed do not have to be verified by an independent auditor if the Respondent Associations elect to escrow one hundred percent (100%) of the fees being

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22/ Dec. No. 18408-G, 19545-G, (WERC, 4/87). Browne and Johnson were consolidated and decided together.

collected from those dissenters who challenge the Respondent Associations' offered rebate amount, hereinafter referred to as "challengers," less any advance rebate that might be provided. Although the financial breakdowns with respect to the budgeted expenses of Respondents WEAC and NEA were adequate, there was no financial information provided with regard to the Respondent UniServs and Local Associations. The notice was further deficient as to all of the Respondent Associations due to the lack of verification of any actual expenses by an independent auditor; 23/

(3) Both constitutionally and under MERA the Respondent Associations may distinguish between those fair-share fee payors who dissent to paying full dues, but agree to accept the Respondent Associations' offered rebate in settlement of their disputes, and those who dissent and challenge the offered rebate, i.e., "challengers." 24/ So long as the notice to the fair-share fee payors makes clear the consequences of accepting the rebate and not "challenging," the Respondent Associations may restrict the benefit of the arbitration of the fee amount to only the "challengers." Here the notice was sufficiently clear that one must select "option #2," arbitration, in order to receive a rebate based on the arbitration;

(4) It is permissible, both constitutionally and under MERA, for a union to rely on its expenses for a prior year to determine the appropriate chargeable fee for the present year, and an end-of-the-year adjustment to reflect the union's actual expenses for that year is not required;

(5) It is not an unwarranted obstacle, and hence is permissible, to require that dissent be submitted within a designated thirty day period annually, assuming adequate prior notice from the Respondent Associations, and provided that new hires and members who terminate their membership in the association and become subject to fair-share after the close of the annual dissent period are given adequate notice and a thirty day period to dissent and that their fair-share fees are placed in escrow until they have had the opportunity to dissent, and that thereafter the procedures pertaining to non-dissenters, "objectors" or "challengers" are applied as appropriate;

(6) The Respondent Associations may require fair-share fee payors to make their dissent known annually, where the Associations provide annual notice to their fair-share fee payors, and may require that dissent be submitted in writing to be effective;

(7) It is constitutionally sufficent for a neutral agency, such as the Commission or the AAA, to appoint an arbitrator to arbitrate the amount of the fee that is chargeable to "challengers," as an alternative to the mutual selection of such an arbitrator;

(8) The Hudson requirement that the portion of the "challenger's" fair-share fee reasonably in dispute be escrowed pending the outcome of the impartial decisionmaker's decision, requires that control of the monies be turned over to a neutral third party, such as a bank, to be disbursed upon issuance of, and in accordance with, the decision of the impartial decisionmaker. The segregated savings accounts established by Respondent Associations in these cases do not meet the aforesaid requirement;

(9) Hudson does not require that the fees continue to be held in escrow after the impartial decisionmaker's decision has been rendered and a valid impartial decisionmaker's decision may be used as a basis for less than a full escrow in the subsequent year;

23/ This finding is based upon the information sent to fair-share fee payors April 24, 1986. The information the Respondent Associations indicated would be sent in the fall of 1986 for 1986-1987 contained no breakdown into chargeable/nonchargeable expenses, the figures were proposed budget figures and there would not be any verification of actual expenses by an independent auditor.

24/ For the sake of clarity we will refer to those fair-share fee payors who dissent, but accept the offered rebate, as "objectors" and those who elect to proceed to arbitration as "challengers."

(10) In the presence of the procedural safeguards set forth in Hudson, the fair-share provisions of MERA permit a union to exact, i.e., to collect and spend, a fair-share fee equal to regular dues from the nonmembers it represents if those nonmembers do not make their dissent known to the union in the manner and time the union may lawfully require;

(11) Hudson is to be applied retroactively, and therefore appropriate relief is to be fashioned retroactive to the date Complainants became subject to fair-share deductions by Respondents subject to the application of Sec. 111.07(14), Stats.;

(12) The Respondent Boards have not committed prohibited practices within the meaning of MERA by deducting fair-share fees from the pay of Complainants and turning those fees over to the Respondent Associations pursuant to their fair-share agreements;

(13) The Complainants may challenge the legal sufficiency of the Respondent Associations' fair-share rebate procedures without having utilized or attempted to utilize those procedures;

(14) Retroactive relief is appropriate in these cases and consists of ordering the Respondent Associations to properly escrow an amount equal to the fair-share fees paid by Complainants since one year prior to the filing of the respective complaints 25/ up to March 4, 1986, the date of the U.S. Supreme Court's decision in Hudson, plus interest at the rate of twelve percent (12%) per annum from the date the fees were taken to the date the funds are placed in escrow in compliance with this Order, with the Commission 26/ in subsequent proceedings to determine the proper disbursement of the escrow monies based on the chargeable/nonchargeable proportions of the fees for each of the years involved; and

(15) The appropriate prospective relief is an order that the Respondent Associations immediately correct their notice and procedures to comply with Hudson, properly escrow in an interest-bearing account all fair-share fees deducted since the date of the Supreme Court's decision in Hudson, and currently being deducted, from all fair-share fee payors in the covered bargaining units, including Complainants, plus interest at the rate of twelve percent (12%) per annum on all such fees collected from the date of the Supreme Court's decision in Hudson until they have been placed in escrow; after the Commission has determined and declared that the Respondent Associations have established the procedures required by Hudson and after adequate notice has been given and the time for "objecting" or "challenging" has run, the fees in escrow, and those collected thereafter, will be disbursed/escrowed in accordance with the approved procedures, and the fees of the "challengers," including Complainants, will remain in escrow until their disbursement is authorized by the decision of an impartial decisionmaker as regards the period dating back to the date of the decision in Hudson. Upon such a determination the escrowed monies are to be disbursed in accord with said decision, including the bank interest earned during the escrow. Complainants are to be deemed "challengers" in any such proceedings.

I. Sufficiency of the Respondent Associations' Pre-Hudson Procedures

The U.S. Supreme Court held in Hudson that the First Amendment requires that before a union may exact a fair-share fee it must establish the following procedural safeguards: "an adequate explanation of the basis of the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending." 106 S.Ct. at 1078. The Wisconsin Supreme Court held in Browne that MERA is constitutional on its face, hence MERA must be construed to require at least the same procedural safeguards held in Hudson to be

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25/ One year prior to the date complainants were added to the complaints in those cases where they were added after the applicable complaint was filed.

26/ Or other impartial decisionmaker if the parties so agree.

constitutionally required. Having concluded herein that Hudson is to be applied retroactively, it is necessary to determine whether the Respondent Unions' pre-Hudson procedures met the procedural requirements set forth in Hudson.

Complainants

Complainants assert that under the fair-share agreements between the Boards in this case and the Respondent Associations, the Boards deducted a fair-share fee equal to regular dues from all nonunion employes and turned those deductions over to the Respondent Associations. A fair-share payor not wishing to pay for the Respondent Associations' activities other than collective bargaining and contract administration is afforded no remedy under the agreements themselves. His/her only recourse, other than filing a prohibited practice charge or a lawsuit, is to participate in the Respondent Associations' internal rebate procedure. Under that procedure an employe must submit a written objection to the Respondent Association and it will then send the employe a rebate of the portion of the fee that the Respondent Associations compute was spent during the preceding fiscal year for non-chargable purposes. If the employe is not satisfied, he/she may request that the matter be referred to arbitration. In Hudson, the Supreme Court considered the constitutionality of a similar procedure adopted by the union in response to objections of fair-share fee payors and the state statute involved was almost identical to Sec. 111.70(1)(f), Stats. The Court reiterated that requiring non-union employes to pay an agency fee "has an impact upon their First Amendment interests," and may well "interfere in some way with an employe's freedom to associate for the advancement of ideas, or to refrain from doing so, as he sees fit." 106 S.Ct. at 1073, citing Abood v. Detroit Board of Education, 431 U.S. 209, 222 (1977). Therefore, the Court held that "carefully tailored" procedural safeguards are constitutionally necessary to "minimize the infringement" when the government and a union compel a non-union employe to pay an agency fee to the union. 106 S.Ct. at 1074. The Court then identified "three fundamental flaws" in the procedure used by the union and the board in Hudson and which are also present in this case.

First, relying on its decision in Ellis the Court held that a procedure which merely offers dissenters the possibility of a rebate, and which therefore risks the possibility that the funds may be used temporarily for an improper purpose, is not a "permissible response to the non-union employes' objections." 106 S.Ct. at 1075. Complainants allege that in these cases there is no advance reduction but only a partial escrow, and hence, at least the possibility that the Respondent Associations will use a portion of the compulsory fees for improper purposes, subject only to a later rebate. They assert that the risk of temporary use for improper purposes is even greater under the Respondent Associations' pre-Hudson procedures than in Hudson, since the Respondent Associations collect a fee equal to regular dues and not a reduced amount.

Second, in Hudson the advance reduction "was inadequate because it provided non-members with inadequate information about the basis for the proportionate share." 106 S.Ct. at 1075. Adequate disclosure requires a union to identify the expenditures for collective bargaining and contract administration, for which non-members as well as members can fairly be charged a fee, including "the major categories of expenses, as well as verification by an independent auditor." 106 S.Ct. at 1076 and note 18. For the union's notice to merely acknowledge "the amount that it admittedly had expended for purposes that did not benefit dissenting nonmembers" is not sufficient. 106 S.Ct. at 1076. Further, "basic considerations of fairness, as well as concern for the First Amendment rights at stake" require that all nonunion employes be given such adequate notice before they have made an objection. Here the Respondent Associations made no disclosure whatsoever until an employe first submitted an objection, and there is no guarantee that even then the employe would be given the "independently verified financial information" required by Hudson.

Third, the fair-share procedure in Hudson "was also defective because it did not provide for a reasonably prompt decision by an impartial decisionmaker." Complainants assert that "even if the Respondents' selection process for an arbitrator produces the necessary neutrality, the neutral's decision is not the 'reasonably prompt' one contemplated by Hudson." According to Complainants, "the current procedure contemplates deduction beginning in September and continuing through June until a fee equal to dues is paid. The Respondents' fiscal year ends on August 31. About February of the following year the union

distributes its self-determined rebate. It is only then -- some 18 months after the deductions began that an arbitrator is selected." Complainants also cite the arbitration that took place in the Sauk Prairie case. That arbitration concerned fees for the 1979-80 and 1980-81 years, however the arbitrator was selected in the spring of 1981 and his award is dated September 20, 1982.

Complainants assert that the Respondent Associations' pre-Hudson fair-share procedures had none of the three constitutional requirements for a union to collect an agency fee. It is asserted that "all three" of "these characteristics are required because the agency shop itself impinges on the nonunion employes' First Amendment interests." 106 S.Ct. at 1077-1078. Because they are constitutional requirements for the collection of an agency fee, the collection of any fair-share fee from Complainants in these cases violated their First and Fourteenth Amendment Rights, unless MERA is construed so as to have made that collection a prohibited practice.

Respondent Associations

The Respondent Associations concede that their pre-Hudson fair-share rebate procedures did not meet all of the requirements imposed by U.S. Supreme Court's decision in Hudson, but assert this had little or no impact on Complainants. Much of Respondent Associations' argument in this area goes to the propriety of retroactive relief and will be dealt with there.

It is asserted by the Respondent Associations that while Hudson imposed new requirements in this area, few, if any, of the requirements apply to these Complainants.

Hudson requires that a union provide sufficient information to non-members in order to allow them to "gauge the propriety of the union's fees" so that they can make an informed decision as to whether or not to dissent. 106 S.Ct. at 1076. That requirement can hardly apply to the present Complainants since all of them had registered their dissent by filing this or other lawsuits.

Further, the Commission has given Complainants in fair-share litigation extensive discovery rights. Browne, Dec. No. 18408 (WERC 5/84). The Complainants in these cases are represented by counsel and have been granted similar broad discovery rights which allow Complainants to obtain "far more specific and precise material than the general budgetary outlines required by Hudson." If they did not obtain such information, it was because their counsel did not believe it was needed. The Respondent Associations also assert that it is possible that "ethical questions could be raised by any union's attempt to provide the type of information suggested by Hudson directly to individuals who are currently in litigation and represented by counsel."

The information requirement of Hudson has little bearing in these cases since any additional information could only have changed the posture of the case if it had convinced Complainants that they had no basis to proceed. If there was any prejudice generated by the failure to provide such information, it fell solely upon the Associations and not upon Complainants.

Respondent Associations note that Hudson also requires that the union not have control over the selection of the impartial decisionmaker who is part of the internal rebate procedure. They assert that such a defect is not present here.

Respondent WEAC's prior procedure, which applied to all of the involved Respondent Associations, did not give Respondent WEAC sole control over the selection of the arbitrator, but allowed for mutual selection. Since 1981 Respondent WEAC's arbitration procedure provided for an arbitrator selected by the parties alternately striking from a list of five arbitrators supplied by the AAA with the appellant striking first. For example, the correspondence with Complainant Jordi in Sauk Prairie indicates that Arbitrator Krinsky was jointly selected by such a procedure. The procedure of alternately striking from a list of arbitrators is the "ordinary and customary procedure utitlized in most labor disputes."

The Respondent Associations also note that all of the Complainants have lawsuits challenging the Respondent Associations' fair-share assessments and rebate procedures pending before the Commission. The Commission being a neutral

and detached decisionmaker, and given the pendency of the lawsuits before that agency, Complainants cannot allege that the unions have controlled the decisionmaker. Hence, Hudson's requirement of impartiality has not been violated.

Hudson also requires a reasonably prompt adjudication of a fair-share dispute. While Complainants' procedural rights in that regard may not have been fully met, the Respondent Associations are not to blame. Except for Jordi, none of the Complainants have sought relief through Respondent WEAC's internal rebate procedure. Hence, there is no way of telling whether the award would have been "prompt." Complainants have chose to litigate before the Commission, and in January of 1985 Complainants asked the Commission for an expedited hearing to determine whether the Associations were exacting "an inappropriate amount of fair-share." Counsel for the Respondent Associations did not oppose such request, but in fact urged that such an immediate hearing be held. Since the Respondent Associations were not responsible for any delay in Complainants' securing a prompt hearing, they are not resposible for any damages flowing from any such delay.

While Complainants imply in their brief that they would not have received the prompt hearing had they sought one, there is no basis for the claim. The prior rebate procedure "specifically allowed an employe to proceed to arbitration on the basis of budgeted, rather than actual expenditures, if that was the employe's wish." While the first arbitration took an extended period of time, there is no reason to believe that subsequent proceedings would have been inappropriately long, particularly if Complainants had asked for an expedited decision. Absent a request by a party, an arbitrator is bound only by his/her own judgement as to the timing of a decision. Since an expedited decision was not requested, the parties did not receive one. The Respondent Associations argue that Complainants' claims in this regard are based upon speculation and relief cannot be premised on speculation. It is assumed that Complainants chose the Commission as a forum based upon their belief that the Commission possessed greater remedial powers than an arbitrator. However, they must take "the bitter with the sweet."

Regarding escrow, the Respondent Associations concede that the appropriate amount of the escrow is difficult to judge in light of Hudson's "guarded discussion of the subject matter." Citing, Hudson, 106 S.Ct. at 1074, note 23. Consistent with prior law, the Respondent Associations' pre-Hudson escrowing has been less stringent, however, unlike the union in Hudson, it had a prior arbitration award by an independent arbitrator that set forth the appropriate rebate amount. That award was issued September 20, 1982 and covered expenditures for the 1979-80 and 1980-81 school years and was based on audited figures. That far exceeds the minimum requirements for reliability set forth in Hudson for an interim escrow. Although the award is dated, the Respondent Associations' expenditures "have not changed radically."

Respondent Associations also contend that Complainants' challenges of certain aspects of the Respondent Associations' prior rebate procedure, even if valid, are irrelevant since the Complainants rejected those internal procedures and chose to litigate before the Commission. There is no showing that the Respondent Associations' internal procedures affected Complainants' decision to litigate before the Commission. They selected their forum and decisonmaker and cannot now attack their choice. Any delay in adjudicating Complainants' claims, while unfortunate, is not the Respondents' responsibility any more than it would be if a court had delayed adjudicating the claims.

Discussion

It is clear that the Respondent Associations' pre-Hudson procedures did not meet the requirements of Hudson. Fair-share fee payors received no notice of their right to object to the amount of the fee and received no information regarding the Respondent Associations' finances unless they requested a rebate on their own initiative. As will be discussed below, the escrow arrangement was also inadequate and did not constitute a true escrow arrangement. Other issues raised by Complainants that are in regard to both the Respondent Associations' pre-Hudson and post-Hudson procedures will be addressed below.

Regarding the ability of Complainants to challenge the procedures they chose not to utilize, it is true of many of these cases, including Hudson, that the plaintiffs filed a law suit challenging the union's fair-share objection procedure

without attempting to participate in those procedures, and they have not been precluded from obtaining a determination on that basis. The District Court in Hudson had held that some plaintiffs had not properly and timely filed their objection and that this "negates their contention that they had objected and continued to do so," and were therefore not entitled to relief. The Seventh Circuit Court of Appeals, however, concluded that:

> None of the plaintiffs followed the prescribed procedure through to the end (some did not invoke it at all) but that is unimportant if the procedure violates their constitutional rights.

743 F.2d 1194. That result was not altered by the Supreme Court's decision.

As to the Respondent Associations' contention that the deficiencies in its pre-Hudson procedures did not harm the Complainants, and that therefore no additional relief is appropriate, that argument goes to remedy and is addressed in our discussion on retroactive relief.

II. Sufficiency of Respondent Associations' Post-Hudson Procedures

We note that at the Show Cause hearing on September 17, 1986 the Respondent Associations presented evidence regarding the notice and information they sent to fair-share fee payors on April 24, 1986 in response to Hudson and follow-up correspondence and the actions they took to meet the requirements of Hudson. They also presented some evidence as to what they intended to do and to send to fair-share fee payors in the fall of 1986 for the 1986-1987 fiscal year. While we comment to some extent upon the latter, our conclusions are based on the evidence of what the Respondent Associations have sent and done.

A. Lack of an Advance Reduction

Complainants

Complainants note that the Respondent Associations' revised procedures still do not provide for an "advance reduction." Citing Ellis, Complainants assert that the Court indicated that a rebate, even with interest, does not cure the injury, but only lessens it. 104 S.Ct. at 1890. The union was not entitled to the money it refunded, and should never have had it in the first place. Further, here the Respondent Associations currently have a practice of immediately refunding the involuntary PAC deduction of Five Dollars at the beginning of the year, and there is no logical reason why they cannot do the same with respect to an advance reduction. They contend that either the immediate refund or a reduction of the involuntary deduction should be utilized to avoid a later refund. They assert that "being deprived of money that is rightfully yours is also an injury that should be prevented if possible."

Respondent Associations

It is asserted by the Respondent Associations that Complainants' reliance on Hudson as requiring the advance reduction of fair-share assessments is totally misplaced. The union in Hudson initially used an advance reduction and later established a one hundred percent escrow of all fees charged. The Court found both systems improper, but did not imply that either or both were legally required as a matter of general law. Respondent Associations cite both the decisions in Ellis and Hudson as not having held either to be automatically required. In Ellis the Court stated that there were alternatives to a pure rebate procedure and noted "advance reduction of dues and/or interest-bearing escrow accounts." 466 U.S. at 444. The Court expressly has given the union the option of choosing either advance reduction or escrow. The purpose of either being to deny the union the use of dissenting employes' funds for political or ideological purposes. According to the Respondent Associations, "under this analysis, the harm does not occur in the taking but in the spending." Hudson also did not command that advance reduction be implemented. It found the union's particular choice in that case, the advance reduction, was inadequate because the union did not provide non-

members with adequate information as to the basis of the amount of the fee and because the union's procedure did not provide for a reasonably prompt decision by an impartial decisionmaker. Hudson, 121 LRRM at 2800. Hudson implies that an escrow system (without an advance reduction) would be acceptable if the procedure met those two requirements, and there is nothing in Hudson to suggest that Ellis was being overruled in this regard.

It is conceded by the Respondent Associations that "on a very superficial and one-sided level" there is an equity argument to be made that advance reduction is required because the union should not be allowed to take money from an individual when it knows that at least some of it will be used for purposes which state or federal law do not permit. However, that argument was rejected in Ellis, presumably because it misconstrues the general law of damages and would elevate fair-share claims into a special status. It is contended that although one party may agree that another party should prevail on a portion of the claim, there is no legal principle suggesting that the first party must make a partial settlement prior to total adjudication of the matter. Both federal and Wisconsin rules of civil procedure have provisions for "offers of judgement." Citing, Civ. R. 68; Section 807.01, Stats. Those provisions contemplate that the party owing money would not be required to tender the offered amount unless the second party accepted and rendered the entire dispute resolved. Respondent Associations contend that it would be different if the first party admitted that it owed a specific, easily liquidated amount. However, in fair-share disputes the parties usually will disagree widely about the amount owed. The only difference between this case and typical civil litigation is that it involves employes' First Amendement rights and therefore traditional remedies must be examined more closely. Citing, Ellis. The First Amendment concerns are met when the union escrows one hundred percent (or in certain situations less than one hundred percent) of the fair-share assessment. By depriving itself of any of the fair-share assessments, the union prevents the spending of those funds for non-chargeable purposes and therefore removes any First Amendment considerations. These Complainants are no different than any plaintiff who must first sue in order to gain relief. However, the harm to these employes is "far less" than in many Commission cases, e.g., an impermissible discharge case.

Complainants' alternate contentions regarding state law should also be rejected "since there is no basis to conclude that MERA intended to single out fair-share Complainants for special protection." If Complainants prove that the Respondent Associations violated MERA by spending their fair-share fees for impermissible purposes, they will receive appropriate rebates plus interest, i.e., the same relief they would obtain had they sued their employer for violations of Sec. 111.73(a)(1) and 3, Stats. "There is no principled reason to treat the equities in a different fashion when employees seek relief against a union then when they seek relief against employers."

The Respondent Associations also contend that it would be almost impossible to administer an advance reduction in a manner which would protect union interests. Given the disputed state of the law, the only method of insuring that a union would not collect money to which it might not be entitled is for the union to collect only a fraction of what it would likely be entitled to. If, as likely, a greater assessment is required, then the union "is left with a serious problem of recoupment since Section 111.70(1)(f), Wis. Stats., may not permit the added deductions for undercharges in prior years." While a union could bring a small claims action to retrieve the old fair-share fees, that procedure would be "prohibitively expensive", and appears to be expressely contrary to the direct deduction method set forth in Sec. 111.70(1)(f), Stats.

Respondent Associations conclude that an escrow and rebate system has been found to be constitutional, is consistent with general practice under MERA, and appears to be the only practical way of dealing with the problems associated with determining and collecting the appropriate fair-share fee.

Discussion

Ellis speaks of alternatives to the "pure rebate" approach in the form of "advance reduction of dues and/or interest-bearing escrow accounts . . ." Ellis, 104 S.Ct. at 1890. The goal is to avoid the chance that a dissenter's

fee will be used even temporarily for improper purposes, Hudson, 106 S.Ct. at 1075, and that goal does not necessarily require advance reduction.

The Court's discussion in Hudson is not very clear regarding the need for an advance reduction. It is initially discussed by the Court more in terms of the information justifying the fee amount:

> Second, the "advance reduction of dues" was inadequate because it provided nonmembers with inadequate information about the basis for the proportionate share.
>
> . . .

106 S.Ct. at 1075. It is next discussed in the context of the union's escrow defense:

> The Union does not contend that its escrow has made the case moot. Rather, it takes the position that because a 100% escrow completely avoids the risk that dissenters' contributions could be used improperly, it eliminates any valid constitutional objection to the procedure and thereby provides an adequate remedy in this case. We reject this argument. Although the Union's self-imposed remedy eliminates the risk that nonunion employees' contributions may be temporarily used for impermissible purposes, the procedure remains flawed in two respects. It does not provide an adequate explanation for the advance reduction of dues, and it does not provide a reasonably prompt decision by an impartial decisionmaker. We reiterate that these characteristics are required because the agency shop itself impinges on the nonunion employees First Amendment interests, and because the nonunion employee has the burden of objection. The appropriately justified advance reduction and the prompt, impartial decisionmaker are necessary to minimize both the impingement and the burden.

106 S.Ct. at 1077. (Emphasis added) The Court's reference to advance reduction again refers to information in terms of "adequate explanation" and "appropriately justified." Finally, in summarizing what is constitutionally required in order for a union to collect an agency fee the Court held that:

> . . . the constitutional requirements for the Union's collection of agency fees include an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending.

106 S.Ct. at 1078. There is no mention of an advance reduction. We conclude that an advance reduction is not constitutionally required. Cf. Tierney v. City of Toledo, Nos. 85-3016, 85-3290 (6th Cir. 1987).

Here, Respondent WEAC admits it has made no determination as to an amount it concedes is not chargeable to dissenters as a part of a fair-share fee, and that, hence, it makes no advance reduction. While an advance reduction is not necessarily required, in the present circumstances, where there is no amount conceded to be rebateable as an advance reduction to dissenters and the Respondent Associations have not provided fair-share payors with either the verification by an independent auditor of the breakdown of their expenditures into chargeable/nonchargeable categories or a valid arbitration award which we herein later conclude is a valid alternative basis for less than a full escrow, the Respondent Associations are being required to escrow one hundred percent (100%) of the fees of all dissenters until they accept the offered rebate and to continue the escrow of the fees of the "challengers" until receipt of the independent decisionmaker's award. See also, Barry, et. al. v. United University Professions, Case No. U-8347 (N.Y. PERB, July 8, 1987).

B. Financial Information in the Notice Regarding the Respondent Associations' Expenses

Complainants

Complainants assert that Hudson "explicitly noted that 'adequate disclosure surely would include the major categories of expenses (for collective bargaining and contract administration), as well as verification by an independent auditor'." 106 S.Ct. at 1076 and n. 18. (Emphasis added) Independent verification is necessary "because the self-serving representations of union officials cannot be considered fair and objective." Citing, Hudson, 106 S.Ct. at 1076-1077. In McGlumphy v. Fraternal Order of Police, 633 F.Supp. 1074, 1082 (N.D. Ohio, 1986), the District Court held that disclosure is not adequate if "the Union does not employ an independent auditor to determine the legitimacy of the related expenses." It is contended that such independently verified disclosure is not required by the Respondent Associations' procedure and in fact has not been made. While the regular financial statements of the Respondents WEAC and NEA apparently are audited, the Respondent Associations' witnesses admitted that the breakdown of that information in the notice into chargeable and non-chargeable categories is not independently audited or verified, but is only the Respondent Associations' calculation of the allegedly chargeable expenses. Further, there is little or no disclosure as to the Respondent Locals or the various UniServ units. In that regard, Complainants' response to the assertion that small locals should not be required to meet Hudson's requirement of advance disclosure of audited financial information is that the union's size is irrelevant. The duty under the First Amendment to provide the information falls on the exclusive bargaining representative, regardless of its size. The rights of the nonmember fair-share fee payors are the same independent of the size of the organization representing the bargaining unit. Citing, Monell v. Department of Social Services, 436 U.S. 658 (1978). The case relied upon by Respondent Associations in this regard, Andrews v. Education Association of Cheshire, 653 F.Supp. 1373 (D.C. Conn. 1987), is on appeal and is contrary to the holding in Hudson that it is the duty of the exclusive representative, and not the state or national organization with which it is affiliated, to provide the necessary information. That complying with the requirements might be burdensome is no basis for avoiding them. "(A)dministrative convenience alone is insufficient to make valid what otherwise is a violation of due process of law." Citing, Cleveland Board of Education v. LaFleur, 414 U.S. 632, 647 (1974).

Respondent Associations

The Respondent Associations note that Hudson imposed a "new disclosure requirement" on unions enforcing fair-share provisions, and assert that the only description as to the type of information required is set forth in notes 17 and 18 of that decision. Those footnotes suggest that the information required need not be extensive. Note 18 describes the information in more detail, but nowhere in Hudson is it indicated how the information is to be provided. Further, Hudson involved an extremely large urban local and care must be taken in extrapolating from that situation into far different ones. The key to determining whether Respondent WEAC has provided adequate information is to determine whether the information given meets the "limited purpose" stated in Hudson, i.e., to give the nonmember a basis to dissent. It is asserted that the information provided more than meets that purpose. The information provided regarding Respondent WEAC's and NEA's expenditures exceeded the requirement of Hudson, analyzing not only major categories, but also "nearly every line item expenditure in both budgets." Although specific UniServ budget information for the 1985-1986 school year was not provided, employes were provided with the entire budgets of all UniServs for the 1986-87 fiscal year. UniServ budgetary information for 1985-1986 was unavailable since prior to Hudson Respondent WEAC did not require UniServ units to submit their budgets. However, the letter from Respondent WEAC's President, Blank, to fair-share employes did discuss UniServ expenditures, and why a particular rebate was believed appropriate, in explaining budget information for the 1985-86 school year. Blank's letter indicated that UniServ budgets are "largely generic with most of the budget being expended on the salary and expenses of a UniServ Director." It was further indicated that the UniServ Director is responsible for most of the bargaining and grievance processing done for the benefit of bargaining unit members. Given the nature of how UniServs work, that description appears to meet the limited purposes of Hudson, "especially given the practical necessities of providing nearly instant information to non-members."

Respondent Associations contend that there are two areas of information that are more problematic. The first area is the budgets of locals. Respondent WEAC has over 420 locals in this State and many are quite small. Respondent WEAC's Business Manager testified that many of these budgets are "extremely informal and many are not reduced to writing in a method that is easily transmitted." While it is conceded that this information would have some value to fair-share employes in deciding whether to dissent, it is believed that Hudson does not require that unions send all information in written form unless there is some indication that the information cannot be obtained in a more informal manner. While it might be a hardship upon a fair-share employe to obtain information from distant cities, there is no similar problem in obtaining information from the local's treasurer, who generally lives in the same town and works with the employe. In these cases, it is easier for the fair-share employe to obtain the information than it is for Respondent WEAC. Since Hudson was silent on how a union is to provide the budget information, requiring nonmembers to obtain locally the information on the local's expenditures, without a showing that the dissenter is prejudiced by this, should not violate Hudson. It is noted, however, that these are not uneducated or immobile individuals. If the information cannot be obtained locally, Respodent WEAC concedes that "it has a responsibility to attempt to see that the individual obtains the information; however, WEAC is entitled to assume that, if a fair-share employe does not ask for WEAC's assistance in obtaining certain information, he or she does not need it."

Citing Andrews, the Respondent Associations note that Hudson involved a single large urban local and the size and scope of that union dictated many of Hudson's requirements, particularly with respect to financial information. The same requirements cannot reasonably be applied to small locals. The District Court in Andrews excused the audit requirement for small locals as being totally impractical and not required by Hudson. The Respondent Associations agree with that interpretation, but assert that the evidence shows they intend "to provide budgetary information for the NEA, WEAC, and most, if not all UniServ units" and for all locals that by themselves constitute a UniServ unit. They admit they will not provide budgetary information for most locals because they do not have it and because some small locals do not even have formal budgets. The Respondent Associations do not dispute their obligation to provide fair-share employes with relevant budgetary information "if that information is needed." (Emphasis supplied) The April 24, 1986 letter directed the fair-share fee payors to seek such information from their locals if they felt they needed it and indicated that Respondent WEAC would help them if they were dissatisifed with the information they received from the local.

The Respondent Associations also contend that the Commission's "compromise" reached in Browne in this regard is premature here. The Respondent Associations should be allowed to rely on local resolution of this problem until a fair-share employe indicates he/she could not get adequate information from his/her local. It is asked that the Commission limit its holding in this regard to the facts in Browne.

A second area raised by Complainants is the failure of the Respondent Associations to provide an "independent verification by an auditor" of its expenses. An audited statement was not provided to fair-share employes initially because Respondent WEAC did not possess one in a form that appeared usable. This did not mean that the Respondent Associations had unaudited accounts, to the contrary, Respondent WEAC's budgetary and expenditure controls are among the best. However, no auditor can provide the auditor verification that particular expenditures will be spent for collective bargaining that the Right To Work Committee seems to demand. Respondent WEAC's CPA firm has "provided fair-share employes for the 1986-87 year as definitive a statement as can be granted under

arbitral analysis of the various Respondent Union's expenditures for 1985-86 and 1986-87." It is asserted that this analysis will provide the information required with much greater precision and accuracy. The Respondent Associations also note the following in footnote 8 of their brief:

> From a practical level, it appears that an unduly broad reading of Hudson regarding the use of an accountant inappropriately combines the roles of an accountant and an auditor. As indicated by the WEAC auditor, most auditors would be totally unable to make a detailed analysis of expenditures in terms of their relationships to collective bargaining. It is simply not a skill taught to most accountants. Conversely, it would be difficult for an arbitrator to analyze WEAC's books and records to determine whether they represent a fair and accurate summary of WEAC's financial transactions and net worth. An auditor can only provide the type of information sought by the Right to Work Committee if he or she is applying proposed or actual expenditures to previously defined catgories. This could only be done if there was a prior arbitration award where specific categories were analyzed and percentages determined. WEAC had no such award becaus it had reached voluntary settlement with all prior dissenting employees since 1980.

Respondent WEAC indicates that it is not asking the Commission to approve the precise information it provided, rather it contends that the information is "presumptively proper unless and until a particular fair-share employe in a particular proceeding demonstrates that he or she was confused, misinformed, underinformed, or in some other way prejudiced by the presented information." Given their reasonable attempt to provide basic information which cannot be readily obtained locally, the Commission should uphold the Respondent Associations' procedure until it is demonstrated that this presumption is unwarranted. "Helplessness and ignorance should not be presumed any more than dissent, especially given the nature of the workforce." Respondent WEAC points out that out of the almost eight hundred information packets sent out, only approximately thirty-five additional individuals responded. Over one hundred individuals had objected without such information, suggesting that most bargaining unit members are not "in the dark" as to how their money is spent. Hence, it would "be inappropriate to assume that slight defects in the type of notification will have any appreciable effect on fair-share employes."

Discussion

As we concluded in our decision in Browne regarding the financial information to be provided to fair-share fee payors:

> The Court's decision in Hudson addresses what is required in the union's notice by way of breakdowns of union expenses and verification by an independent auditor in its discussion regarding the adequacy of the union's notice, 106 S.Ct. at 1076, and n. 18, and in its discussion regarding escrow. 106 S.Ct. at 1077-78, and n. 21. In its discussion regarding the notice the Court held that the notice must identify expenditures for collective bargaining and contract administration, i.e., expenses for which dissenting fair-share fee payors may be charged and clarified in note 18 that:
>
> > The Union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor. With respect to an item such as the Union's payment of $2,167,000 to its affiliated state and national labor organizations, see n. 4, supra, for instance, either a showing that none of it was used to

subsidize activities for which nonmembers may not be charged, or an explanation of the share that was so used was surely required.

106 S.Ct. at 1076.

Complainants assert that note 18 is to be read to require verification by an independent auditor of the breakdowns into chargeable and non-chargeable categories as well. Such an interpretation, however, would not be consistent with the Court's discussion of when and why a 100% escrow would not be required:

> We need not hold, however, that a 100% escrow is constitutionally required. Such a remedy has the serious defect of depriving the Union of access to some escrowed funds that it is unquestionably entitled to retain. If, for example, the original disclosure by the Union had included a certified public accountant's verified breakdown of expenditures, including some categories that no dissenter could reasonably challenge, there would be no reason to escrow the portion of the nonmember's fees that would be represented by those categories. 23 On the record before us, there is no reason to believe that anything approaching 100% "cushion" to cover the possibility of mathematical errors would be constitutionally required. Nor can we decide how the proper contribution that might be made by an independent audit, in advance, coupled with adequate notice, might reduce the size of any appropriate escrow.

106 S.Ct. at 1078. (Emphasis added)

The Court's discussion appears to us to indicate that verification by an independent auditor of the figures in the notice for the chargeable categories is an alternative the unions have to escrowing 100% of the fee. This interpretation is supported by note 23 where the Court clarifies its above-cited discussion:

> If the Union chooses to escrow less than the entire amount, however, it must carefully justify the limited escrow on the basis of the independent audit, and the escrow figure must itself be independently verified.

106 S.Ct. at 1078. Further, the Court held that one of the constitutionally required safeguards is "an escrow for the amounts reasonably in dispute while such challenges are pending." 106 S.Ct. at 1078. If the union is required to have its figures for the chargeable categories in the notice verified by an independent auditor, and if the union need not escrow those amounts for the chargeable categories listed and verified by an independent auditor as having been spent in those categories, the question arises as to what categories of expenses are left that need be escrowed as being "reasonably in dispute."

We conclude that Hudson requires that, in this regard, the union's notice must at least list the major categories of the union's expenses and those figures must be verified by an independent auditor. While the notice must also indicate the amounts for the categories related to collective bargaining and contract administration, the union may elect to either have those amounts verified by an independent auditor or it must escrow 100% of the fee being collected, and not advance rebated, from a dissenting fair-share fee payor who is

challenging the union's computations until the determination of the proper fee amount has been made by the impartial decisionmaker.

Dec. No. 18408-G at 31-32.

There are a number of problems with the information provided to fair-share payors by the Respondent Associations. First, the information provided is in the form of a synopsis of budgeted expenses with no verification of actual expenses by an auditor. The budget information provided for 1985-86 by Respondent WEAC in response to Hudson consisted of a "budget overview" which described the expense and amount rebateable, e.g.:

> Project 207 - News & Views Publication
> Budget $174,104 ($4.30 per member) Rebatable 25%
>
> Provides funds for the WEAC newspaper; the percent rebatable is based upon items covered.
>
> Project 208 - Update & Local Presidents Mailing
> Budget $12,480 ($0.31 per member) Rebatable 25%
>
> Funds a weekly (40 weeks) mailing to local leaders dealing with topics related to thier position.
>
> Project 209 - Print Shop/Mail Room
> Budget $137.326 ($3.39 per member) Rebatable 14.6% 1/
>
> Funds cost of a complete print shop. All WEAC documents except News & Views are printed in-house.
>
> . . .
>
> ---
>
> 1/ (Per general allocation of WEAC services)

Also provided was a copy of the Gerleman decision and Arbitrator Arvid Anderson's determinaton of the chargeable fee amount for Respondent NEA for 1984-85.

For 1986-87 Respondent WEAC was to provide its "proposed" budget which provides a more detailed breakdown and explanation of the expenses, but, again, although it lists actual expenses for 1984-85 and the amount that was budgeted for 1985-86, there is no verification by an independent auditor of actual expenses for 1985-86. While the Court held in Hudson that a union may calculate its fee on the basis of its expenses for the preceeding year as long as there is a listing of the major category of expenses with verification by an independent auditor, there is no indication a union would be permitted to rely on budgeted expenditures for the prior year with only a statement by a CPA that the actual results will vary, but that historically the budget has been very close to the actual results. In Lehnert v. Ferris Faculty Association, 643 F.Supp. 1306 (W.D. Mich., 1986), the District Court specifically held that a copy of the approved (as opposed to "proposed") budget for the year in question "constitutes inadequate information." 643 F.Supp. at 1332. Cf. Damiano v. Matish, 644 F. Supp. 1058, 1061-62 (W.D. Mich. 1986) (where another federal district court found adequate under Hudson a union policy of not providing any financial information to agency fee payors unless they request such information.) In Andrews the District Court found adequate the budgets of the associations accompanied by end-of-year financial reports for the preceding year with statements by an independent auditor "or authorized association representative" verifying those are the actual expenditures for that year. We would agree to the extent that a budget accompanied by independently verified audit of the prior year's expenses would meet the disclosure requirements.

Another problem with the information provided for 1985-86 is that did not include anything for the UniServs or locals other than an assertion as to what Respondent WEAC believes is rebateable. For 1986-87 Respondent WEAC was to

provide the budgets for the UniServs and large locals that would constitute a UniServ unit by themselves. As to other locals, fair-share fee payors would be directed to see the officers of the locals for information, with Respondent WEAC ready to assist them, if necessary. The Respondent Associations argue that audited budgetary information for locals should only be required on an as needed basis, citing Andrews where the District Court held that Hudson does not require independent audits of the local's expenses and that the state association may use statewide financial data to generate a presumed average chargeable fee for locals. We addressed this issue in Browne where we concluded that:

> While we recognize the practical problems with requiring the unions to provide such information as to the locals' expenditures, we cannot accept, and do not read the Court in Hudson as accepting, a presumption as to the chargeable portion of locals' expenses based upon a union official's experience. The federal district court cases cited by Respondent Unions provide little guidance on the point. In Ellis, the District Court's findings as to the locals was based upon testimony of the locals and an examination of their books and records, as well as a stipulation. Ellis, 108 LRRM at 2650. Such a presumption was not an issue before the Court in Dolan, and in Beck the Special Master found that the defendant local unions had failed to meet their burden of proof and that "only by evaluating the evidence in the light most favorable to them could the Special Master justify an allocation equal to that of the CWA." Beck, 112 LRRM at 3072. These cases preceded the Supreme Court's decision in Hudson and we note that the Supreme Court did not mention such a presumption in its discussion of what it was requiring as far as a notice requirement. However, we also note the Court's recognition of the practical problems involved in meeting its requirements and the Court's efforts to find practical solutions, e.g.,
>
> > We continue to recognize that there are practical reasons why "(a)bsolute precision" in the calculation of the charge to nonmembers cannot be "expected or required." Allen, 373 U.S., at 122, quoted in Abood, 431 U.S. at 239-240, n. 40. Thus, for instance, the Union cannot be faulted for calculating its fee on the basis of its expenses during the preceding year. The Union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, . . .
> >
> > . . .
> >
> > We do not agree, however, with the Seventh Circuit that a full-dress administrative hearing, with evidentiary safeguards, is part of the "constitutional minimum." Indeed, we think that an expeditious arbitration might satisfy the requirement of a reasonably prompt decision by an impartial decisionmaker, so long as the arbitrator's selection did not represent the Union's unrestricted choice.

always have a lesser percentage of non-chargeable expenses than does Respondent District Council 48, such a presumption would be established and would be sufficient for notice purposes. See Andrews, et al vs. Connecticut Education Association, et al, No. H 83-481 (JAC) (D.C. Conn. 1987). We note, however, that a union would not be relieved of its burden of proving the validity of the presumption to the satisfaction of the arbitrator or legal tribunal if its figures are challenged.

Dec. No. 18408-G at 32-33.

Unlike the District Court in Andrews, we do not read the Court's decision in Hudson to permit the exemption of the small local unions from the financial disclosure and audit requirement. Contrary to the Respondent Associations, we also do not interpret Hudson to permit a union to leave it to the fair-share fee payors to seek out the financial information from their local associations. As indicated above, the Court recognized the practical problems involved in this area, however, it gave no indication that the disclosure and audit requirements would be waived for any union collecting an agency fee, regardless of size. We continue to view the possible presumption with regard to locals that we indicated in Browne as a practical approach that is possible within Hudson's strictures. However, due to the organizational arrangement here (locals belong to UniServ districts) we would restrict the presumption to the local associations in the particular UniServ district, rather than the establishment of a state-wide presumption.

C. Scope of the Determination By the Impartial Decisionmaker

Complainants

Complainants note that if the impartial decisionmaker determines that the chargeable percentage is less than the Respondent Associations' initially offered, the fee will be reduced to the lower percentage only for employes who "challenged" the calculation. All other nonmembers, including "objectors," will be charged a fee greater than the amount determined to be lawful. Such limited application of the decision of the impartial decisionmaker is prohibited by the fair-share provisions of MERA. Complainants contend that in order to find MERA to be constitutional the Wisconsin Supreme Court, in its decision in Browne, construed the fair-share provisions of MERA as limiting the amount which a union may collect from all nonmembers to a proportionate share of its cost of collective bargaining and contract administration. Thus, the Court held that it was a prohibited practice under MERA to require an employe to pay more than that amount. 83 Wis.2d at 333. An objection or challenge is not necessary to limit the amount of the fair-share fee that can be charged to a non-union employe in Wisconsin because the fee is limited by statute. Hence, when the impartial decisionmaker determines that the fee calculated by the Respondent Associations is too high, the Respondent Associations must refund the excess amounts already collected to all nonmember employes and must reduce all future fair-share deductions from those employes to the lawful amount.

Even if Wisconsin law permits the collection of a fee equal to dues absent an objection from the employe, a decision that the chargeable percentage is less than initially calculated by the union must, as a matter of constitutional law, be given effect for all dissenters and not just those who "challenged." "Otherwise there is 'compulsory subsidization of ideological activity by employees who object thereto' in violation of the First Amendment, and the Wisconsin Statute is unconstitutional." Citing, Abood, 431 U.S. at 233-37. Therefore, it follows from Hudson that once it is determined that the union-calculated advance reduction is inadequate, all dissenters must receive a refund and have their future fees reduced in accord with that finding in order "to minimize the infringement" on their First Amendment rights.

Respondent Associations

The Respondent Associations disagree that dissent is to be presumed under MERA. They contend that since the inception of fair-share legislation in

Wisconsin, municipal employers and unions "uniformly have assumed dissent is required under the Wisconsin law", relying upon the language of Sec. 111.70(1)(f), Stats., which requires that fair-share assessments be "measured by dues uniformly required of members," and on the long-standing federal practice. They contend that it would be "particularly odd" for the Commission to reject as misguided such a long-standing and universal practice.

Discussion

The same issue was raised by the complainants in Browne. In that case we reviewed the U.S. Supreme Court's decision in Hudson and concluded that:

> It is clear from the Court's statements that regardless of whether it is a matter of construing the Railway Labor Act (RLA), or a matter of an employe's First Amendment rights, the employe has the burden of making his/her objection known before the statutory or constitutional restrictions on the amount of the agency fee a union may collect will apply, assuming the employe has been given adequate prior notice and disclosure as to the amount of the fee. Thus, assuming adequate prior disclosure by the union, if a fair-share fee payor does not inform the union of his/her objection, that fee payor will not be entitled to complain as to the amount of the fee being collected, nor will he/she be entitled to the benefit of the impartial decisionmaker's determination.

Dec No. 18408-G at 34-35.

Regarding the requirements under MERA's fair-share provisions, we reviewed the applicable statutory language, its legislative history and the Wisconsin Supreme Court's decision in Browne and concluded:

> We have reviewed both the Court's decision in Browne and the language of Secs. 111.70(1)(f) (formerly Sec. 111.70(1)(h)) and 111.70(2), Stats., and have not found any basis in either the decision or MERA for distinguishing MERA from the First Amendment as to the need for nonmembers to make their dissent known to the union. Therefore, assuming adequate prior notice and disclosure by the union, a fair-share fee payor who does not make his/her dissent known to the union is not entitled to the benefit of the determination by the impartial decisionmaker.

Dec. No. 18408-G at 37.

As is the case here, the unions' procedures in Browne did not extend the benefit of the impartial decisionmaker's decision to those who "objected" but accepted the unions' calculation of the amount to be rebated, i.e., who did not "challenge" the unions' calculations. The unions characterized the "objectors" choice as a "knowing and voluntary" waiver of their right to challenge. Here the Respondent Associations have argued that the "objectors" who accept the Respondent Associations' offered rebate, knowingly accept the rebate in settlement of all their claims against the Respondent Associations in this regard. Regardless of how the "objector's" choice is characterized, we concluded in Browne that it is permissible, under both the Constitution and MERA, to limit the benefit of the impartial decisionmaker's award to just "challengers." We held that:

> Just as an adequately informed fair-share fee payor may choose not to object, and thereby waive his/her rights to a reduced fee, a nonmember may knowingly choose to "settle" for the union's figures and to forego the challenge of those figures and any benefit that might result from such a challenge. We conclude that a union's procedure may distinguish between a fair-share fee payor who dissents, but does not challenge the union's computations, and one who challenges the union's

computations, if the union's notice to its fair-share fee payors is clear both as to the distinction and as to the consequences of opting not to challenge.

Dec. No. 18408-G at 38.

In this case those fair-share fee payors who submitted their dissent in response to the Respondent Associations' April 24, 1986 letter were sent a letter which, in relevant part, stated:

> Dear Fair-share Employee:
>
> We have received your request for a fair-share rebate of monies based on the budgetary information we supplied you in May. This letter is to inform you that you have two options and they are outlined below.
>
> 1. We are estimating that the following amounts will be the amounts to be rebated and if you wish to accept these amounts, this will remove all claims you have for monies for the 1985-86 school year. We will mail you a check in the amount outlined below upon receiving your indication that you wish to choose this option.
>
> . . .
>
> 2. The WEAC, if requested, will conduct an arbitration this summer with the arbitrator to be provided by the Wisconsin Employment Relations Commission. (It is possible that the WERC itself may agree to hear these disputes. If that is the case, the WERC may be used in lieu of an arbitrator. If this is the case, we will notify you.) You have a right to participate in that arbitration. The subject of the arbitration will be to determine the exact amount to be rebated for 1985-86 and this amount may be greater than or less than the estimated amount above. If you wish your rebate to be contingent upon this arbitration, then you should indicate option #2 on the form and return it to us. If you indicate option #2, we will escrow a sufficient amount of your dues to more than adequately cover any possible decision.
>
> . . .
>
> (Emphasis added)

Accompanying the above letter was an option form on which the dissenter was to indicate which option he/she was selecting. Option #1 reads:

> _____ Option #1 in which I will receive a check in full payment of claims for the 1985-86 school year. That amount is $_____.
>
> (Emphasis added)

We consider those statements to be sufficiently clear to put the dissenting fair-share payor on notice that accepting the offered rebate, and not challenging, settles all of his/her claims against the Respondent Associations and precludes him/her from receiving the benefit of the arbitration.

D. End of Year Adjustment

Complainants

Complainants argue that it follows from Abood that if the union finds at the end of its fiscal year that its actual expenditures for non-chargeable purposes were greater than accounted for by the advance reduction, it must refund

the additional amount to all dissenters (under MERA to all nonmembers). Conversely, if the reduced fee is insufficient to meet the union's actual chargeable cost during that year, it is entitled to collect the difference. It is asserted that the Respondent Associations' new procedures do not provide for such year-end adjustments.

Respondent Associations

The Respondent Associations make no argument on this point.

Discussion

While we have previously concluded in Browne that such an adjustment is not required constitutionally or under MERA, 27/ we note that the Respondent Associations' "Revised Non-Member Fair Share Rebate Procedure," paragraph 4 A) states in relevant part:

> If requested by the individual, WEAC will provide its auditors with the arbitrator's award so that the auditor can analyze WEAC's final audited expenses in light of the arbitrator's ruling and, if favorable to the employee, adjust any rebate in light of the actual project expenditures.

Thus, the procedure appears to provide for such an adjustment after the audit of that year's expenses and that interpretation is also consistent with the assertions of Respondent Associations' Counsel at the hearing.

E. Thirty Day Dissent Period and Requiring Annual Dissent

Respondent Associations' "Revised Non-Member Fair Share Rebate Procedure" requires that a fair-share payor make his/her dissent known annually and paragraph 3 of that procedure provides:

> 3. INITIAL PROCESSING OF A CHALLENGE
>
> Any employee who seeks a rebate of his/her fair share assessment, must file a written objection with the WEAC in accordance with applicable procedure within thirty (30) days from the date the employee receives the budgetary material. For the purpose of this provision, material shall be deemed received three (3) days after it is mailed. The Association may waive the above time limitations if the person can demonstrate good cause for the delay in filing.

Complainants

The Complainants contend that the Respondent Associations' new procedures still do "not provide for a reasonably prompt decision by an impartial decisionmaker." 106 S.Ct. at 1076. It was held in Hudson that "the non-union employee . . . is entitled to have his objections addressed in an expeditious, fair, and objective manner" and that "the government and union have a responsibility to provide procedures . . . that facilitate a non-union employee's ability to protect his rights." 106 S.Ct. at 1076 and n. 20. (Emphasis added) As one court in a pre-Hudson decision held, the procedures "must provide an uncomplicated, efficient, and readily accessible process for testing the representation fee. Such a process must contain no feature or conditions that would in any manner inhibit or restrain a non-member employe from utilizing it."

The Court stated in Hudson that "the non-member's burden is simply the obligation to make his objection known." 106 S.Ct. at 1076, n. 18. The Respondent Associations add to that burden the requirements that dissent must be filed only during a thirty day period after the notice and receipt of the budgetary material. Further, dissent must be renewed annually. Those requirements are unlawful under the fair-share provisions of MERA, as the Wisconsin Supreme Court in Browne construed MERA as limiting the amount which a union may collect from all non-union employes to a proportionate share of its costs of collective bargaining and contract administration. Hence, an objection cannot be required to entitle a nonmember to pay a fee less than full dues. Even assuming that an objection may be required under Wisconsin law, a limitation on the period for filing an objection and a requirement that it be renewed annually are impermissible under Hudson, as they constitute "procedural hurdles". Citing, Perry, 708 F.2d at 1262; In re UAW District 65, No. CI-85-70-153, slip op. at 25, 30 (N.J. Public Employment Relations Commission, April 11, 1986). They constitute obstacles which allow unions to coerce dissenting employes into subsidizing non-chargeable activities in two instances: (1) where a nonmember does not object during the limited period, but wishes to do so later; and (2) where an employe resigns from membership during the year. In either case, the employe's First Amendment right not to support the union's non-chargeable activities is violated. To be constitutional the procedures must permit an employe to object and begin paying a reduced fee at any time after having received notice of his options. Complainants concede that, assuming the Hudson procedures have been in effect, a nonmember employe could not delay making his objection and then demand a refund for that period in which he failed to make his dissent known.

Respondent Associations

Regarding the requirement that dissent be filed in writing within thirty days of the fair-share payor's receipt of the notice, the Respondent Associations contend that a written objection is necessary in order to provide a record for both parties. Serious prejudice could result to both sides if rebates and litigation were based on the recollections of individuals. The thirty day time limit for filing an objection is "absolutely necessary" in order to comply with Hudson. A union cannot have a "prompt arbitration hearing" unless it receives prompt requests for arbitration. If requests for arbitration are not gathered within a specified time frame, the union could be forced to relitigate the same dispute in a number of different arbitrations. Further, the new procedures "specifically provide for a waiver of the time limits if the person could demonstrate good cause for delay in filing." Respondent WEAC asserts that it should not be required to "spend significant resources because Complainants are lax and negligent in the filing of their challenge." In order to have a prompt arbitration hearing it is necessary to have prompt notification.

Regarding the requirement that dissent be renewed annually, the Respondent Associations assert that there are several reasons why this is necessary. First, it relates to the nature of school employment. Union membership is resolicited every year after summer vacation and this practice is probably the result of the school employment law set forth in Sec. 118.22, Stats., which requires annual renewal of contracts. Second, there is no basis upon which to believe that individuals permanently oppose or support a union. Their feelings toward a union may be greatly affected by a number of factors, e.g., the amount of the pay raise, the amount of the dues assessment, individual local officers. Those variables change and it is reasonable to assume that employes' positions regarding the union change. Further, the Respondent Associations presume that Complainants would object if the union did not provide new budgetary information each year on the grounds that it did not change much from year to year.

Discussion

As is true of many of the issues in these cases, the legality of requiring that dissent be made known annually and within a specified thirty day period to be effective was addressed in our decision in Browne. We noted in Browne that the Court did not specifically address time limits in its decision in Hudson,

but did require unions to give fair-share payors timely and up-to-date notice regarding the union's expenses. We held that:

> Since dissent is not to be presumed, and given the timely notice unions are required to provide, it is not unduly burdensome to require the nonmember to file his/her "objection" or "challenge" each year.

Dec. No. 18408-G at 42. Neither did we find that requiring fair-share payors to file their dissent within a thirty day period is an unwarranted obstacle. Citing Lehnert, 643 F. Supp. at 1332-33; Gilpin v. AFSCME, 643 F.Supp. 733, 737 (C.D. Ill., 1986) and Andrews, we held that:

> As long as individuals are given a reasonable amount of time after receipt of adequate notice from the union, and prior to the union's using the fair-share fee, we find a thirty day dissent period to be sufficient time to make the decision and submit one's "objection" or "challenge."
>
> The same principles would apply to individuals who become subject to fair-share after the annual dissent period, i.e., new employes and those who terminate union membership after the dissent period, but remain in a covered bargaining unit. Those individuals must be given adequate prior notice and a reasonable period of time thereafter to exercise their right to "object" and/or "challenge," and until they have, an appropriate percentage of their fees must be placed in escrow. They must have the right to "object" and receive an advance rebate or to "challenge" and receive the benefit of the challenge in addition to the advance rebate. However, in our view it is not required under Hudson to permit latecomers to participate in the arbitration procedure where to do so would unduly burden the procedure or cause a delay in completing the procedure. If the challenge arbitration has been completed, latecomers who "challenge" must receive the benefit of the outcome of the arbitration. If there were no "challenges" filed prior to the new fair-share fee payor's "challenge," at the union's option, the procedure must either permit the latecomer to initiate a "challenge" and complete the procedure, or to have his/her fee escrowed under the same conditions as any other "challenger," but he/she would be required to wait until the next dissent period, his/her "challenge" would be automatically applied to the new period and the arbitration would be applied retroactively as well to the date he/she became subject to fair-share. Parr testified as to how latecomers would be treated. However, testimonial evidence as to a union's intent is not sufficient, either as evidence of, or notice of, the procedure; both the notice and existing written union policy must make clear the rights of new hires and those employes who quit the union and become covered by a fair-share provision after the dissent period for that year. Ellis v. Western Airlines, Inc., and Air Transport Employees, Civil No. 86-1041-E (S.D. Cal. 1986). Further, Parr's testimony indicated that members who terminate membership in the union and become subject to fair-share would not have the same right to "object" or "challenge," that new hires would have, but would have to wait until the next dissent period. (Tr. 83-85). In our view, however, members who become fair-share payors after the annual dissent period has passed must be treated the same as the new hires.

Dec. No. 18408-G at 43.

As in Browne, we would require that anyone hired, or who otherwise becomes subject to fair-share deductions, after the annual thirty day dissent period must

be given adequate notice and a similar period in which to file his/her dissent. 28/

F. Selection of the Impartial Decisionmaker

The Respondent Associations' revised procedure provides for the selection of an impartial decisionmaker in the following manner:

> ARBITRATION
>
> WEAC shall seek from the WERC or AAA a panel of qualified arbitrators. If possible, WEAC and the challenging party shall arrange a method for the joint selection of arbitrators so as to meet the neutrality requirement of Hudson. If no method is agreed upon, WEAC shall ask the appointing agency to name an arbitrator to hear the dispute. As a condition of appointment, the arbitrator must agree to issue his or her award in an expeditious manner.

Complainants

It is alleged by Complainants that the Respondent Associations' new procedure provides for appointment of an arbitrator by the Commission, and that this deprives the "challenger" of any input in the selection of the arbitrator. Even though this is better than the union's unrestricted choice it still deprives the nonmember of any role in the selection. Hudson requires that to be constitutional the procedure must provide for "mutual selection from a list of truly impartial panel members." 106 S.Ct. at 1077, n. 21.

Respondent Associations

The Respondent Associations contend that to obtain a mutually selected arbitrator for thirty-four 29/ individuals would be impractical, even if there were no time constraints. It is inherently impossible to jointly select an arbitrator and still have a prompt hearing. Complainants' argument in this regard makes clear that their real goal is "to require the union to adopt procedures which make the administration of fair-share impossible." It is asserted that the old procedure did provide for mutual selection of the arbitrator, which led to significant delays, and which forced the Respondent Associations to adopt a more expeditious method of selection. It is contended that Complainants' procedural objections are designed to make the administration of fair-share impossible and, hence, are inconsistent with the purpose of Hudson.

Discussion

We note first that the revised procedure does initially provide for an attempt at mutual selection of the arbitrator before requesting a neutral agency to appoint one. The Court found the union's procedure lacking in Hudson because the union unilaterally selected the arbitrator. 106 S.Ct. at 1076-77. In note 21 the Court stated that arbitration would be satisfactory "so long as the arbitrator's selection did not represent the Union's unrestricted choice." Id. at 1077. We concluded in Browne that we did not see a problem "with having the agency appoint an ad hoc arbitrator to hear and decide the 'challenges'," under the Court's test. Dec. No. 18408-G at 50. This assures the impartial selection of the arbitrator by a neutral agency without either the unions or the "challengers" having more input in the selection than the other.

28/ We note that the Respondent Associations' revised procedure provides for waiver of the time limit for filing dissent "if the person can demonstrate good cause for the delay in filing." However, there is no evidence as to what will be considered "good cause."

29/ The number of dissenters who challenged the offered rebate under the revised procedures.

G. Escrow

The Respondent Associations' revised procedure provides the following regarding escrow:

> B) Escrow Account
>
> Upon receipt of a challenge, WEAC shall immediately escrow, in an interest bearing account, an amount reflected as the appropriate rebate in prior, relevant arbitration awards and court adjudications plus an appropriate "cushion" determined by WEAC, or, if there are no relevant adjudications, the amount determined by an independent audit plus an appropriate cushion. If there is no such determination, WEAC shall escrow the entire fair share assessment.

The form on which a dissenter selects his/her option sets forth the following as the arbitration option:

> _____ Option #2 in which I will participate in the upcoming arbitration, with funds being escrowed until that arbitration is complete.

As noted previously, prior to the Commission's order of September 17, 1986, the Respondent Associations escrowed Complainants' 1985-1986 fees on the basis of the Krinsky Award plus interest at the rate of twelve percent (12%) per annum, plus a five percent (5%) cushion. However, Respondent WEAC's Business Manager testified that those who requested arbitration for 1985-86 would have one hundred percent (100%) of their fees escrowed. From September 1, 1986 forward the Respondent Associations would "escrow" one hundred percent (100%) of Complainants' fees, however, as to fair-share payors generally, for the 1986-87 year Respondent Associations were escrowing an amount equal to three months of dues for three times the total number of persons who had dissented in 1985-86, three months' dues x 453 (3 x 151), and would escrow more if they did not have an arbitration award by then.

Complainants

It is contended that the "escrow" provided by the Respondent Associations lacks two of the characteristics of an escrow that enabled the Court to say in Hudson that "a 100% escrow completely avoids the risk that the dissenters' contributions could be used improperly." 106 S.Ct. at 1077. First, because it is a regular bank account under the unilateral control of the Respondent WEAC, there is no guarantee that the funds will not be released to the Respondent Associations before there has been a determination by the impartial decisionmaker. It is not a true escrow account because its terms do not condition dispersement of the deposited fees upon the bank's receipt of the impartial decisionmaker's award. Escrow is defined as "a deed, a bond, money, or a piece of property delivered to a third person to be delivered by him to the grantee only upon the fulfillment of a condition." Webster's New Collegiate Dictionary, 390 (1976 ed.). Respondent WEAC will distribute all of the "escrowed" funds at the time of the determination by the impartial decisionmaker even if further relief is sought from a court or administrative agency. In contrast, the union in Hudson indicated to the Court that under its escrow arrangement an objector's payment is not released from the escrow upon completion of the internal proceeding, but is held until the objector, if he/she wishes, has obtained "a final judicial determination" as to the proper

Complainants also contend that the Krinsky Award cannot be used to justify an escrow of less than one hundred percent. The award is unreliable because it is too old (issued on September 28, 1982), pre-dates Hudson, and therefore was not decided "with proper consideration" of the First Amendment concerns, and because the Award itself indicates it is an unreliable guide for other determinations. Citing, Krinsky Award, at 9-10. Complainants also submit Tierney v. Toledo where the Sixth Circuit Court of Appeals held that while a prior arbitration award may be the basis for the advance reduction, the union must still escrow that amount reasonably in dispute.

Respondent Associations

The Complainants' argument that an escrow account must be delivered to a third party with delivery conditioned upon a third party's receipt of the arbitration award is based on an "unduly skeptical view of the Respondents." Escrow accounts are ordinarily designed to minimize the risk of insolvent parties, however, the risk of concern to the Court in Hudson was the union's use of the fair-share fee for the financing of ideological activity unrelated to collective bargaining. Hudson, 121 LRRM at 2798. The Respondent Associations assert that in Ellis the Court held that such a risk results when a union takes the fee and later rebates the amount improperly spent. According to the Respondent Associations, "once a union has placed the funds in a bank account, however, this risk no longer exists."

In response to Complainants' citation of a dictionary definition of "escrow", the Respondent Associations offer the following definitions:

> "as money 'delivered into the keeping of a third party by one party to a contract or sometimes taken from one party to a contract and put in trust to be returned only upon the performance or fulfillment of some condition of the contract or to ensure such performance or fulfillment by some other disposition'; and as 'a fund or deposit serving as or designed to serve as an escrow.'"

Citing, Webster's Third New International Dictionary. It is asserted that a union's placing the fees in a separate bank account created by the union, pending an impartial decisionmaker's decision on those fees, arguably fits within the first definition above and certainly fits within the second. Further, courts have not mentioned such qualifications in their discussions of escrow accounts in the fair-share cases. Citing, McGlumphy, 633 F.Supp. at 1078. It is contended that the Courts have used the term "escrow" in a looser sense than that contemplated by Complainants and that a separate bank account for holding the disputed fees meets the concerns of the Court in Hudson.

Regarding releasing the funds from escrow prematurely, the Respondent Associations contend that "any dispute regarding how long the Association will keep the disputed funds in escrow and the nature of its distribution, at present, are extremely speculative." Hence, the issue is not ripe for adjudication at this point. As to Complainants' arguments in this regard, it is contended by Respondent Associations that although in Hudson the union's procedures apparently called for keeping the money in escrow until all levels of appeal have been exhausted, the actual holding in that case was narrower:

> The constitutional requirements for the Union's collection of agency fees include . . . and an escrow for the amounts reasonably in dispute while such challenges are pending.

Hudson, 121 LRRM at 2800. "Such challenges" can only refer to the challenge before an impartial decisionmaker, and there is no reference in Hudson to keeping the fees in escrow until the employe has secured a final judicial determination of the appropriate fee. Further, a reasonably prompt opportunity to challenge the fee does not mean "several" opportunties.

The Respondent Associations consider Complainants' criticisms of the validity of the Krinsky Award exaggerated. The assertion that the award is unreliable because it pre-dates Hudson, fails to distinguish substantive from procedural fair-share law. Hudson does not change the substantive rules. The award dealt with the substantive issue of what categories of union expenditures may be charged

to fair-share employes and that aspect has not changed. Thus, the award serves as a reliable guide in that regard. While the award is more than four years old, so is the dispute, however, time has diminished the value of the award and the Respondent Associations have ceased using it after the 1984-85 school year. The parties are currently arbitrating the subsequent school years and the Respondent WEAC is escrowing one hundred percent of the dues from March of 1986 for those who have "challenged."

Similarly, while Jordi probably lacked the effectiveness of a skilled counsel, the Arbitrator still was able to review all of the audited expenditures of the Respondent Associations.

The Respondent Associations state that they have complied with the Commission's order to escrow one hundred percent of the Complainants' fees retroactive to the date of Hudson. For fees collected prior to Hudson, the Respondent Associations have escrowed the percentage of dues based on the Krinsky Award along with twelve percent interest through October 15, 1986, plus a five percent safety factor. For new dissenters in 1986-87 the Respondent Associations assert they have escrowed one hundred percent of the dues for three times the number of 1985-86 dissenters. They contend that it appears "that the escrow figure represents more than twice the number of actual dissenters, and in those terms more than adequately protects dissenters' rights."

Discussion

Complainants have raised several issues regarding the Respondent Associations' escrow arrangement: (1) Must the monies be placed under the control of a third party to satisfy the escrow requirement of Hudson and Ellis; (2) does Hudson require that the monies remain in escrow following the issuance of the impartial decisionmaker's award until all levels of appeal are exhausted; and (3) may a partial escrow be based on a prior award of an impartial decisionmaker.

Regarding the first two issues, relying on the Court's discussion of escrow in Hudson 30/, the post-Hudson decision in Lehnert 31/ and the definition of the term "escrow", we held in Browne that:

> As did the Court in Lehnert, we read Hudson as requiring that control of the account be turned over to a third party.
>
> . . .
>
> As to when the escrowed funds are to be dispersed, we agree with the decision in Lehnert that the Court intended that the fees be held in escrow only until the determination is made by the impartial decisionmaker.

Dec. No. 18408-G at 51-52. As we noted in Browne, this is not a matter of doubting the union's integrity, rather it is based upon our reading of what the Court's decision in Hudson requires. Since the Respondent Associations have maintained control of the "escrow" accounts, they have not complied with the escrow requirement.

30/ 106 S.Ct. at 1077-78.

31/ In Lehnert the federal district court interpreted Hudson as requiring that:

> . . . the union must either deposit 100% of objectors' service fees into an independently controlled, interest bearing escrow account until such time as an impartial decisionmaker has rendered his final decision on the validity of the reduced fee calculation or have their (sic) data for its reduced fee calculation and the data on which it bases its limited escrow verified by an independent audit by a certified public accountant.
>
> 643 F.Supp. at 1333. (Emphasis added)

The third issue raised by the parties is to what degree, if any, may a prior arbitration award on the fee amount that may properly be charged to "challengers" be used as the basis for a partial escrow. The Court held in its decision in Hudson that a one hundred percent escrow is not always required:

> We need not hold, however, that a 100% escrow is constitutionally required. Such a remedy has the serious defect of depriving the Union of access to some escrowed funds that it is unquestionably entitled to retain. If, for example, the original disclosure by the Union had included a certified public accountant's verified breakdown of expenditures, including some categories that no dissenter could reasonably challenge, there would be no reason to escrow the portion of the nonmember's fees that would be represented by those categories. 23/ On the record before us, there is no reason to believe that anything approaching a 100% "cushion" to cover the possiblity (sic) of mathematical errors would be constitutionally required. Nor can we decide how the proper contribution that might be made by an independent audit, in advance, coupled with adequate notice, might reduce the size of any appropriate escrow.
>
> . . .
>
> 23/ If the Union chooses to escrow less than the entire amount, however, it must carefully justify the limited escrow on the basis of the independent audit, and the escrow figure must itself be independently verified.

Hudson, 106 S.Ct. at 1077-78. (Emphasis added)

Note 23 notwithstanding, given the Court's statement using the CPA verified breakdown of expenditures as an example of where a partial escrow is permitted, along with its continued attempt to find a practical solution to these problems, e.g., the use of arbitration to resolve challenges, we would infer that an arbitrator's award may be the basis of a partial escrow for the following year. For example, if the arbitrator concluded in his/her award that a particular category of expenses was wholly chargeable, that portion of the fair-share fee reflecting the proportionate share of the expenses in that category for the present year would not have to be escrowed. 32/ This of course presumes

32/ In Tierney the Sixth Circuit Court of Appeals discussed advance reduction and partial escrowing and held:

> During the first year of the plan's operations, once dissenters have made their objections known in accordance with a constitutional procedure, they may be required to pay into escrow that portion of the union fee that has accrued, at least since the constitutional procedure has been properly in place and operational, corresponding to the portion of union expenditures the independent auditor has determined to be other than indisputably ideological. Thus, Hudson indicates that the amount to be initially placed in escrow may be up to the union member's fee less the advance reduction. While the union is not required to withdraw any portion of the escrowed funds, it may obtain an immediate payment of those sums which

(Footnote 32 continued on Page 46.)

the presence of a procedure that meets all of the requirements of Hudson. For that reason alone the Krinsky Award was not a valid basis for a partial escrow in this case. 33/ Further, as noted previously, given the lack of an amount conceded to be rebateable and the lack of a determination as to what portion of the fee is rebateable, and what portion is clearly not, a one hundred percent escrow is required. 34/

III. Application of the Hudson Decision

Complainants

Complainants contend that Hudson applies fully to this case and must be applied retroactively. Complainants in these cases essentially reiterate the arguments made in this regard by the Complainants in Browne and Johnson. They assert that federal law is controlling since the issue is the scope of a federal constitutional decision, and Hudson applies to this case under federal case law on retroactivity. Complainants characterize the Respondent Associations' position as being that "judicial decisions are applied prospectively unless the party urging retroactive application establishes certain criteria set out in Chevron . . .," and assert that the Respondent Associations' argument "turns the law on its head." 35/

The Court's recent decisions in the area of retroactivity are U.S. v. Johnson, 457 U.S. 537 (1982) and Shea v. Louisiana, 105 S.Ct. 1065 (1985). In Johnson the Court adopted the views of Justice Harlan in Desist v. United States, 394 U.S. 244, 258 (1969) (dissenting opinion), and Mackey v. United States, 401 U.S. 667, 681 (1971) (separate opinion):

> All "new" rules of constitutional law must, at a minimum be applied to all those cases which are still subject to direct review by this Court at the time the "new" decision is handed down. (A) proper perception of our Constitution to resolve every legal dispute within our jurisdiction on direct review, mandates that we apply the law as it is at the time, not as it once was.

(Footnote 32 continued from Page 45.)

> according to the independent audit "it is unquestionably entitled to retain" as undoubtedly agreement-related. Id. at 1078. In future years, the union may calculate the advance reduction and amounts indisputably expended for agreement operation either under the procedures set forth above or by using the previous year's proportion of expenditures for ideological activities and to manage the agreement as determined by the impartial decisionmaker. Id. at 1076 n. 18. Nevertheless, the union must continue to place in escrow each year at least that portion of the fee that the dissenter reasonably disputes.

Johnson, 457 U.S. at 548, 562. While Johnson explicitly concerned only Fourth Amendment issues, it was recognized as having general application in Shea, a Fifth Amendment case. In Shea the Court held that the constitutional provision involved was not the significant factor and that "the primary difference between Johnson, on the one hand, and Solem v. Stumes, 36/ on the other, is the difference between a pending and undecided direct review of a judgment of conviction and a federal collateral attack upon a state conviction which has become final." 105 S. Ct. at 1069-70. Thus, the distinction between retroactive and non-retroactive application of a constitutional ruling "properly rests on considerations of finality in the judicial process." Id. at 1070.

Shea also rejected the Respondent Associations' argument that a rule which "is only prophylactic in character" is not to be applied retroactively. 105 S.Ct. at 1071. The very procedural rule that was applied only prospectively in Stumes was given retroactive effect in Shea. Decisions that impose new procedural rules for protection of constitutional rights, like any constitutional ruling, apply in all pending cases.

The general rule following Johnson and Shea is that "a federal court is to apply the law in effect at the time it adjudicates the claim" before it. Citing, Landahl v. PPG Industries, Inc., 746 F.2d 1312, 1313-14 (7th Cir. 1984). The sole exception in cases where there has been no final judgment is "those situations that would be clearly controlled by existing retroactivity precedence of the Court to the contrary." Citing, Shea, 105 S.Ct. at 1069-70. The Supreme Court itself can use the Chevron test to hold that a new rule of law applies prospectively only, or can leave such an analysis for the lower courts by expressly reserving the issue. Otherwise the new rule of law announced by the Court must be applied to all pending cases:

> If the Supreme Court fails to limit the substantive scope of its new rule to purely prospective cases, . . . an inferior court must assume that the rule applies in all situations. The policy factors that the Supreme Court relies on in determining whether its rule should have merely prospective effect are irrelevant. . .

U.S. v. Fitzgerald, 545 F.2d, 578, 582 (7th Cir. 1976).

The Commission should follow the decision of the Sixth Circuit in Gurish v. McFaul, 801 F.2d. 225 (6th Cir. 1986) and apply Hudson retroactively. In Gurish, the Court held:

> In determining whether a decision of the Supreme Court in a civil matter is to be applied retroactively, i.e., to cases in which the operative facts preceded the date of that decision, federal courts generally have applied the three part test of Chevron Oil Co. v. Huson, 404 U.S. 97 (1971). However, this court, in Smith v. General Motors Corp., 747 F.2d 372, 117 LRRM 2941 (6th Cir. 1984) (en banc) determined that where, as in Loudermill, the Court applies the announced rule to the case before it and makes no statement as to whether it intends the rule to have retroactive or only prospective effect as to other cases, it will be presumed that the Court intends that the rule be given retroactive application. This court also held that in this situation it is inappropriate to apply the Chevron analysis in determining whether the announced rule should be given retroactive effect as to other cases. This court, in determining that the Chevron analysis is inappropriate in this context, followed the lead of the Second Circuit in Welyczko v. U.S. Air, Inc., 733 F.2d 239, 241, (2d Cir. 1984) and has since applied the Smith rule again. Mulligan v. Hazard, 777 F.2d 340, 344 (6th Cir. 1985), cert. denied, 106 S.Ct. 2902 (1986).

36/ 465 U.S. 638 (1984).

> Accordingly, applying the law of this circuit, we conclude that, since the Supreme Court in Loudermill applied the announced rule to the case before it and made no statement as to retroactivity with respect to other cases the rule of Loudermill applies to the instant case and that, therefore, we find that Gurish was entitled to a hearing before he was discharged. (Footnote omitted.)
>
> Id. 801 F.2d at 227.

It is asserted that Hudson is not one of the cases in which the lower courts are free to give the Court's rulings prospective-only effect. In Hudson, the Court applied its own ruling retroactively in the case at hand. The Court rejected the constitutionality of union procedures that were no longer in effect at the time of its decision and not just the new procedures adopted while the case was on appeal. 106 S.Ct. at 1075-77 and n. 14. In directing the District Court to remedy the constitutional violation plaintiffs had established, without limiting relief to the future, the Court implicitly held that its rulings apply retroactively in other cases as well. Hence, this is not an appropriate occasion for the Chevron analysis. Citing, Fitzgerald, 545 F.2d at 582; Smith v. General Motors Corp., 747 F.2d 372, 375 (6th Cir. 1984). Further evidence of the Court's intention that Hudson is to be applied retroactively is the vacating and remand of the lower court decisions for reconsideration in light of Hudson in Tierney v. City of Toledo, 106 S.Ct. 1628 (1986) and Abernathy v. San Jose Teachers Association, 106 S.Ct. 1372 (1986).

Complainants assert that even if the Chevron analysis is used, it would result in the retroactive application of Hudson. Since there is a presumption favoring retroactivity, the party invoking Chevron has the burden of demonstrating that all three of the factors in Chevron favor prospective-only application before a rule of law will be denied retroactive effect. NLRB v. Lyon and Ryan, Ford Inc., 647 F.2d 745, 757 (7th Cir.), cert. denied, 454 U.S. 894 (1981). Citing also, Kumrow v. Teamsters Local 200, 579 F.Supp. 393, 395, (1983).

The first part of the Chevron test is that "the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed." 404 U.S. at 106. Citing Johnson, 457 U.S. at 550, n. 12, Complainants assert that in the civil context this "clear break" principle is the "threshhold test for determining whether or not a decision should be applied non-retroactively" and only if it is met, should the other parts of the Chevron analysis be reached. While all of the issues determined in Hudson had not previously been decided by the Court, that is not enough to justify non-retroactivity. Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481, 496-99 (1968); Johnson, 457 U.S. at 559-61. The announcement of an "entirely new and unanticipated principle of law":

> has been recognized only when a decision explicitly overrules a past precedent of this Court, or disapproves a practice this Court arguably has sanctioned in prior cases, or overturns a long standing and widespread practice to which this Court has not spoken, but which a near-unanimous body of lower court authority has expressely approved.

Johnson, 457 U.S. at 551.

Hudson expressely overruled no clear past precedent on which the Respondent Associations may have relied. Kempner 37/ and White Cloud, 38/ cited as clear

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37/ Kempner v. AFSCME (2077), 126 Mich. App. 452, 337 N.W.2d 354 (1983), appeal dismissed, 105 S.Ct. 316 (1984).

38/ White Cloud Education Association v. Board of Education, 101 Mich. App. 309, 300 N.W.2d 551 (1981), appeal dismissed, sub. nom. Gibson v. White Cloud Education Association, 105 S.Ct. 236 (1984).

past precedent by the Respondent Associations, were not expressly overruled by Hudson and they are not clear prior Supreme Court precedents on the issues decided in Hudson. The Court in Hudson merely referred to those cases as two of "the divergent approaches of other courts to the issue" of agency shop procedures that led the Court to grant certiorari. Hudson, 106 S.Ct. at 1073 and n. 7. Further, the precedential value of the Court's summary disposition of an appeal is limited to the precise facts and issues involved in the particular case and, thus, is difficult to determine. The broad interpretation of the Court's actions in Kempner and White Cloud by the Respondent Associations cannot be reconciled with the decision in Ellis v. Railway Clerks, 466 U.S. 435, 443-444 (1984), which only a few months earlier held that a "union cannot be allowed to commit dissenters' funds to improper uses even temporarily." Citing the Seventh Circuit's decision in Hudson, 743 F.2d at 1196-97.

Unlike Elrod v. Burns, 427 U.S. 347 (1976), and Lemon v. Kurtzman, 403 U.S. 602 (1971), (Lemon I), cited by the Respondent Unions, Hudson did not dissapprove an established practice the Court arguably had sanctioned in earlier cases. Those prior opinions "merely suggested the desirability of an internal union remedy." Hudson, 106 S.Ct. at 1076. "Those opinions did not, nor did they purport to pass upon the statutory or constitutional adequacy of the suggested remedies." Ellis, 466 U.S. at 443. Further, in Abood v. Detroit Board of Education, 431 U.S. 209 (1977), the Court explicitly disclaimed any view as to the constitutional sufficiency of intra-union procedures. 431 U.S. at 244. Neither did Hudson overturn a long-standing, widespread practice approved by nearly unanimous lower court decisions. The Court in Hudson noted the divided authority on the issue. 106 S.Ct. at 1073 and n. 7.

Hudson also did not "decide an issue of first impression whose resolution was not clearly foreshadowed." Chevron, 404 U.S. at 106. Unlike Elrod and Lemon, the decison in Hudson was unanimous and the Court's analysis made clear that the decision rests on long recognized principles of First Amendment law and is merely an extension of doctrines which had been growing and developing over the years in the line of cases that began with Machinists v. Street, 367 U.S. 740 (1961). Requiring advanced reduction and escrow was clearly foreshadowed by Ellis and Justice Stevens' concurring opinion in Abood, 39/ and requiring that non-union employes be given adequate information about the financial basis for the fee was a logical extension of the holding in Abood and Allen that unions have the burden of proving chargeable costs. Requiring a reasonably prompt decision by an impartial decisionmaker was simply a particular application of the general principles of First Amendment and due process law. Citing, Hudson, 106 S.Ct. at 1074 and nn. 11 to 13, 1076-77. While lower courts were divided prior to Hudson as to whether the Constitution required each of those procedures, that does not mean that Hudson's resolution of the issues was not foreshadowed. Rather, it means that "any argument by respondents against retroactive application . . . is unavailing since the existence of conflicting cases from other courts . . . made review of that issue by the Supreme Court and decision against the position of the respondents reasonably foreseeable." Citing, U.S. v. Rogers, 466 U.S. 475, 484 (1984); accord Landahl, 746 F.2d at 1314-15, and other cases, including Johnson, 457 U.S. at 559-61.

Finally, many courts have considered the question and applied Hudson retroactively. McGlumphy v. Fraternal Order of Police, 633 F.Supp. 1074 (N.D. Oh. 1986); Huffman v. Springfield Education Association, No. 85-1234, C.D. Ill., June 16, 1986; Gilpin v. AFSCME, No. 85-C.D. Ill., July 30, 1986; and Gibney v. Toledo Federation of Teachers, No. 83-2280, Lucas Co. Ct. Com. Pl., June 14, 1986. See also Deed v. Campbell, 106 S.Ct. 2234 (1986) the Court's most recent decision on retroactivity.

Since the decision in Hudson does not satisfy the first Chevron criterion, it is not necessary to address the other two parts of the test. However, application of the remaining two factors also does not support prospective-only application.

39/ 466 U.S. at 244.

The second factor in the Chevron test is whether retroactive operation will further or retard operation of the rule in question. Arguing that it is too late for the Respondent Associations to afford retroactively the procedural safeguards required by Hudson because Complainants' fees have already been taken and spent, misses the point. As the Commission recognized, Hudson held that "the First Amendment requires that certain procedural safeguards must be established before a fair-share fee may be collected." Dec. No. 18577-C at 7. It is asserted that other post-Hudson decisions reached the same result absent proof of the amount spent on chargeable activities. Citing, McGlumphy, Huffman, Gilpin, and Gibney. Operation of that rule is furthered by the equitable remedy of restitution, which both restores the status quo ante and gives the unions and others an incentive to provide the required procedural safeguards. Complainants contend deterence is particularly relevant in this case, "where individual constitutional rights are at the mercy of those clothed with state authority":

> If . . . rulings resolving unsettled (First) Amendment questions should be non-retroactive, then, in close cases, (union and government) officials would have little incentive to err on the side of constitutional behavior. . . . Failure to accord . . . retroactive effect to (First) Amendment rulings would "encourage (unions and public employers) to disregard the plain purport of our decisions and to adopt a lets-wait-until-its-decided approach."

Citing, Johnson, 457 U.S. at 560-61. See also, Hudson, 106 S.Ct. at 1075, n. 14, 1077, n. 22.

The third Chevron criterion is whether retroactive application works a substantial inequity upon the party opposing it. 404 U.S. at 107. The Respondent Associations confuse that question by citing Carey v. Piphus, 435 U.S. 247 (1978), a case concerning the appropriate remedy for a bare violation of procedural due process, rather than retroactivity. The issue under Chevron is not the appropriate remedy, but whether the equities of the case justify a denial of any remedy at all for the constitutional deprivation Complainants suffered prior to the date of the Hudson decision. That question answers itself in the negative here, "where the complainants' First Amendment right not to be compelled to pay fees in the absence of certain procedural safeguards must be balanced against the unions' mere statutory privilege of obtaining reimbursement for their chargeable costs." Complainants allege that the Respondent Associations have been aware of Complainants' claim that if fair-share agreements are constitutional at all, certain procedural safeguards must be provided to prevent unconstitutional use of fair-share fees, even temporarily, for impermissible purposes. Despite the pendency of this litigation and the lack of any clear precedent permitting the practice, the Respondent Associations chose to continue to collect fair-share fees equal to full dues and to spend them for non-chargeable purposes, subject only to a possible later rebate. Complainants cite the argument of complainants in Browne that the Wisconsin Supreme Court's decision in Browne did not uphold the constitutionality of the unions' practice on the merits, but merely held that complainants in that case were not entitled to temporary escrow relief prior to final judgment unless they showed that a part of the fees were in fact being used for impermissible purposes. That missing element was supplied by the Commission's Initial Findings of Fact and Initial Conclusions of Law in Browne. As did the unions in Browne, the Respondent Associations gambled that their view of the unsettled question of law would prevail over the contrary view of the Complainants. That they now face the consequences of losing their conscious gamble hardly presents a case of inequitable hardship. The Chevron doctrine is not directed at insulating litigants from the consequences of their conscious business decisions, rather, its purpose is to avoid the hardship which can result from retroactive application of decisions which represent sudden, unexpected shifts in the law. Valencia v. Anderson Brothers Ford, 617 F.2d. 1278, 1290 and n. 16 (7th Cir. 1980), rev'd on other grounds, 452 U.S. 205 (1981). Hudson did not constitute such a dramatic break with the past. As to the equities, Complainants request the refund, with interest, only of their own past fair-share fees.

Thus, even if the Chevron test is utilized, the Respondent Associations have been unable to demonstrate that any of the three Chevron factors favor prospective-only application. Since MERA must be construed to require at least

the same safeguards held to be constitutionally required in Hudson, the Respondents committed prohibited practices before, as well as after, the date of Hudson by collecting fair-share fees from Complainants without providing the constitutionally required procedural safeguards.

Complainants also make several arguments in response to the Respondent Associations' contention that the Commission should reconsider its holding in Browne that the advance notice requirement of Hudson is to be applied retroactively. First, they assert that in filing a motion to compel discovery in Richfield, Complainants put the Respondent Associations on notice as early as April 16, 1982 that they "did not have adequate information to properly protect their interests." Further, in Browne complainants argued that the appropriate future remedy included:

> (1) a cessation of fair-share deductions until such time as the respondent labor organizations meet their burden of proving the appropriate amount to the Commission from adequate accounting records, and (2) a fee reduction to the appropriate amount determined by the Commission from such records, after a hearing preceded by disclosure to complainants of the records on which the unions base their calculation of the fee.

See Brief In Support of Complainants' Motion For Interlocutory Findings and Order To Compel Discovery in Browne at 28-38 (January 13, 1983).

Secondly, the Seventh Circuit's decision in Hudson, in which case Respondents WEAC and NEA filed amicus briefs, required a notice as part of the "constitutional minimum." 743 F.2d at 1196.

Third, even assuming that the advance information requirement was not clearly foreshadowed, the Commission held in Browne that the circumstances here satisfy none of the three Chevron criteria, all of which must be met in order have prospective-only application of a decision.

Fourth, the Court in Hudson saw the notice requirement as following logically from its holding in Abood and Allen. 106 S.Ct. at 1075-76. The notice requirement enables the fair-share payor to decide whether to object and whether to accept the union's calculations. The Respondent Associations' reliance on the Court's use of the word "also" in Hudson is disingenuous. While the Court did not cite other cases besides Abood and Allen, it did cite a number of legal treatises addressing the issue of due process in the First Amendment context. One such authority cited, L. Tribe, American Constitutional Law, 734-36 (1978), demonstrates that the Court derived the notice requirement from its prior decisions on First Amendment due process cases. Citing, Carroll v. President and Commissioners of Princess Anne, 393 U.S. 175, 181-83, 185 (1968).

The Court also noted in Hudson at 106 S.Ct. 1075, n. 13, that in the context of compulsory unionism arrangements, "the procedures required by the First Amendment also provide the protections necessary for any deprivation of property." Even where first-amendment interests are not at stake, 'minimum procedural safeguards' under the due process clauses of the Constitution include "timely and adequate notice detailing the reasons for a proposed (deprivation of property)." Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970). That also is true under the statutory duty of fair representation owed by an exclusive bargaining representative to all of the employees it represents. As the Supreme Court said in the seminal fair-representation case, when an exclusive representative proposes to take action against the interests of nonunion employees, it "is required to consider requests of non-union members of the craft and expressions of their views * * * and to give them notice of and opportunity for hearing upon its proposed action." Steele v. Louisville & Nashville Railroad, 323 U.S. 192, 204 (1956) (emphasis added); see also Electrical Workers Local 801 v. NLRB, 307 F.2d 679, 283 (D.C. Cir.) (opinion by Burger, J.), cert. denied, 371 U.S. 936 (1962) (the fiduciary "obligation of fair dealing" which a union owes to every employee in the unit "includes the duty to inform the employee of his rights and obligations" under a union-shop agreement).

Respondent Associations

The Respondent Associations contend that in Hudson, "the Court enunciated essentially four constitutional requirements to accompany union collection of agency fees: (1) adequate explanation of the basis for the fee, (2) a reasonably prompt opportunity to challenge the amount of the fee, (3) use of an impartial decision-maker, and (4) the escrow of the amounts reasonably in dispute, while any such challenges are pending." They assert that Chevron Oil Company is the leading case on retroactivity in the civil context. Three criteria were set forth in Chevron to be applied in determining whether a decision should be applied prospectively. "First, the decision must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression the resolution of which was not clearly foreshadowed. Second, the Court must in each case examine the nature of the new rule, including its purpose and effect, and determine whether retrospective operation will enhance or retard its underlying purposes. Third, the Court must weigh the inequities imposed by retroactive application." Citing, Chevron, 404 U.S. at 106-107.

Hudson enunciated for the first time the requirements of an adequate explanation of the basis for the fee and a reasonably prompt opportunity to challenge the amount of the fee. Those requriements were not foreshadowed at all. Thus, they satisfy the Chevron criteria and should be applied prospectively only. The third requirement of a decision by an impartial decisionmaker also was not foreshadowed, but Respondents have always met that requirement. Adequacy of the escrowing arrangement is addressed below.

The Respondent Associations assert that issues of first impression, i.e., those which are subject to rational disagreement, must be given prospective effect. Citing, Allen v. State Board of Elections, 393 U.S. 544, 572 (1969). The Court reasoned in that case that the coverage questions of the Voting Rights Act involved complex issues subject to rational disagreement and that plaintiffs' request to set aside the elections would be of too great a consequence. On those bases the Court gave only prospective effect to its decision. 393 U.S. at 572.

A review of prior case law involving union security agreements reveals that Hudson resulted in "significant, unforeseen changes." It is noted that the Court expressly noted that its previous decisions in this area had not specified a necessity for a reasonably prompt decision by an impartial decisionmaker. Hudson, 121 LRRM at 2799. Prior to Hudson there were five decisions of the Court that dealt with the legality of union security provisions. The first was Railway Employees' Department v. Hanson, 351 U.S. 225 (1956). Hanson involved Section 2, Eleventh of the Railway Labor Act (RLA), which authorized a carrier and a union to agree on a provision requiring all employes to become members of the union, provided membership is not denied for any reason other than failure to pay periodic dues, initiation fees, and assessments uniformly required as a condition of acquiring or retaining membership. In upholding the constitutionality of Section 2, Eleventh, the Court noted that the payments were the only condition to union membership authorized by the Act, and concluded: "No more precise allocation of union overhead to individual members seems to us to be necessary." Hanson, 351 U.S. at 235.

International Association of Machinists v. Street, another RLA case, involved the issue of whether a union, over a employe's objection, could spend the dues for political causes he/she opposed. There was no discussion of procedure in that case.

Brotherhood of Railway and Steamship Clerks v. Allen, 373 U.S. 113 (1963), also involved Section 2, Eleventh of the RLA and the alleged use by the union of compulsory dues for lobbying, campaign contributions, and other political activities. In discussing possible remedies, the Court suggested restitution of an amount from the fee collected that is in the same proportion to the total fee that the proportion of the union's political expenditures are to the union's total expenditures. 373 U.S. at 120-121. The Court noted that it would be necessary to distinguish between political expenditures and expenditures germane to collective bargaining and remanded the case for determinations as to what expenditures were political and what percentage political expenditures were of the total union expenditures. Id. at 121. There was not even an allusion to the Hudson

requirements of advance explanation for the basis of the fee and a reasonably prompt opportunity to challenge the amount of the fee, though neither had been met in that case.

The Respondent Associations contend that Abood v. Detroit Board of Education is the seminal case in this area. That case involved the consitutional challenge to a Michigan statute authorizing the "agency shop" whereby non-union employes in a bargaining unit must pay a service charge to the union in an amount equal to dues. The Court held that plaintiffs could constitutionally prevent the union from spending part of the required fee for political purposes unrelated to the union's duties as the exclusive bargaining representative. 431 U.S. at 234. In discussing possible remedies, the Court reiterated its holding in Allen that manifesting objection to any political expenditures by the unions sufficiently stated a cause of action and the Court, in remanding the case, specifically suggested that further judicial proceedings might appropriately be deferred to permit the parties to resolve the dispute by using the newly adopted union internal remedy. 431 U.S. at 242. While the Court expressed no views as to the adequacy of the internal remedy, the union's rebate procedure was before the Court. 431 U.S. at 237, n. 34, 240, n. 41, and Brief for Appellees at 19b. That procedure did not provide that potential objectors be given information regarding union expenditures and lacked expressed time frames for proceeding to arbitration under the procedure. However, there was no suggestion from the Court that more was constitutionally necessary. The only comment remotely similar to such concerns was found in Justics Stevens' concurring opinion. 431 U.S. at 244. Such a lone remark in a concurring opinion, with no reference to it by the majority, hardly is a clear foreshadowing on which Complainants could base their requested broad relief. If anything, it infers that the majority did not favor the concept stated in the concurring opinion.

The last case prior to Hudson, was Ellis v. BRAC. The case dealt primarily with the alleged illegality of requiring objecting employes to contribute to six specific union expenses and the adequacy of the union's rebate procedure which allowed the union to collect the equivalent of full dues from the objecting employe, use part of the dues for impermissible political purposes, and rebate the appropriate funds a year later. 466 U.S. at 443-444. In holding that the pure rebate approach was inadquate because it permitted the union to obtain an involuntary loan for purposes to which the employe objected, the Court cited two "acceptable alternatives": advance reduction of dues and interest-bearing escrow accounts. Id. That is the only discussion of the rebate procedure and there was no indication that the year long rebate was unreasonably long or that potential objectors were constitutionally entitled to detailed financial statements of the union.

Complainants' argument that requiring that unions provide potential objectors with adequate financial information is a logical extension of the holdings in Allen and Abood that the unions have the burden of proving chargeable costs is erroneous. There is a substantial difference between the burden of persuasion in a particular proceeding and requiring that unions provide pre-hearing information to employes as a matter of course.

Complainants' argument that requiring a reasonably prompt decision by an impartial decisionmaker is no more than a particular application of the general principles of First Amendment and due process law, overlooks the Court's failure in Abood and Ellis to remark upon any such insufficiency in the rebate procedures in those cases.

Regarding the assertion that Hudson did not decide an issue of first impression whose resolution was not clearly foreshadowed, and Complainants' reliance on alleged divergent decisions on the subject, the Respondent Associations assert that the amount of divergent opinion is not determinative. Rather, the issue is whether a constitutional resolution "could (have been) predicted with assurance sufficient to undermine appellees' reliance." Citing, Lemon v. Kurtzman, 411 U.S. at 207. (Lemon II)

The Court applied its decision in Lemon I prospectively-only and framed the issue as the Commission should frame it here, "whether to attach legal consequence to patterns of conduct premised on unlawful statutes or on a different understanding of the controlling judge-made law from the rule that ultimately prevailed." 411 U.S. at 198. The Court held that Lemon I decided "an issue of

first impression whose resolution was not clearly foreshadowed," 411 U.S. at 206, even though there was some direct authority in line with the Court's ultimate ruling, reasoning: "That there would be constitutional attack on Act 109 was plain from the outset. But this is not a case where it could be said that appellees acted in bad faith or that they relied on a plainly unlawful statute. In this case, even the clarity of hindsite it not persuasive that the constitutional resolution of Lemon I could be predicted with assurance sufficent to undermine appellees' reliance on Act 109." Hence, contradictory lower court opinions and divergence of views on an issue do not constitute "clear foreshadowing." There is a difference between judicial conflict and judicial holdings suggesting resolution in a particular manner, and while Respondents knew that it was likely that whatever they did would be challenged in Court, "they had no idea what ultimately would be required of them."

In summary, a review of the Supreme Court's cases in this area shows that the requirements of adequate explanation of the fee and reasonably prompt opportunity to challenge the amount of the fee were never foreshadowed. The decision in Hudson was the first to refer to them at all, much less adjudicate them, and there was no hint given in Abood and Ellis that the procedures' time frames were inadequate. Thus, the resolution of those two issues was still "a first impression" and "unforeshadowed." Hence, the first part of the Chevron test has been met.

The second criterion of the Chevron analysis is a "balancing of the merits and demerits of each case, by looking at the prior history of the rule in question and its purpose and effect, in determining whether retrospective operation will further or retard the operation of the newly-enunciated rule." Citing, Chevron, 404 U.S. at 106-107; and Linkletter v. Walker, 381 U.S. 618, 629 (1965). Linkletter involved whether the holding in Mapp v. Ohio, 367 U.S. 643 (1961), was to be applied retrospectively or only prospectively. The Court rejected retroactive operation of Mapp for several reasons. First, the purpose of the rules set forth in Mapp was to deter illegal police action and that purpose would not be advanced since the police misconduct prior to Mapp had already occurred. 381 U.S. at 637. Second, retroactive operation would excessively tax the administration of justice by requiring new hearings in the situations governed by the change in law. Id. Also, the Court reasoned that the procedural weapon in question had no bearing on the guilt of the accused. Respondent Associations assert that the reasoning in Linkletter is applicable here. The Respondent Associations collected the fees from the Complainants and subsequently spent them almost exclusively on what the Respondent Associations believe are collective bargaining-related activities. Complainants rejected the Respondent Associations' rebate offers and brought these actions before the Commission. A hearing before the Commission on what activities of the Respondent Associations are chargeable is expected. Hence, there is no reason to restore the Complainants' "mythical status quo ante." They are obtaining the rights from the Commission that the Hudson procedural rules are meant to protect. Any procedural deprivations the Respondent Associations committed are faits accomplis. The retroactive application of Hudson will not undo that. Further, any procedural deprivations had no impact on the substantive issue of the percentage of Complainants' fees the Respondent Associations are entitled to.

Regarding Complainants' argument that restitution of all fair-share fees collected from them will encourage the Respondent Associations to provide the necessary procedural safeguards, the Respondent Associations contend that the Commission's order to show cause why their collection of agency fees ought not be enjoined for current non-compliance with Hudson's requirements provides sufficient incentive to which the Respondent Associations are responsive. What Complainants really are seeking is an "unjustified windfall."

The final Chevron criterion is whether retroactive application will impose an inequity. 404 U.S. at 107. Respondent Associations assert that retroactivity should be rejected if the decision would produce substantial inequitable results if applied retroactively, or the injustice or hardship may be avoided by a holding of nonretroactivity. Citing, Cipriano v. City of Houma. 395 U.S. 701 (1969).

It is not, as Complainants claim, a matter of whether the equities of the case justify a denial of any remedy at all for the constitutional deprivations they suffered prior to the date of Hudson. The Commission must distinguish between "any remedy at all" and the remedy of full restitution of all fees

collected from them that Complainants seek. The procedural flaws in the Respondent Associations' rebate procedures do not negate the collective bargaining-related activities that they have performed on Complainants' behalf. It is asserted that "most if not virtually all" of Complainants' fees have gone for chargeable expenses. To refund to Complainants all their fees would "give them the windfall of free representation, the precise evil fair-share is meant to prevent." Citing, Hanson, 351 U.S. at 231, 238; Street, 367 U.S. at 749, 751, 661-62; Allen, 373 U.S. at 122; Abood, 431 U.S. at 222, 224; Ellis, 466 U.S. at 439, 446; and Hudson, 121 LRRM at 2794, 2797. Such a windfall is an unjust enrichment to the Complainants at Respondents' expense, and equity does not favor such outcomes. Citing, Lemon II, 411 U.S. at 198. Respondent Associations analogize these cases to the situation in Lemon. By applying Lemon I prospectively, the Court enabled sectarian schools to receive the payments in reliance upon which they had previously provided educational services. Recognizing that people rely on statutes or judge-made rules in deciding their conduct, the Court held that the schools' reliance upon the statute authorizing the payments in question outweighed the possible constitutional harm in permitting the payments for services already rendered. Similarly, the Respondent Associations relied upon the statutory authorization for fair-share fees and the Supreme Court's pronouncements. They are also bound by the duties of fair representation and they have already performed the services for the fees that Complainants now seek to take back. To now return those fees would be inequitable.

The Respondent Associations concede that, to a degree, the escrow requirement in Hudson was foreshadowed even though the "precise Hudson formulation was a departure from prior holdings." In affirming that an exaction of a nonmember's dues followed by a rebate of the amount improperly expended, is unconstitutional, the Court relied, in part, on its holding in Ellis. Ellis was the first agency fee case to suggest an interest-bearing escrow account as a possible union response to the constitutional rights of dissenters. In prior agency fee cases the Supreme Court had approvingly mentioned pure rebate procedures as a viable response. Ellis, 466 U.S. at 444-445. That an interest-bearing escrow account would be constitutionally required is apparent only from Ellis, and it made foreseeable only the concept of an interest-bearing escrow account itself. The notion of an independent audit was never alluded to in prior cases and "the Court's treatment in Hudson of that idea is confused and contradictory." Neither that concept nor the tying of the amount of escrow to an independent audit was foreshadowed. Hence, those concepts should not be retroactively applied. Respondent WEAC does not deny that it was required to escrow some funds after the decision in Ellis and that its actual implementation of the escrow system was flawed in some aspects, however, it is asserted that its new escrow system meets the "added demands of Hudson."

In response to the Commission's decision in Browne that Hudson is to be applied retroactively, the Respondent Associations contend that the Commission treated the decision in Hudson as a "gestalt." They contend that each of the procedural requirements are in fact distinct rules or adjudications. This is unlike the normal holdings in cases where retroactivity is in issue, where only one rule is being considered. Hence, the Respondent Associations argue that each new requirement of Hudson should be ruled on separately as to retroactivity. It is asserted by the Respondent Associations that requiring an advance, audited explanation of the basis of the fee should be reconsidered, since it is "totally incapable of retroactive application under traditional requirement (sic) for retroactivity." The same is true for the audit requirements for a partial escrow. A review of the excerpts from the decisions in Abood and Allen relied on by the Commission to find that such notice was foreshadowed indicates they applied only to the challenge resolutions, after the employes have objected. It is asserted that the Court indicated in Hudson that it was "entering a new area" by following its analysis of Abood and Allen with the following statement:

> Basic considerations of fairness, as well as concern for the First Amendment rights at stake, also dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee."

106 S.Ct. at 1076 (emphasis added). The Respondent Associations contend that the Court's use of the word "also" "makes it clear that the remarks in Allen and Abood were directed to challenge resolution procedure (sic) and not at all to information entitlements of potential objectors."

It is further contended that neither the Supreme Court or the Commission ever suggested prior to Hudson that any information, much less audited information, must be sent to potential objectors. Also, the Commission may take administrative notice that no union had in place prior to Hudson such "sophisticated information requirements." Further, not even the complainants in these or other fair-share cases before the Commission argued for such a requirement. Therefore, this requirement was not "clearly foreshadowed" and meets Chevron's first criteria. The remaining criteria are also satisfied. The evidence submitted at the show cause hearing by the Respondent WEAC's Business Manager demonstrated that retroactive application of this requirement "will not appreciably" increase the number of dissenters. Thus, the purpose of the requirement would not be served by its retroactive application. To require the Respondent Associations to produce the information, especially for past years, "would constitute an enormous inequitable burden upon unions." This is so especially in light of the little to be gained from such a requirement and in view of the chargeable services the Respondent Associations have provided in return for the fees.

Discussion

Without repeating all of the case law we cited in Browne in this area, having viewed the decision in Hudson as being silent on the issue of retroactivity and having relied on the U.S. Supreme Court's decision in U.S. v. Johnson, 457 U.S. at 549-550, n. 12, 40/ the decision Welyzcko, 733 F.2d at 241, and the decisions in the Seventh Circuit applying the Chevron test in circumstances similar to here, 41/ we held in Browne that the Chevron test is to be applied in determining whether Hudson is to be applied retroactively. The threshold test being whether Hudson is a "clear break" from the past. Dec. No. 18408-G at 69. We reviewed the test in Chevron and applied the test to the procedural safeguards required by the Supreme Court's decision in Hudson:

40/ 12/ In the civil context, in contrast, the "clear break" principle has usually been stated as the threshold test for determining whether or not a decision should be applied non-retroactively. See, e.g., Chevron Oil Co. v. Huson, 404 U.S. 97, 106 (1971). Once it has been determined that a decision has "establish(ed) a new principle of law, either by overruling clear past precedent on which litigants may have relied . . . or by deciding an issue of first impression whose resolution was not clearly foreshadowed," the Court has gone on to examine the history, purpose, and effect of the new rule, as well as the inequity that would be imposed by its retroactive application. Id., at 106-107. See also Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481, 499 (1968).

457 U.S. at 549-550, n. 12. (Emphasis added)

. . .

Finally, all questions of civil retroactivity continue to be governed by the standard enunciated in Chevron Oil Co. v. Huson, 404 U.S., at 106-107. See n. 12, supra.

457 U.S. at 562-563. (Emphasis added)

41/ "The Chevron criteria have been applied in civil cases in the Seventh Circuit in Landahl v. PPG Industries, Inc., 746 F.2d 1312, 1314 (1984), 577 F. Supp. 867 (1983); Unger v. Consolidated Foods Corp., 693 F.2d 703 (7th Cir. 1982); NLRB v. Lyon & Ryan Ford, 647 F.2d 745, 757 (1981); Kumrow v. Teamsters General Local No. 200, 579 F.Supp. 393 (1983). These were cases where the law changed after the cases were initiated, but before the trial court rendered its decision, unlike Fitzgerald, supra, and similar to the instant case."

Browne, Dec. No. 18408-G at 69.

Chevron Test

The Chevron test consists of three criteria to be considered and all three criteria must be satisfied in order to find that a decision should be applied nonretrospectively. 51/ The Chevron criteria may be stated as follows:

> 1. Whether the decision establishes a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed;
>
> 2. whether retrospective application will further or retard application of the new rule; and
>
> 3. whether retrospective application would result in substantial injustice to the parties.

First Chevron Criteria

The first criterion has been described as the "clear break" test, and in U.S. v. Johnson, supra, the Court noted that in the civil context it has been stated as the "threshold test." 457 U.S. at 550, n. 12. Unger, 693 F.2d at 707, n. 8. Only if that first criterion is satisfied, are the second and third considered. Id. The first criterion is whether a decision has "established a new principle law, either by overruling clear past precedent on which litigants may have relied . . . or by deciding an issue of first impression whose resolution was not clearly foreshadowed." Chevron 404 U.S. at 106.

Johnson also provides guidance as to what is to be considered a "clear break" with existing law:

> First, Payton v. New York did not simply apply settled precedent to a new set of facts. In Payton, the Court acknowledged that the "important constitutional question presented" there had been "expressly left open in a number of our prior opinions."
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> . . .
>
> By the same token, however, Payton also did not announce an entirely new and unanticipated principle of law. In general, the Court has not subsequently read a decision to work a "sharp break in the web of the law", unless that ruling caused "such an abrupt and fundamental shift in doctrine as to constitute an entirely new rule which in effect replaced an older one,". Such a break has been recognized only when a decision explicitly overrules a past precedent of this Court, see, e.g., Desist v. United States, 394 U.S. 244 (1969); Williams v. United States, 401 U.S. 646 (1971), or disapproves a practice this Court arguably has sanctioned in prior cases, or overturns a longstanding and widespread practice to which this Court has not spoken, but which a near-unanimous body of lower court authority has expressly approved. See, e.g., Gosa v. Mayden, 413 U.S., at 673 (plurality opinion) (applying nonretroactively a decision that "effected a decisional change in attitude that had prevailed for many decades").

51/ NLRB v. Lyon & Ryan Ford, 647 F.2d at 757:

> Since there is a presumption favoring retroactivity, all three Chevron factors must support prospective application in order to limit the retroactive effect of the decision. Valencia v. Anderson Bros. Ford, 617 F.2d 1278, 1289 (7th Cir.), cert. granted, ____ U.S. ____, 101 S.Ct. 395, 66 L.Ed.2d 242 (1980); Schaefer v. First Nat'l Bank, 509 F.2d 1287, 1294 (7th Cir. 1975), cert. denied, 425 U.S. 943, 96 S.Ct. 1682, 48 L.Ed.2d (1976).

. . .

> Milton v. Wainwright, 407 U.S., at 381-182, n. 2 (Stewart, J., dissenting) ("sharp break" occurs when "decision overrules clear past precedent . . . or disrupts a practice long accepted and widely relied upon").
>
> Payton did none of these. Payton expressly overruled no clear past precedent of this Court on which litigants may have relied. Nor did Payton disapprove an established practice that the Court had previously sanctioned. To the extent that the Court earlier had spoken to the conduct engaged in by the police officers, in Payton, it had deemed it of doubtful constitutionality. The Court's own analysis in Payton makes it clear that its ruling rested on both long-recognized principle of Fourth Amendment law and the weight of historical authority as it had appeared to the Framers of the Fourth Amendment. Finally, Payton overturned no long-standing practice approved by a near-unanimous body of lower court authority. Payton therefore does not fall into that narrow class of decisions whose nonretroactivity is effectively preordained because they unmistakably signal "a clear break with the past," . . .

457 U.S. at 551-554.

In order to determine whether Hudson constitutes a "clear break" it is necessary to note what it is Hudson requires and to review what the existing case law was prior to Hudson. The issue presented in Hudson was:

> whether the procedure used by the Chicago Teachers Union and approved by the Chicago Board of Education adequately protects the basic distinction drawn in Abood. "(T)he objective must be to devise a way of preventing compulsory subsidization of ideological activity by employees who object thereto without restricting the Union's ability to require every employee to contribute to the cost of collective-bargaining activities." Abood, 431 U.S. at 237.

106 S.Ct. at 1074. (Emphasis added) The Court held that:

> Procedural safeguards are necessary to achieve this objective for two reasons. First, although the government interest in labor peace is strong enough

to support an "agency shop" notwithstanding its limited infringement on nonunion employees' constitutional rights, the fact that those rights are protected by the First Amendment requires that the procedure be carefully tailored to minimize the infringement. 11/ Second, the nonunion employee--the individual whose First Amendment rights are being affected--must have a fair opportunity to identify the impact of the governmental action on his interests and to assert a meritorious First Amendment claim. 12/

. . .

11/ "See Roberts v. United States Jaycees, supra, at 12 (Infringements of freedom of association "may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms"); Elrod v. Burns, 427 U.S. 347, 363 (1976) (government means must be "least restrictive of freedom of belief and association"); Kusper v. Pontikes, 414 U.S. 51, 58-59 (1973) ("even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty"); NAACP v. Button, 371 U.S. 415, 438 (1963) ("(p)recision of regulation must be the touchstone" in the First Amendment context).

12/ "(P)rocedural safeguards often have a special bite in the First amendment context." G. Gunther, Cases and Materials on Constitutional Law 1373 (10th ed. 1980). Commentators have discussed the importance of procedural safeguards in our analysis of obscenity, Monaghan, First Amendment "Due Process," 83 Harv. L. Rev. 518, 520-524 (1970); overbreadth, L. Tribe, American Constitutional Law 734-736 (1978); vagueness. Gunther, supra, at 1373, n. 2, and 1185-1195; and public forum permits, Blasi, Prior Retraints on Demonstration, 68 Mich. L. Rev. 1481, 1534-1572 (1970). The purpose of these safeguards is to insure that the government treads with sensitivity in areas freighted with First Amendment concerns. See generally, Monaghan, supra, at 551 ("The first amendment due process cases have shown that first amendment rights are fragile and can be destroyed by insensitive procedures").

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106 S.Ct. at 1074. (Emphasis added) The Court appears to have relied on existing First Amendment case law in holding that procedural safeguards are constitutionally necessary in this context.

The Court held that the union's procedure was inadequate because:

> . . . it failed to minimize the risk that nonunion employees' contributions might be used for impermissible purposes, because it failed to provide adequate justification for the advance reduction of

dues, and because it failed to offer a reasonably prompt decision by an impartial decisionmaker.

106 S.Ct. at 1077. Regarding what is constitutionally required for a union to collect an agency fee the Court held:

> . . . the constitutional requirements for the Union's collection of agency fees include an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending.

106 S.Ct. at 1078.

We must look at each of the above components of the Court's decision, what the Court relied on in holding that the First Amendment requires such procedures and what the law was as to each of those requirements prior to the Court's decision in Hudson.

First, in holding that the union must first establish a procedure that avoids the risk that objecting fee payors' funds will be used temporarily for improper purposes the Court stated:

> First, as in Ellis, a remedy which merely offers dissenters the possibility of a rebate does not avoid the risk that dissenters' funds may be used temporarily for an improper purpose. "(T)he Union should not be permitted to exact a service fee from nonmembers without first establishing a procedure which will avoid the risk that their funds will be used, even temporarily, to finance ideological activities unrelated to collective bargaining." Abood, 431 U.S., at 244 (concurring opinion). The amount at stake for each individual dissenter does not diminish this concern. For, whatever the amount, the quality of respondent's interest in not being compelled to subsidize the propagation of political or ideological views that they oppose is clear. In Abood, we emphasized this point by quoting the comments of Thomas Jefferson and James Madison about the tyrannical character of forcing an individual to contribute even "three pence" for the "propagation of opinions which he disbelieves." A forced exaction followed by a rebate equal to the amount improperly expended is thus not a permissible response to the nonunion employees' objections. 52/
>
> 106 S.Ct. at 1075. (Emphasis added)

52/ Citing the majority in Abood, at 234-235, n. 31.

The following is the portion of Ellis relied on by the Court in Hudson in holding that a rebate procedure is constitutionally inadequate and that the required procedural safeguards must be in place before a union may exact an agency fee:

> As the Court of Appeals pointed out, there is language in this Court's cases to support the validity of a rebate program. Street suggested

"restitution to each individual employee of that portion of his money which the union expended, despite his notification, for the political causes to which he had advised the union he was opposed." 367 U.S., at 775. See also Abood v. Detroit Board of Education, 431 U.S. 209, 238 (1977). On the other hand, we suggested a more precise advance reduction scheme in Railway Clerks v. Allen, 373 U.S. 113, 122 (1963), where we described a "practical decree" comprising a refund of exacted funds in the proportion that union political expenditures bore to total union expenditures and the reduction of future exactions by the same proportion. Those opinions did not, nor did they purport to, pass upon the statutory or constitutional adequacy of the suggested remedies. 7/ Doing so now, we hold that the pure rebate approach is inadequate.

7/ The courts that have considered this question are divided. Compare Robinson v. New Jersey, 547 F.Supp. 1297 (N.J. 1982); School Committee v. Greenfield Education Assn., 385 Mass. 70, 431 N.E.2d 180 (1982); Threlkeld v. Robbinsdale Federation of Teachers, 307 Minn. 96, 239 N.W.2d 437, vacated and remanded, 429 U.S. 880 (1976) (all holding or suggesting that such a scheme does not adequately protect the rights of dissenting employees) with Seay v. McDonnell Douglas Corp. 533 F.2d 1126, 1131 (CA9 1976); Opinion of the Justices, 401 A.2d 135 (Me. 1979); Association of Capitol Powerhouse Engineers v. State, 89 Wash.2d 177, 570 P.2d 1042 (1977) (all upholding rebate programs). See generally Perry v. Local 2569, 708 F.2d 1258, 1261-1262 (CA7 1983).

By exacting and using full dues, then refunding months later the portion that it was not allowed to exact in the first place, the union effectively charges the employees for activities that are outside the scope of the statutory authorization. The cost to the employee is, of course, much less than if the money was never returned, but this is a difference of degree only. The harm would be reduced were the union to pay interest on the amount refunded, but respondents did not do so. Even then the union obtains an involuntary loan for purposes to which the employee objects.

The only justification for this union borrowing would be administrative convenience. But there are readily available alternatives, such as advance reduction of dues and/or interest bearing escrow accounts, that place only the slightest additional burden, if any, on the union. Given the existence of acceptable alternatives, the union cannot be allowed to commit dissenters' funds to improper uses even temporarily. A rebate scheme reduces but does not eliminate the statutory violation.

. . .

104 S.Ct. at 1889-1890. (Emphasis added)

Previous references to what might constitute appropriate procedures are also noted at various places in the Court's opinion in Abood:

> In determining what remedy will be appropriate if the appellants prove their allegations, the objective must be to devise a way of preventing compulsory subsidization of ideological activity by employees who object thereto without restricting the union's ability to require every employee to contribute to the cost of collective bargaining activities. This task is simplified by the guidance to be had from prior decisions. In Street, supra, the plaintiffs had proved at trial that expenditures were being made for political purposes of various kinds, and the Court found those expenditures illegal under the Railway Labor Act. See pp. 9-10, supra. Moreover, in that case each plaintiff had "made known to the union representing his craft or class his dissent from the use of his money for political causes which he opposes." 367 U.S.at 750; see id., at 771. The Court found that "(i)n that circumstance, the respective unions were without power to use payments thereafter tendered by them for such political causes." Ibid.
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> After noting that "dissent is not to be presumed" and that only employees who have affirmatively made known to the union their opposition to political uses of their funds are entitled to relief, the Court sketched two possible remedies: first, "an injunction against expenditure for political causes opposed by each complaining employee of a sum, from those moneys to be spent by the union for political purposes, which is so much of the moneys exacted from him as is the proportion of the union's total expenditures made for such political activities to the union's total budget," and second, restitution of a fraction of union dues paid equal to the fraction total union expenditures that were made for political purposes opposed by the employee. 367 U.S., at 774-775. 38/
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> 38/ In proposing a restitution remedy, the Street opinion made clear that "(t)here should be no necessity, however, for the employee to trace his money up to and including its expenditure; if the money goes into general funds and no separate accounts of receipts and expenditures of the funds of individual employees are maintained, the portion of his money the employee would be entitled to recover would be in the same proportion that the expenditures for political purposes which he had advised the union he disapproved bore to the total union budget." 367 U.S., at 775.
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> The Court again considered the remedial question in Brotherhood of Railway & Steamship Clerks v. Allen, 373 U.S. 113, 53 LRRM 2128.

. . .

The Court indicated again the appropriateness of the two remedies sketched in Street; reversed the judgment affirming issuance of the injunction; and remanded for determination of which expenditures were properly to be characterized as political and what percentage of total union expenditures they constituted. 40/

The Court in Allen described a "practical decree" that could properly be entered, providing for (1) the refund of a portion of the exacted funds in the proportion that union political expenditures bear to total union expenditures, and (2) the reduction of future exactions by the same proportion. Id., at 122. Recognizing the difficulties posed by judicial administration of such a remedy, the Court also suggested that it would be highly desirable for unions to adopt a "voluntary plan by which dissenter would be afforded an internal union remedy." Ibid. This last suggestion is particularly relevant to the case at bar, for the Union has adopted such a plan since the commencement of this litigation. 41/

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40/ The Court in Allen went on to elaborate:

> "(s)ince the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion. Absolute precision in the calculation of such proportion is not, of course, to be expected or required; we are mindful of the difficult accounting problems that may arise. And no decree would be proper which appeared likely to infringe the unions' right to expend uniform exactions under the union-shop agreement in support of activities germane to collective bargaining and, as well, to expend nondissenters' such exactions in support of political activities." 373 U.S. at 122.

41/ Under the procedure adopted by the Union, as explained in the appellees brief, a dissenting employee may protest at the beginning of each school year the expenditure of any part of his agency-shop fee for "activities or causes of a political nature or involving controversial issues of public importance only incidentally related to wages, hours, and conditions of employment." The employee is then entitled to a pro rata refund of his service charge in accordance with the calculation of the portion of total union expenses for the specified purposes. The calculation is made in the first instance by the Union, but is subject to review by an impartial board.

431 U.S. at 237-240. (Emphasis added)

The majority in Abood expressly left open the question of the constitutionality of the union's internal remedy, which was in effect a rebate procedure:

> The Court of Appeals thus erred in holding that the plaintiffs are entitled to no relief if they can prove the allegations contained in their complaints, and in depriving them of an opportunity to establish their right to appropriate relief, such, for example, as the kind of remedies described in Street and Allen. In view of the newly adopted union internal remedy, it may be appropriate under Michigan law, even if not strictly required by any doctrine of exhaustion of remedies, to defer further judicial proceedings pending the voluntary utilization by the parties of that internal remedy as a possible means of settling the dispute. 45/
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> 45/ We express no view as to the constitutional sufficiency of the internal remedy described by the appellees. If the appellants initially resort to that remedy and ultimately conclude that it is constitutionally deficient in some respect, they would of course be entitled to judicial consideration of the adequacy of the remedy.

431 U.S. at 241-242. (Emphasis added)

This includes Justice Stevens in his concurring opinion in Abood:

> Mr. Justice STEVENS, concurring.
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> By joining the opinion of the Court, including its discussion of possible remedies, I do not imply--nor do I understand the Court to imply--that the remedies described in Street and Allen would necessarily be adequate in this case or in any other case. More specifically, the Court's opinion does not foreclose the argument that the Union should not be permitted to exact a service fee from nonmembers without first establishing a procedure which will avoid the risk that their funds will be used, even temporarily, to finance ideological activities unrelated to collective bargaining. Any final decision on the appropriate remedy must await the full development of the facts at trial.

431 U.S. at 244. (Emphasis added)

As can be seen, the Court relied on its prior decisions in Ellis and Abood in finding that a rebate procedure, without other safeguards, is not constitutionally adequate to protect dissenters' First Amendment rights. The Court expressly noted in Abood that it was not deciding the constitutionality of the union's rebate procedure. In Ellis the Court reiterated that it had not in its decisions in Abood and Allen judged the "statutory or constitutional adequacy of the suggested remedies." 104 S.Ct. at 1889. The Court also noted in Ellis that the courts that had considered that question "are divided." 104 S.Ct. 1890, n.7. Thus, prior to its decision in Ellis and Hudson the Court had expressly left open the question of the constitutional adequacy of a "pure rebate" procedure, as well as the question of what was constitutionally required, and the lower courts were divided on the question.

In its decisio in Hudson the Court also required, and found the proced e flawed because it was lacking, "an adequate explana on of the basis for the fee," as a correlative of req ing the nonmember to object. Hudson, 106 Ct. (sic) at 75, 1078. The Court relied on its prior decisions in A od and Allen in requiring such explanation:

> Second, e "advance reduction of dues" was inadequate be ause it provided nonmembers with inadequate ir rmation about the basis for the proportionate are. In Abood, we reiterated that the nonunion ployee has the burden of raising an objection, bu hat the union retains the burden of proof: "Sinc the unions possess the facts and records from hich the proportion of political to total union xpenditures can reasonably be calculated, b c considerations of fairness compel that they, nc the individual employees, bear the burden of pr ing such proportion.'" Abood, 431 U.S., at 239-), n. 40, quoting Railway Clerks v. Allen, 373 S. 113, 122 (1963). 16/ Basic considerations f fairness, as well as concern for the First Ame lment rights at stake, also dictate that the pot tial objectors be given sufficient information t gauge the propriety of the union's fee. Leaving he non-union employees in the dark about the sou e of the figure for the agency fee-- and requiring hem to object in order to receive information--d s not adequately protect the careful distinctions dr wn in Abood. 17/
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> In this c e, the original information given to the non-union nployees was inadequate. Instead of identifying e expenditures for collective bargaining and contract administration that had been provided for e benefit of nonmembers as well as members - a for which nonmembers as well as members can airly be charged a fee--the Union identified th amount that it admittedly had expended fo purposes that did not benefit dissenting nor embers. An acknowledgment that nonmembers w d not be required to pay any part of 5% of the Uni 's total annual expenditures was not an adequate d closure of the reasons why they were required to pa their share of 95%. 18/
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16/ "The no member's "burden" is simply the obligation to make his objection known. See Machinists v. treet, 367 U.S. 740, 774 (1961) ("dissent is not to be presumed--it must affirmatively made known to the union by the dissenting emp yee"); Railway Clerks v. Allen, 373 U.S. 113, 11 (1963); Abood, supra, 431 U.S., at 238.

17/ Although p blic sector unions are not subject to the disclosure equirements of the Labor Management Reporting and isclosure Act, see 29 U. S. C. at 402(e), the fa that private sector unions have a duty of discl ure suggests that a limited notice requirement d s not impose an undue burden on the union. This i not to suggest, of course, that the information re red by that Act, see 29 U. S. C. at

431 (b); 29 CFR at 403.3 (1985), is either necessary or sufficient to satisfy the First Amendment concerns in this context.

18/ We continue to recognize that there are practical reasons why "(a)bsolute precision" in the calculation of the charge to nonmembers cannot be "expected or required." Allen, 373 U.S., at 122, quoted in Abood. 431 U.S., at 239-240, n. 40. Thus, for instance, the Union cannot be faulted for calculating its fee on the basis of its expenses during the preceding year . . .

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106 S.Ct. at 1075-1076. (Emphasis added)

Again, the Court was relying on its prior decisions in this area and what it felt followed from those decisions based on "Basic considerations of fairness, as well as concern for the First Amendment rights at stake . . ." 106 S.Ct. at 1076.

Regarding its requirement that a "reasonably prompt decision by an impartial decisionmaker" must be provided by the procedure, the Court stated:

Finally, the original Union procedure was also defective because it did not provide for a reasonably prompt decision by an impartial decisionmaker. Although we have not so specified in the past, we now conclude that such a requirement is necessary. The nonunion employee, whose First Amendment rights are affected by the agency shop itself and who bears the burden of objecting, is entitled to have his objections addressed in an expeditious, fair, and objective manner. 19/

. . .

19/ Our prior opinions have merely suggested the desirability of an internal union remedy. See Abood, supra, at 240, and n. 41: Allen, supra, at 122.

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106 S.Ct. at 1076. (Emphasis added)

While the Court expressly held for the first time in Hudson that a reasonably prompt decision by an impartial decision-maker is required as part of the union's procedure, it overruled no past decision of the Court, and what is required in a union's internal rebate procedure and whether a rebate procedure is constitutionally adequate has been addressed by a number of lower courts reaching a variety of conclusions. A summary of various decisions is noted in Perry v. Machinists Local Lodge 2569:

The Union maintains, however, that because a refund procedure exists whereby the plaintiff can receive a rebate of her fees spent on political causes, the First Amendment does not prohibit the Union from collecting the whole fee (i.e. both political and non-political components).

> The merits of the Union's argument were clearly left open by the Supreme Court in Abood. See 431 U.S. at 242 n. 45; 431 U.S. at 244 (Stevens, J., concurring); see also Robinson v. State of New Jersey, 547 F.Supp. 1297, 1318, 112 LRRM 2308 (D.N.J. 1982). Since then courts have split on the issue whether a refund procedure cures the First Amendment problems created when a union spends agency fees on political causes. Some courts have found rebate procedures sufficient to protect an employee's rights. See, e.g., Ellis v. Brotherhood of Railway, Airline and Steamship Clerks, 685 F.2d 1065, 1070, 111 LRRM 2173 (9th Cir. 1982), cert. granted, 51 LW 3746 (April 18, 1983). Other courts have held that an agency fee system requiring continual payments and subsequent refunds to claimants does not satisfy the requirements of the First Amendment. See, e.g., Robinson v. State of New Jersey, 547 F.Supp. 1297, 1321, 112 LRRM 2308 (D.N.J. 1982) School Committee of Greenfield v. Greenfield Education Association, 385 Mass. 70, 431 N.E.2d 180, 189, 109 LRRM 2420 (1982); see general Galda v. Bloustein, 686 F.2d 159, 168 (3rd Cir. 1982). We need not presently select the better position, however, because all courts have agreed that, at least, a rebate system must be fair, administered in good faith, and not cumbersome. See, e.g., Ellis v. Brotherhood of Railway, Airline and Steamship Clerks, 685 F.2d 1065, 1070, 111, LRRM 2173 (9th Cir. 1982) cert. granted, 51 LW 3746 (April 8, 1983); Robinson v. State of New Jersey, 547 F.Supp. 1297, 1321, 112 LRRM 2308 (D.N.J. 1982). This agreement stems from the principle that when First Amendment interests are at stake, the least restrictive means of effectuating government interests must be employed, see Kuspers v. Pontikes, 414 U.S. 51, 58-59 (1973).

708 F.2d at 1261-1262. (Emphasis added) It is noted that the Seventh Circuit found the union's procedures inadequate in Perry because they took too long (were not "reasonably prompt") and were not fair in that the dissenter bore the burden of proof and the final decision was made by the union's executive council (not an impartial decisionmaker). 708 F.2d at 1262.

In the initial decision in Hudson the federal district court also noted the diversity of rulings on the adquacy of a rebate system:

> Some courts have found rebate procedures sufficient to protect an employee's rights. See, e.g., Ellis v. Brotherhood of Railway, Airline & Steamship Clerks, 685 F.2d 1065, 1070 (9th Cir. 1982); Browne v. Milwaukee Board of School Directors, (1977-78 PBC 36,299) 83 Wis.2d 316, (1978); White Cloud Educational Ass'n v. Board of Education, (1979-81 PBC 37,187) 101 Mich.App.309, (1980). Other courts have held that an agency fee system requiring continual payments and subsequent refunds to claimants does not satisfy the requirements of the First Amendment. See, e.g., Robinson v. State of New Jersey, (1981-83 PBC 37,624) 547 F.Supp. 1297, 1321 (D.N.J. 1982); Schools Committee of Greenfield v. Greenfield Education Association, (1981-83 PBC 37,431) 385 Mass. 70, (1982).

573 F.Supp. 1505, 1515 (1983).

Thus, it appears there was no solid body of lower court precedent upon which the Respondent Unions could have justifiably relied and there were numerous decisions indicating the need for a reasonably prompt decision by an impartial decisionmaker, e.g. Robinson; Perry; Tierney v. City of Toledo, 116 LRRM 3475 (N.D. Ohio 1984), Greenfield Education Ass'n, 385 Mass. at 82; Central Michigan Faculty Ass'n v. Stengren, et al, Mich. Ct. App., Case No. 76097 (May 6, 1985).

Hudson also requires escrowing of the amount reasonably in dispute while challenges are pending. As was the case with the above, the courts have taken various approaches as to whether escrowing may be required. However, the Supreme Court had indicated in Street and Allen that broad injunctive relief that would deprive the unions of the funds was inappropriate. Allen, 373 U.S. at 120; Street 367 U.S. at 771-772. See also, Browne, 83 Wis.2d at 340; Champion v. Deukmejian, 738 F.2d 1082 (9th Cir. 1984). In Ellis the Court altered its direction somewhat and required escrow of the fees or advanced reduction and that decision was preceded by various lower court decisions that had required or recognized the need for escrowing of the fees while a challenge was pending. Robinson v. State of New Jersey, 547 F.Supp. 1297 (1982); reversed and remanded, 741 F.2d 598 (3rd Cir. 1984) (the Court of Appeals noting the union's procedure now provided for escrow of the contested portion of the fee); School Committee v. Greenfield Education Association, supra; Perry, supra, Tierney, supra.

To a major extent the question of what would constitute a constitutionally adequate internal union procedure was left unanswered by the Court, expressly or otherwise, until its decisions in Ellis and Hudson. That is similar to the case in Johnson, supra, where the Court noted that prior to its decision in Payton, the '"important constitutional question presented' there has been 'expressly left open in a number of our prior opinions.'" 457 U.S. at 551. The Court then concluded that Payton also did not announce "an entirely new and unanticipated principle of law" since that decision did not overrule clear past precedent or overturn a practice arguably sanctioned in prior cases or overturn a longstanding and widespread practice. 457 U.S. at 551-54. Similarly, Hudson also did not overrule a clear past precedent of the Court in this area and while the requirements in Hudson had been addressed in lower court decisions in this area and in prior decisions on the First Amendment, there was no "near unanimous body of lower court authority" in the area of union fees expressly approving as adequate the internal union rebate procedure found to be inadequate in Hudson. At most, such a rebate system had arguably been sanctioned by the Court in Street, but as of the Court's decision in Abood, it was clear that the Court did not consider the question to have been answered, nor did the Court answer it in that case. 431 U.S. at 242.

The Respondent Unions' argument that the Supreme Court's dismissals of the appeals in Kempner and White Cloud were "clear past precedents" upon which they could rely is not persuasive. The issue in both of those cases was whether the dissenting fee payors should be permitted to pay the entire fee they were being asked to pay into an escrow account pending the outcome of the litigation on the appropriate fee amount. Such requested interim relief was the relevant procedural aspect decided in those cases and appealed; and the other procedural safeguards that had been addressed in lower court decisions, and held to be constitutionally required in Hudson, were not addressed in those decisions. Further, while such summary dispositions are "precedent," the

dismissals contain no rationale and have "considerably less precedential value than an opinion on the merits." Illinois Elections Board v. Socialist Workers Party, 440 U.S. 173, 180-181 (1979). They are to be given "appropriate, but not necessarily conclusive weight." Mandel v. Bradley, 432 U.S. 173, 180 (1977) (J. Brennan, concurring). Hence, the Supreme Court's dismissals of the appeals in Kempner and White Cloud did not constitute clear past precedent upon which unions were entitled to rely as establishing that a simple rebate procedure was constitutionally adequate.

Although the Court had not, prior to its decision in Hudson, specified the procedural safeguards a union must establish in order to lawfully collect an agency fee, it had previously held in Ellis that a "pure rebate" procedure was inadequate and offered escrow of the fee or advanced rebate as possible alternatives to avoid the possibility that dissenters' funds be committed to improper uses even temporarily. Ellis, 104 S.Ct. at 1890. Thus, the principle that a union's compulsory dues procedure must be such as to avoid the risk that dissenters' funds will be used even temporarily for impermissible purposes was articulated in the Court's decision in Ellis, relying in part on its decision in Abood. In applying that principle in Hudson the Court was not deciding an issue of first impression. Further, the specific procedural safeguards found to be required in Hudson were foreshadowed to a considerable extent by precedents in this area in the lower federal courts, by the application of the Court's prior decisions in the area of the First Amendment, and by "basic considerations of fairness." Contrary to the Respondent Unions' claims, Kempner and White Cloud involved only the escrow aspect of the procedural safeguards and were not broad decisions on the constitutionality of the unions' procedures in those cases. Also contrary to the Respondent Unions' arguments, the Court of Appeals' decision in Hudson 53/ held that the union's procedure must provide for a prompt decision by an impartial decisionmaker (albeit an administrative agency or the courts), 54/ and strongly suggested that to meet constitutional minimums the procedure provide for "fair notice" 55/ and a "proper escrow arrangement." 56/ Therefore, we conclude that the Court in Hudson did not establish a new principle of law by deciding "an issue of first impression whose resolution was not clearly foreshadowed."

On the basis of the foregoing we conclude that the decision in Hudson does not constitute a "clear break" such as is required to meet the first criterion, i.e., the threshold, of the Chevron test. That being so, it would not be necessary to address the second and third Chevron criteria. However, for the sake of answering all of the questions raised, we will do so.

The second criterion of the Chevron test is whether retroactive application will further or retard application of the rule in question. The "rule" to be served is that the First Amendment requires that certain procedural safeguards must be established before a union may exact a fair-share fee in order to minimize the infringement on the non-member's constitutional rights. As Complainants point out, there may be some deterrence value to applying Hudson retroactively as unions will be more likely to observe constitutional procedural requirements, if relief is granted for their failure to do so in the past. Conversely, there would be little incentive for unions to err on the side of clearly constitutional behavior in this area, if the only consequence of their failure to do so would be that they would have to establish and follow constitutional procedures in the future. Johnson, 457 U.S. at 561.

The third criterion under the Chevron test is whether retrospective application would result in substantial injustice to the parties. This factor requires a balancing of the interests of the parties and the impact retroactive application of the rule would have on those interests. Complainants have their First Amendment right, as well as their rights under MERA, not to be required over their objection to subsidize the union's activities that are not sufficiently related to collective bargaining and contract administration. The Respondent Unions' recognized interest is having every employe it represents contribute his/her proportionate share toward the costs of collective bargaining and contract administration. There is also the government's interest in labor peace, and while that interest is strong enough to justify permitting a fair-share agreement and its infringement on non-members' constitutional rights, the First Amendment requires that the interests of the unions and the government be achieved by the least restrictive means, i.e., that the unions' fair-share procedures "be carefully tailored to minimize the infringement." Hudson, 106 S.Ct. at 1074 and n. 11, 12.

53/ 743 F.2d 1187 (1984).

54/ Ibid., at 1195.

55/ Ibid., at 1196.

56/ Ibid., at 1197.

It is evident from the admissions in the pleadings and the responses of the Respondent Unions that their internal rebate procedures prior to Hudson did not meet the requirements set forth in Hudson for a union to lawfully exact a fair-share fee. Both Complainants and the Respondent Unions apparently assume that such being the case, if Hudson is found to apply retroactively, then the Respondent Unions must forfeit all the fees they collected from Complainants, and they argue the equities of retroactive application of Hudson from that standpoint. However, as we discuss more fully in the next section, it is not necessarily a case of "all or nothing" with regard to remedy. It is possible to fashion a remedy that takes into consideration the valid interests of both the non-member fair-share payors and the unions without imposing undue hardship upon the unions. To the extent the retroactive application of Hudson does impose some additional burdens upon the Respondent Unions, weighing the interest of Complainants in protecting their First Amendment rights against the interest of the Respondent Unions in having everyone they represent pay their "fair-share" of the costs of collective bargaining, we conclude that the need to vindicate the Complainants' constitutional rights outweighs the additional financial burden imposed on the Respondent Unions under our remedial order by applying Hudson retroactively.

On the basis of the foregoing, we conclude that Hudson is to be applied retroactively. This appears to also have been the result at least implicitly reached in those cases where Hudson has been applied as the basis for granting relief for periods predating the Supreme Court's decision in Hudson. Ellis v. Western Airlines, Inc., and Air Transport Employes, Civil No. 86-1041-E (S.D. Cal. 1986); Gilpin v. AFSCME, 643 F.Supp. 733 (C.D. Ill. 1986); Lehnert v. Ferris Faculty Ass'n, MEA-NEA, 643 F.Supp. 1306 (W.D. Mich. 1986); McGlumphy, supra.

> The fair-share provisions of MERA having been held to be constitutional on their face, the retroactive application of Hudson inescapably leads to the conclusion that the Respondent Unions violated MERA by collecting and spending fair-share fees equivalent to full dues in the admitted absence of the procedural safeguards held in Hudson to be constitutionally required in order for a union to lawfully exact a fair-share fee. Specifically, Complainants have alleged that by requiring them to pay a fair-share fee equivalent to full dues, the Respondent Unions and Respondents Board and County have committed prohibited practices within the meaning of MERA.

Browne, Dec. No. 18408-G at 70-81.

Regarding the Respondent Associations' contention that the procedural requirements should be considered separately as to retroactivity, assuming that is correct, the result does not change. We considered each requirement separately as to the first Chevron criterion, i.e., the "threshold test," and held that none of them represented a "clear break."

The Respondent Associations specifically take issue with our conclusion in Browne that the advance information requirement of Hudson did not establish a new principle of law by dealing with an issue of first impression whose resolution was not clearly foreshadowed. However, we find no persuasive basis for reversing our decision in that regard. Cited by the Respondent Associations in support of their position is the following language from Hudson:

> Second, the "advance reduction of dues" was inadequate because it provided nonmembers with inadequate information about the basis for the proportionate share. In Abood, we reiterated that the nonunion employee has the burden of raising an objection, but that the union retains the burden of proof: "'Since the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion.'" Abood, 431 U.S., at 239-240, n. 40, quoting Railway Clerks v. Allen, 373 U.S. 113, 122 (1963). Basic considerations of fairness, as well as concern for the First Amendment rights at stake, also dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee. Leaving the non-union employees in the dark about the source of the figure for the agency fee--and requiring them to object in order to receive information--does not adequately protect the careful distinctions drawn in Abood.

106 S.Ct. at 1076. (Emphasis added) Contrary to the Respondent Associations' contention, we do not find that the Court's use of the word "also" (underscored above) indicates that the idea "Basic considerations of fairness, as well as concern for the First Amendment rights at stake, also dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee," did not follow from the Court's holdings in Abood and Allen. It had held in those cases that since the union possesses all the facts from which the proper fee can reasonably be calculated, "basic considerations of fairness" require that the union bear the burden of proving the fee is appropriate. It appears to us that the Court was citing those same considerations it relied on in the earlier cases and that it concluded from those considerations that it followed that the potential objectors must be giving sufficient information to permit them to make an informed choice as to whether or not to object. The need for independent verification of the union's financial information appears also to be something the Court felt automatically followed. 106 S.Ct. at 1076, n. 18. Further, "basic considerations of fairness" are by definition fundamental and apparent to all, and hence, forseeable. Thus, while we concede that all of the details of the requirements were not self-evident, the basic requirements followed from the Court's earlier decisions in this area and in the First Amendment cases. Hence, we are not persuaded that our holding in Browne in this regard was erroneous.

IV. Prohibited Practices Under MERA

As we noted in Browne:

> The fair-share provisions of MERA having been held to be constitutional on their face, the retroactive application of Hudson inescapably leads to the conclusion that the Respondent Unions violated MERA by collecting and spending fair-share fees equivalent to full dues in the admitted absence of the procedural safeguards held in Hudson to be constitutionally required in order for a union to lawfully exact a fair-share fee.

Browne, Dec. No. 18408-G at 81.

As in Browne and Johnson, the Complainants in these cases have alleged that the Respondent Associations and the Respondent Boards committed prohibited practices within the meaning of MERA, both before and after the U.S. Supreme Court's decision in Hudson, by requiring the Complainants to pay fair-share fees equivalent to full dues.

MERA provides in relevant part that:

> **111.70 Municipal employment.** (1) DEFINITIONS. As used in this subchapter:
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> . . .
>
> (f) "Fair-share agreement" means 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. Such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employes affected by said agreement and to pay the amount so deducted to the labor organization.
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> . . .
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> **(2)** RIGHTS OF MUNICIPAL EMPLOYES. Municipal employes shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employes shall have the right to refrain from any and all such activities except that employes may be required to pay dues in the manner provided in a fair-share agreement. . .
>
> . . .
>
> **(3)** PROHIBITED PRACTICES AND THEIR PREVENTION. (a) It is a prohibited practice for a municipal employer individually or in concert with others:
>
> 1. To interfere with, restrain or coerce municipal employes in the exercise of their rights guaranteed in sub. (2).
>
> . . .
>
> 3. To encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure or other terms or conditions of employment; but the prohibition shall not apply to a fair-share agreement.

. . .

6. To deduct labor organization dues from an employe's or supervisor's earnings, unless the municipal employer has been presented with an individual order therefor, signed by the municipal employe personally, and terminable by at least the end of any year of its life or earlier by the municipal employe giving at least 30 days' written notice of such termination to the municipal employer and to the representative organization, except where there is a fair-share agreement in effect.

. . .

(b) It is a prohibited practice for a municipal employe, individually or in concert with others:

1. To coerce or intimidate a municipal employe in the enjoyment of his legal rights, including those guaranteed in sub. (2).

2. To coerce, intimidate or induce any officer or agent of a municipal employer to interfere with any of its employes in the enjoyment of their legal rights, including those guaranteed in sub.(2), or to engage in any practice with regard to its employes which would constitute a prohibited practice if undertaken by him on his own initiative.

. . .

(c) It is a prohibited practice for any person to do or cause to be done on behalf of or in the interest of municipal employers or municipal employes, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by par. (a) or (b).

We held previously in Browne that, assuming the presence of the constitutionally required procedural safeguards set forth in Hudson, MERA permits a union to exact 42/ a fair-share fee equal to regular dues unless the fair-share payor has made his/her dissent known to the union in the time and manner the union may lawfully require. We have concluded that in these cases the Respondent Associations have failed to provide certain of the constitutionally required safeguards both prior to, and following, Hudson.

Pursuant to the fair-share provisions contained in the respective collective bargaining agreements they have had with the Respondent Boards, the Respondent Associations have required the Complainants, as fair-share fee payors in bargaining units represented by the Respondent Local Associations, to pay a fee equal to the dues the Respondent Local Associations require of their members, and thereby, have undoubtedly required Complainants to pay more than their proportionate share of the cost of collective bargaining and contract administration. By exacting a fee in the absence of the procedural safeguards held in Hudson to be constitutionally required in order for a union to lawfully exact a fair-share fee, the Respondent Associations violated not only the Complainants' First Amendment rights, but also Complainants' rights under MERA. This is true of the Respondent Associations' conduct in this regard both before and after Complainants made their dissent known to the Respondent Associations, since the requirement that fair-share fee payors make their dissent known is premised on their having received adequate notice from the union as to how the appropriate amount of the fee was computed by the union. Hudson, 106 S.Ct. at 1075-1076. We have therefore concluded that by exacting fair-share fees from Complainants in the absence of the constitutionally required procedural safeguards set forth in Hudson, the Respondent Associations, and their officers and agents, have committed prohibited practices within the meaning of Sec. 111.70(3)(b)1, Stats.

42/ As in Browne, by the use of term "exact" we mean the collecting and spending of the fair-share fee.

Complainants also allege that the Respondent Boards 43/ have committed prohibited practices within the meaning of MERA "by requiring payment of, and by deducting without individual authorization, fair-share fees in excess of a proportionate share of the costs of the collective bargaining process and contract administration." 44/ It appears that, as in Browne, Complainants' allegations are based on the municipal employer's conduct in complying with a fair-share provision in the collective bargaining agreement between the municipal employer and the local union by acting as a conduit for the union. As we noted in Browne, municipal employers are required by MERA to comply with the terms of their collective bargaining agreements. Sec. 111.70(3)(a)5, Stats. To further clarify the law in this area we point out that we have consistently held that "so long as a fair-share provision is couched in terms of the Sec. 111.70(1)(f), Stats., definition of the term 'fair-share' agreement, such a proposal or provision is legal and mandatory on its face and can properly be incorporated into a labor agreement." Richland County, Dec. No. 23103 (WERC, 12/85) at 9. 45/ In Richland County we concluded that because the fair-share proposal in issue referenced the fair-share provisions of MERA and contained portions of the statutory language contained in those provisions, the proposal was legal on its face. If the fair-share proposal is legal on its face, the municipal employer is required to bargain on the proposal. Similarly, if the fair-share provision placed in the parties' collective bargaining agreement is legal on its face, the municipal employer is required to abide by the terms of the provision or be in violation of the agreement, which among other things, is a prohibited practice under Sec. 111.70(3)(a) 5, Stats. Thus, a municipal employer will not be found to have committed a prohibited practice by abiding by the terms of a fair-share provision, which is legal on its face, contained in the agreement between the employer and the union.

The fair-share provisions allegedly contained in the fair-share agreements between the Respondent Boards and the Respondent Local Associations contain language that either references MERA, uses the statutory language or similar language, or limits the fee to the costs allowed by law, and they all require the Respondent Local Associations to provide an internal mechanism for challenging the amount of the fee. We conclude that the fair-share provisions alleged to be in the applicable collective bargaining agreements are legal on their face and, therefore, we have found that the Respondent Boards have not committed prohibited practices within the meaning of MERA by complying with the terms of those provisions by acting as a conduit for the Respondent Associations. 46/

43/ The boards in Hartland, Clinton and Sauk Prairie are named as Respondents.

44/ Complainants' "Proposed Conclusions of Law" filed May 20, 1986 in the four previously consolidated cases. Complainants also cite Dixon v. City of Chicago, No. 86C 4884 (N.D. Ill. June 30, 1987) in regard to the municipal employer's culpability.

45/ Citing, City of New Berlin, Dec. No. 17748-A (WERC, 5/81).

46/ As we noted at footnote 58 in Browne:

> . . . that although in its decision in Browne the Wisconsin Supreme Court cited Sec. 111.70(3)(a)1, Stats., as the prohibited practice in question, the Court referred to the union's use of the fee, stating:
>
> > The plaintiffs are claiming that their fair-share dues have been used for political purposes, in contravention of the statute. That use of the fair-share funds interferes with their statutory rights and is a prohibited practice over which W.E.R.C. has jurisdiction.
>
> 83 Wis.2d at 334.

V. Remedy

Relief Requested

In their "Brief in Support of Final Findings of Fact, Conclusions of Law and Order in Light of Controlling Decision of the United States Supreme Court" filed on May 20, 1986, 47/ Complainants requested as relief that the Commission make an order:

> (a) requiring respondent unions to return to Complainants with interest at a rate of 12% per annum from the date of deduction until the date of return, all fair-share monies received by them from said employees since one year prior to the filing of the complaints;
>
> (b) requiring the respondent employers to cease and desist from making fair-share deductions from the earnings of all nonunion employees in the respective bargaining units in which Complainants are employed that are in excess of a proportionate share of the costs of the collective bargaining process and contract administration within the meaning of Section 110.70(1)(h), Wis. Stats.;
>
> (c) requiring respondent unions to cease and desist from inducing the respective employers to make fair-share deductions from the earnings of all nonunion employees in the bargaining units in which Complainants are employed that are in excess of a proportionate share of the costs of the collective bargaining process and contract administration with the meaning of Section 110.70(1)(h), Wis. Stats.; and,
>
> (d) requiring the respondent employers to cease and desist from making any fair-share deductions from the earnings of all nonunion employees in the respective bargaining units in which Complainants are employed until the Commission, after hearing upon request of any respondent, has determined that respondents have provided for: an adequate advance explanation to all nonunion employees of the basis for the fair-share fee, verified by an independent certified public accountant; a reasonably prompt opportunity for employees to challenge the amount of the fee before an impartial decisionmaker; and an escrow, for at least the amounts determined by the impartial decisionmaker reasonably to be subject to dispute, while such challenges are pending. 48/

Complainants

Complainants contend that the appropriate relief in these cases should include full restitution with interest and a cease and desist order. They also contend that the appropriate prospective relief is to order the cessation of the fair-share deductions in the covered bargaining units until the Commission

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47/ As noted previously, Sauk Prairie was consolidated with the other cases here against the wishes of the Complainants in that case and they had not filed such a request with the Commission, but made a similar request at the show cause hearing.

48/ We note that the Complainants in Hartland and Clinton originally sought as part of their request for relief an order suspending for one year the Respondent Associations' privilege of entering into and enforcing fair-share agreements in the affected bargaining units and a concomitant cease and desist order as to the Respondent Boards. A request for such relief was not included in Complainants' request for final findings of fact, conclusions of law and order filed with the Commission. However, to the extent, if any, the request for such relief remains before the Commission, we note that the relief sought would be primarily punitive in nature, rather than remedial, and for that reason we would find it inappropriate to grant such relief.

determines, after hearing, that the Respondent Associations have established the procedures required by the U.S. Supreme Court's decision in Hudson. It is contended by Complainants that the Commission has the authority and the duty to utilize substantive remedies, as well as the procedures of Sec. 111.07(4), Stats., in complaint proceedings under MERA, WERC v. Evansville, 69 Wis.2d 140, 158 (1975); Board of Education v. WERC, 52 Wis.2d 625, 635 (1971), and one such remedy is to award damages. General Drivers, Local 622 v. WERB, 21 Wis.2d 242, 249 (1963); WERB v. Algoma Plywood & Veneer Co., 252 Wis. 549, 560-61, aff'd 336 U.S. 301 (1949). Restitution has also been approved as a remedy in agency-fee cases. Citing, Ellis, 466 U.S. at 440, 457, n. 1; Abood, 431 U.S. at 238, 240.

Complainants note that in Hudson the Court remanded the case to the lower court for the determination of the appropriate remedy, and that the Court warned that "the judicial remedy for a proven violation of law will often include commands that the law does not impose on the community at large." 106 S.Ct. at 1077, n. 22. The Court cited National Society of Professional Engineers v. U.S., 435 U.S. 679, 697-98 (1978); and Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15-16 (1971), cases that emphasized the broad authority of courts to fashion equitable relief "both to avoid a recurrence of the violation and to eliminate its consequences," . . . "and to remedy past wrongs." The discretion a court has to fashion an equitable remedy does not permit it to deny an effective relief once the constitutional violation has been found and the finding of a constitutional violation imposes a duty on the court to grant appropriate relief. Hill v. Gautreaux, 425 U.S. 284, 297 (1976); North Carolina State Board of Education v. Swann, 402 U.S. 43, 46 (1971); and Davis v. School Commissioners 402 U.S. 33, 37 (1971).

Complainants contend that in a prohibited practice proceeding the Commission acts in the place of a court of equity, having the authority and duty "to order the remedy most consistent with the public interest." Citing, Appleton Chair Corp. v. Carpenters Local 1748, 239 Wis. 337, 343 (1941). Also cited is the Commission's statement in its Orders to Show Cause that the Wisconsin Supreme Court made it clear that MERA is to be interpreted so as to be consistent with the requirements of the First Amendment, and it is asserted that it is in the public interest that the Commission exercise its "substantial remedial powers" so as to give the Complainants the greatest possible degree of relief from the prohibited practices.

Complainants submit that the record establishes that prohibited practices have been committed both before and after Hudson by the Respondent Associations' having exacted fair-share fees from nonmembers in the absence of the constitutionally required procedural safeguards. Here the prohibited practice is not necessarily the amount of the fee, but the collection of any fee at all in the absence of the constitutionally required safeguards. "The remedy for that unlawful taking -- and unlawful use thereafter -- should be the remedy given for any unlawful taking of property: Restitution of the unlawfully taken property." Restitution is particularly appropriate here because the unlawful taking was not only without due process of law, but (unless prohibited by MERA) itself infringed upon the non-union employes' First Amendment Rights. 106 S.Ct. at 1074 and n. 13.

Because the taking of the compulsory union fee in the absence of the required procedures set forth in Hudson is itself a constitutional violation, the U.S. Supreme Court made it clear in Hudson that the remedy must be designed "both to avoid a recurrence of the violation and to eliminate its consequences." Citing, National Society of Professional Engineers v. United States, 435 U.S. at 697. 106 S.Ct. at 1077, n. 22. While restitution cannot wholly repair the "irreparable harm" done when First Amendment rights are violated, Elrod v. Burns, 427 U.S. 347, 373 (1976), Hudson, 106 S.Ct. at 1075, "it will do more to remedy the consequences of the injury in this case than any lesser remedy for respondent unions' continued violation of the law over the years since the complaints were filed." The Respondent Associations might have been entitled to collect some fee from Complainants had they provided the necessary safeguards and met their burden of proving the lawfully chargeable amount, but they did neither and cannot now complain that full restitution is inequitable, "the remedy for a proven violation of law will often include commands that the law did not impose on the community at large." 106 S.Ct. at 1077, n. 22.

The decision in Hudson makes clear that Complainants are entitled to refunds from the period commencing one year prior to the filing of the complaints in these cases, rather than the dates on which the complaints were filed. Sec. 111.07(14), Stats. The Constitution requires that the procedures set forth in Hudson be available to all non-union employes so that they "have a fair opportunity to identify the impact of the governmental action (i.e., the fair-share deductions,) on (their) interests and to assert a meritorious First Amendment claim." Hudson, 106 S.Ct. at 1074. (Emphasis added) An objection is not required to trigger that requirement or to establish that the failure to provide the requisite procedures is a violation of law. Further, it is settled that the Respondent Associations must pay interest "from the date of deduction of the fair-share fees on all refunds." Citing, Ellis, 466 U.S. at 442. Hence, interest is an element of the actual damages awardable as part of the required remedy for the constitutional violation without regard to Wisconsin law on the subject of pre-judgement interest. However, as a matter of Wisconsin law the Commission is required to award interest on liquidated or liquidable damages. Here the amounts of the fair-share refunds are determinable because the fees were fixed and, hence, Complainants are entitled as a matter of law to interest on refunds from the dates of collection of the fees. The interest awardable here should be at the rate of twelve percent per year. Citing, Wilmot Teachers' Association v. Wilmot Union High School District, Dec. No. 18820-B (WERC, 12/83).

Complainants contend that the Respondent Associations present no argument that requiring restitution is inappropriate other than to erroneously argue that Hudson should not be applied retroactively. The Respondent Associations mistakenly rely on Carey, where the Court rejected an award of damages based on the deprivation of due process unaccompanied by actual injury. Carey is distinguishable since in this case it is proven that the failure to afford the constitutionally required procedural safeguards caused injury in two respects: (1) the Respondent Associations were able to spend a portion of Complainants' fair-share fees for improper purposes, and (2) the procedures set forth in Hudson are a prerequisite to the collection of any compulsory fee, hence, Complainants were unconstitutionally deprived of the use of the entire amount of their fees. Citing, District 65 UAW, slip op. at 39; see also Dec. No. 18577-C at 7-8. Even though restitution of all monies taken, plus interest, cannot wholly repair the irreparable harm done to Complainants' First Amendment rights, it is the "best possible approximation of the damage done." In a recent decision of the Supreme Court in a First Amendment case, the Court explained:

> When a plaintiff seeks compensation for an injury that is likely to have occurred but difficult to establish, some form of presumed damages may possibly be appropriate. In those circumstances, presumed damages may roughly approximate the harm that the plaintiff suffered and thereby compensate for harms that may be impossible to measure.

Memphis Community School District v. Stachura, 54 U.S.L.W. 4771, 4774 (U.S. June 25, 1986) (No. 85-410). (Emphasis added) Hence, after Hudson the relief granted for the collection of compulsory fees in the absence of the constitutionally required safeguards has been restitution of the full amount of the fees collected. Citing, Huffman; Gibney; District 65 UAW. Complainants assert that full restitution was not ordered in McGlumphy or in Lehnert since it was not requested in the former and in the latter the union proved the amount spent for chargeable purposes. They cite United University Professions v. Barry as having granted full restitution based on a violation of the New York statute as well as the constitutional violation.

As prospective relief Complainants request that fair-share deductions be ceased in their respective bargaining units until it has been determined that the Respondent Associations have established the constitutionally required procedures.

While the Supreme Court remanded Hudson to the District Court for further proceedings consistent with its opinion, 106 S.Ct. at 1078, the Court also affirmed the judgement of the Court of Appeals which had indicated in its opinion that the plaintiffs were entitled to injunctive relief. 743 F.2d, 1187, 1197 (7th Cir. 1984), aff'd 106 S.Ct. 1066 (1986). The Court of Appeals' opinion is consistent with dicta in the Supreme Court's earlier decisions suggesting that a nonmember has a right to an injunction to prevent future collections of compulsory union fees for improper purposes. Citing, Ellis, 466 U.S. at 454;

Abood, 431 U.S. at 237-42. After Hudson the collection of any fee must be enjoined until the unions have established the required procedural safeguards. "The constitutional violation found in Hudson was the collection of compulsory fees in the absence of those safeguards, regardless of the uses to which they were put. Moreover, Hudson unequivocally rejected the proposition that an adequate remedy would be one which permitted a continued deduction of non-union employes' compulsory payments while requiring escrow pending a judicial or administrative determination of the proper amount in litigation brought by the employes." Such an injunction would not provide the adequate explanation for the advance reduction and would not provide a reasonably prompt decision by an impartial decisionmaker. 106 S.Ct. at 1077-78. Only completely stopping the deductions of the compulsory fees until the constitutionally required procedures have been implemented can prevent the continued prohibited practice or constitutional violation. A similar injunction was awarded in Galda v. Rutgers, 772 F.2d 1060 (3rd Cir., 1985), cert. denied., 106 S.Ct. 1375 (1986). That case involved mandatory contributions from students to a student organization engaged in political and ideological activities subject only to a later rebate, if requested. The Court of Appeals held that the mandatory fee violated the students' First Amendment rights and that a rebate was inadequate to cure the violation and that, therefore, the exaction of the fee could not continue. The case was remanded to the District Court for entry of an order enjoining the assessment of the mandatory fee. Id. at 1068.

Complainants concede that the Commission cannot itself issue an injunction, but assert that it does have authority under Sec. 111.07(4), Stats., to order Respondents to cease and desist from collecting fair-share fees in the absence of the required constitutional safeguards, and under Sec. 111.07(7), Stats., it could petition (Milwaukee County) Circuit Court for an injunction if that order is not obeyed. Such a remedy would prevent future deductions and would serve "both to avoid a recurrence of the violation and to eliminate its consequences." Citing, National Society of Professional Engineers, 435 U.S. at 697.

The cease and desist order can be made subject to future modification upon the Respondent Associations' demonstrating to the Commission that the necessary procedures have been implemented. Thereafter, the Respondent Associations would be required only to cease and desist from making fair-share deductions in excess of a proportionate share of the cost of collective bargaining and contract administration. "Justifiably, 'the burden is upon the proved transgressor(s)' to bring any proper claims for relief to the (Commission's) attention, 'and their legitimate interests are adequately protected by the opportunity of doing so." Id. at 698-699.

Complainants assert that the Respondent Associations do not argue that a cease-and-desist order is improper if the new procedures do not comply with Hudson. They assert "that is not surprising, given the Commission's ruling that 'in Hudson the U.S. Supreme Court has held that the First Amendment requires that certain procedural safeguards must be established before a fair-share fee may be collected." Dec. No. 18557-C at 7. (Emphasis added) They add to their prior arguments in this regard that other courts and employment relations agencies have ordered such relief. Citing, McGlumphy; Huffman; and Gilpin.

Complainants also assert that their having registered their objection prior to Hudson and decided to litigate the issues before the Commission "do not serve to condone or forgive the violations nor do they alter the fact that the Respondents have never had a right to any fees because of their failure to provide the required procedural protections."

In their response to Respondent WEAC's brief regarding the impact of Browne, Complainants argue that, at a minimum, they are entitled to the same relief granted to the complainants in Browne. 49/ Specifically regarding the need for a new arbitration, Complainants assert that, just as with the unions' procedures in Browne, the Respondent Associations' fair-share procedures are, and have been, defective. Therefore, as in Browne, a new dissent period and arbitration must be required.

49/ Complainants assert that, at a minimum, part of their prospective relief should include an order to:

Respondent Associations

The Respondent Associations assert that a close analysis of the holding in Hudson demonstrates that there is no basis for any additional relief. The Court held in Hudson that certain procedures are constitutionally required in order for a union to collect an agency fee, including "an adequate explanation of the basis of the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending." 106 S.Ct. at 1078. These requirements "constitute significant changes in the heretofore perceived requirements affecting enforcement of union security agreements and the operation of internal union rebate procedures. However, few, if any, of these requirements apply to any of the Complainants."

The Respondent Associations assert that procedures exist to advance substantive rights and remedies exist to redress actual injury. Complainants have questioned Respondents' past and present conduct, but they have failed to explain how this conduct affected them. This precludes most of their claims for damages based upon Hudson and especially their claim for a total refund of all fair-share fees collected since the filing of their actions.

> 3. Correct the deficiencies in the current procedure to include an advance rebate for all fair-share payers and continue to escrow fees taken since March 4, 1986 until the parties agree or the Commission determines the proper fair-share procedures to be followed (to include verification by an independent auditor of the breakdown into chargeable and nonchargeable expenses). This should include a new dissent period and a new arbitration.

Hudson requires that a union provide sufficient information to nonmembers in order to allow them to "gauge the propriety of the union's fees" so that they can make an informed decision as to whether or not to dissent. 106 S.Ct. at 1076. That requirement can hardly apply to the present Complainants, since all of them had registered their dissent by filing this or other lawsuits.

The Respondent Associations do not deny that Complainants did not receive the notification of the Associations' budgetary expenditures, but assert it was unlikely that any non-union employe subject to a union security agreement in the entire country received such a notice, since prior to Hudson such a requirement had never been suggested. However, Complainants are not entitled to any monetary relief based upon the lack of this notice because they did not show how they were harmed by this process. The Respondent Associations contend that in analogous situations courts have held that a defective summons cannot serve as a basis for an adverse judgement, absent a showing that the person was prejudiced by the defect. Citing, Newman v. Prior, 518 F.2d 97, 99 (4th Cir. 1975); 7 Moore, Sec. 61.05. Since Complainants have objected, they cannot complain they were not given adequate basis upon which to decide whether to dissent.

Further, the Commission has given complainants in fair-share litigation extensive discovery rights. Browne, Dec. No. 18408 (WERC, 5/84). The Complainants in these cases are represented by counsel and have been granted similar broad discovery rights which allow Complainants to obtain "far more specific and precise material than the general budgetary outlines required by Hudson." If they did not obtain such information, it was because their counsel did not believe it was needed. The Respondent Associations also assert that it is possible that "ethical questions could be raised by any union's attempt to provide the type of information suggested by Hudson directly to individuals who are currently in litigation and represented by counsel."

The information requirement of Hudson has little bearing in these cases since any additional information could only have changed the posture of the case if it had convinced Complainants that they had no basis to proceed. If there was any prejudice generated by the failure to provide such information, it fell solely upon the Respondent Associations and not upon Complainants.

The Respondent Associations note that Hudson also requires that the union not have control over the selection of the impartial decisionmaker who is part of the internal rebate procedure. They assert that such a defect is not present

here. Respondent WEAC's prior procedure, which applied to all of the involved Associations, did not give WEAC sole control over the selection of the arbitrator, but allowed for mutual selection. Since 1981 Respondent WEAC's arbitration procedure provided for an arbitrator selected by the parties alternately striking from a list of five arbitrators supplied by the American Arbitration Association, with the appellant striking first. For example, the correspondence in the Jordi arbitration indicates that Arbitrator Krinsky was jointly selected by such a procedure. The procedure of alternately striking from a list of arbitrators is the "ordinary and customary procedure utitlized in most labor disputes."

The Respondent Associations also note that all of the Complainants have lawsuits challenging the Associations' fair-share assessments and rebate procedures pending before the Commission. The Commission being a neutral and detached decisionmaker, and given the pendency of the lawsuits before that agency, Complainants cannot allege that the unions have controlled the decisionmaker. Hence, Hudson's requirement of impartiality has not been violated.

Hudson also requires a reasonably prompt adjudication of a fair-share dispute. While Complainants' procedural rights in that regard may not have been fully met, the Respondent Associations are not to blame. Except for Jordi, none of the Complainants have sought relief through Respondent WEAC's internal rebate procedure. Hence, there is no way of telling whether the award would have been "prompt." Complainants have chosen to litigate before the Commission, and in January of 1985 Complainants asked the Commission for an expedited hearing to determine whether the Associations were exacting "an inappropriate amount of fair-share." Counsel for the Respondent Associations did not oppose such request, but in fact urged that such an immediate hearing be held. Since the Respondent Associations were not responsible for any delay in Complainants securing a prompt hearing, they are not resposible for any damages flowing from any such delay.

While Complainants imply in their brief that they would not have received the prompt hearing had they sought one, there is no basis for the claim. The prior rebate procedure "specifically allowed an employe to proceed to arbitration on the basis of budgeted, rather than actual expenditures, if that was the employe's wish." (Response, Ex. A at page 3.) While the first arbitration took an extended period of time, there is no reason to believe that subsequent proceedings would have been inappropriately long, particularly if Complainants had asked for an expedited decision. Absent a request by a party, an arbitrator is bound only by his/her own judgement as to the timing of a decision. Since an expedited decision was not requested, the parties did not receive one. The Respondent Associations argue that Complainants' claims in this regard are based upon speculation and relief cannot be premised on speculation. It is assumed that Complainants chose the Commission as a forum based upon their belief that the Commission possessed greater remedial powers than an arbitrator. However, they must take "the bitter with the sweet."

Regarding the escrow requirement, the Respondent Associations concede that the appropriate amount of the escrow is difficult to judge in light of Hudson's "guarded discussion of the subject matter." Citing, Hudson, 106 S.Ct. at 1074, n. 23. Consistent with prior law, its pre-Hudson escrowing has been less stringent, however, unlike the union in Hudson, it had a prior arbitration award by an independent arbitrator, the Krinsky Award, that set forth the appropriate rebate amount. That award was issued September 20, 1982 and covered expenditures for the 1979-80 and 1980-81 school years and was based on audited figures. That far exceeds the minimum requirements for reliability set forth in Hudson for an interim escrow. Although the award is dated, the Respondent Associations' expenditures "have not changed radically." Therefore, the award could continue to serve as a benchmark for escrowing.

While Complainants have some basis to argue that their money was not appropriately escrowed, the remedy for improper escrowing is proper escrowing. The Respondent Associations note that, from a financial perspective, Complainants will have benefited from the negligence of the Respondent Associations in this regard since the Respondent Associations reimbursed the escrow accounts at the interest rate of twelve percent per annum, almost double the market rate.

Respondent WEAC notes that it requested the appointment of an arbitrator for the 1985-86 and 1986-87 school years, and that once the award is rendered the Respondent Associations will have a benchmark for the appropriate escrow making

the issue moot. If it is concluded that additional escrowing is required, the Commission should order such and "not unjustified retroactive payments."

It is contended by the Respondent Associations that procedural violations ordinarily do not justify substantive damages awards, absent direct proof of harm. They assert that the purpose of union security agreements is to enhance harmonious labor relations by eliminating free riders. Citing, Berns v. Wisconsin Employment Relations Commission, 99 Wis.2d 252, 264 (1980). They contend that there is little doubt that Complainants received the benefits of representation during the pendency of the lawsuit. A portion of Complainants' fair-share assessment has been escrowed and the Respondent Associations agree that Complainants should not be required to pay for activities "not related to contract administration or the collective bargaining process." However, Complainants seek to recover even the "legitimate fair-share assessments" due to alleged procedural flaws. The Respondent Associations assert that in a "nearly identical context" the U.S. Supreme Court has rejected the notion that damages based upon substantive claims can be awarded based solely upon the denial of a due process right. Citing, Carey v. Piphus, 435 U.S. 247 (1978), where the Court concluded that it would be "a windfall" to award the plaintiff students damages for injuries caused by their suspension based upon a denial of their rights to due process, where it was concluded that the suspensions would have taken place even if they had been accorded their procedural due process rights. Id., at 261. The Respondent Associations assert that the same logic applies here and that it would be "a pure windfall" for Complainants to "be awarded retroactively the benefits of a free rider" when such a result is expressly prohibited by the parties' collective bargaining agreements. Such a result would also be contrary to "established principles of damages" and to the intent of the parties who negotiated the agreements providing for fair-share.

It is contended by the Respondent Associations that the Court in Hudson specifically refused to decide any damages questions and referred the case to the District Court for determination of the appropriate remedy. They assert that "the only basis for even suggesting such a concept was a vague quotation from Abood that 'the Union should not be permitted to exact a service fee from non-members without first establishing a procedure which will avoid the risk that their funds will be used, even temporarily, to finance ideological activities unrelated to collective bargaining'." Abood, 431 U.S. at 224. Cited in Hudson at 1075. It is contended that quote "speaks only to the future and does not address the issue of prior conduct or of damages." Further, Abood seemed to endorse a rebate procedure similar to the one rejected in Hudson.

Complainants are only entitled to recover the amounts which were impermissibly spent and nothing in Hudson suggests it was overruling the common law of damages. The Respondent Associations also assert that even if Hudson is fully applicable, it does not support the Complainants' request for retroactive relief, since such relief would still be foreclosed under the general doctrine of retroactivity set forth in Chevron and Lemon v. Kurtzman.

Regardless of the merits of the Complainants' claims, they have not shown any actual injury. Hence, only nominal damages could be awarded on the basis of the retroactive application of Hudson's new requirements. Actual damages must be based upon Complainants' claim that the Respondent Associations used their fair-share fees for purposes not permitted by state or federal law. Such a conclusion was reached in McGlumphy, 633 F.Supp. at 1084. In Lehnert the District Court specifically rejected arguments for a refund of all fees based upon defects in the union's rebate procedures:

> Plaintiffs are required by law to contribute to the unions an agency shop service fee of whatever amount the unions can legally establish is chargeable. That amount has been determined by the court for 1981-1982 and the parties have stipulated to a method for calculating that amount for the four subsequent fiscal years. The "retroactive injunction" requested by plaintiffs based on the procedural inadequacies would effectively relieve them of their legal obligation to contribute to the support of the recognized exclusive representative. Such a "retroactive injunction" would not, in my opinion, redress the nature of the theoretical injury, to wit: the denial of the plaintiffs'

first amendment interests in proper procedures. Therefore, this type of equitable relief would be inappropriate.

> To the extent that plaintiffs have been injured, they are entitled to and will receive adequate compensatory damages. Plaintiffs are not entitled to damages for the value or importance of their first amendment interests in proper procedures as a supplement to compensatory damages. Memphis Community School District v. Stachura, 91 L. Ed. 2d 249, 261-62 (1986).

643 F. Supp. at 1334-1335. To obtain damages, Complainants must prove them.

Regarding the Complainants' request for a cease and desist order, The Respondent Association's do not agree that a cease and desist order totally enjoining the operation of some or all fair-share agreements would be appropriate unless the Commission were to conclude that the procedures constituted a "wholesale repudiation of Hudson." Specific shortcomings of the Respondent Associations' procedure which do not go to the heart of the Hudson requirements should be remedied by narrowly drawn cease and desist orders. Complainants' argument that any flaw in the union internal procedure should result in a nullification of the entire security agreement is too drastic of a remedy and is not supported in law or equity. If the Commission finds a portion of the rebate procedure to be inadequate, the Commission should issue a cease and desist order limited to the particular flaw found. Citing, Dolan v. Rockford Education Association, No. 84C 20209 (N.D. Ill., August 22, 1986). Additional relief would be inappropriate unless the Complainants establish some nexus between the particular flaw and some actual injury. For example, if Respondents' information is found to be inadequate, the appropriate remedy is to require Respondents to supply the information, and if this failure prevented someone from challenging, the Commission should order an additional window period. If some aspect of the escrowing procedure is flawed, the remedy would be to order Respondents to adopt the correct procedure and to reimburse any injured claimant in an appropriate manner.

According to Respondent Associations, the decision in Hudson "was designed to help develop a more orderly and fair system for the administration of union security agreements" and was not intended to "make union security agreements only a theoretical possiblity."

In their brief on the impact of Browne, the Respondent Associations argue that the Commission should narrow its holding regarding the need for a new arbitration based on defects in the unions' notice and procedures. The Respondent Associations concede that the notice and procedures of the unions in Browne might be considered confusing and somewhat unusual so as to result in a person unknowingly waiving his/her right to arbitrate. It is contended, however, that the Commission's language can be given a broader interpretation and should, therefore, be narrowed. The Respondent Associations fear that an arbitration could be invalidated by any defect in the unions' notice under the Commission's holding in Browne, regardless of whether certain persons voluntarily participated in the arbitration, which itself was fair and proper. They point to their arbitration in September of 1986 before Arbitrator Mueller and the amount of time, effort and resources that went into that arbitration by both the Respondent Associations and the "challengers," many of whom were represented by counsel. Even if a "minor defect" in the notice sent to the fair-share payors is found, it would be unreasonable to assume that the defect "impeached the validity of the arbitration decision." The purpose of the notice requirement in Hudson is to permit fair-share payors to determine whether they wish to participate in the union's arbitration procedure. Those who elect to participate do not have standing to complain they were not given an adequate basis to make such a determination. Further, unless the notice was so defective as to taint the whole procedure, the arbitration award should be valid, with only the scope of its jurisdiction in question. Even in that regard the Commission should be cautious. Looking at the small number of resulting additional fair-share payors who dissented after being sent the April 24, 1986 notice, it is asserted that the Commission should not become fixated on the notice issue. The language in Hudson regarding the notice requirement must be read in the context of the facts in that case and the intent of the decision. There is nothing in Hudson to suggest that its procedural requirements were intended to overturn basic concepts

of standing, causation, and damages. Therefore, the Commission should reconsider the language it used in Browne in dealing with this and other issues in which it interpreted Hudson "in a manner which may provide remedies to individuals who were not harmed." Further, the Commission should limit its holding to the facts in that case. There are "substantial differences" between the Respondent Associations' notice and procedures and that of the unions in Browne which have "minimized any potential adverse effect of any defects in the Association's notice," therefore, making it even less likely that any actual harm or prejudice can be shown.

Discussion

Retrospective Relief

We have not found any sufficient basis for changing our conclusion reached in Browne that the appropriate retrospective relief that would recognize the interests of both the dissenters and the unions is to require the union to escrow sums equal to the fees collected from the complainants prior to Hudson, subject to Sec. 111.07(14), Stats., plus interest, and a determination as to the proper amounts of the fees chargeable to complainants for those years. We reasoned and held in Browne that:

> The Complainants' request for a full refund of all fair-share fees collected from them since they became subject to fair-share deductions to the present is premised on the Court's holding in Hudson that before a union may lawfully exact a fair-share fee from the non-members it represents, it must first establish the procedural safeguards the Court held are required by the First Amendment. They assert it follows that since, as we have found herein, the Respondent Unions' objection and rebate procedures, both pre- and post-Hudson, did not and do not meet the requirements of Hudson, the entire fees collected from Complainants have been taken unlawfully. While Complainants correctly note that a usual remedy for an unlawful taking is restitution, we must also remain cognizant of the government's legitimate interest in maintaining stable and peaceful labor relations by permitting fair-share agreements in order to avoid the "free-rider" problem. Further, the Respondent Unions have been required under MERA to represent Complainants during those years in their capacity as the exclusive bargaining representatives of the collective bargaining units to which Complainants belong. Although neither the complete refunding of all fees collected, nor the retroactive application of the Hudson procedures, will completely cure the violation of Complainants' First Amendment rights, to now require the Respondent Unions to refund all of the fees collected from Complainants would result in a "windfall" to Complainants and would be the equivalent of awarding "punitive damages" against the Respondent Unions. Such relief would, in our view, be inconsistent with the remedial nature of Chapter 111.70. Furthermore, it is inconsistent with the "make whole" relief ordinarily ordered where we have found that under MERA such relief was required to cure a prohibited practice.
>
> We find that the relief set forth in our orders in these cases would be most consistent with the purposes and policies underlying MERA and would also adequately serve the purposes of the rule set forth in Hudson. To remedy the violations found herein retrospectively for the period prior to the date of the Hudson decision, we are requiring the Respondent Unions to immediately properly escrow, in an interest-bearing account, an amount equal to all of the fair-share fees collected from Complainants since January 1, 1983 to the date of the decision in Hudson, plus interest at the rate of seven percent (7%) per annum from the date they were taken to the date the funds are placed in escrow in conformity with our order. The Complainants will be deemed to challenge the amount of the fees for each of those years, and any amounts determined by the Commission or other impartial decisionmaker

> to be in excess of the appropriate fees for those years are to be refunded to Complainants with the appropriate share of the interest discussed above and the interest earned during the escrow at the bank rate.

Dec. No. 18408-G at 87-88. (footnotes omitted)

In these cases the retroactive relief will cover the period running from one year prior to the filing of the complaints in these cases, 50/ or in the case of those Complainants who were later added, one year prior to the date they were effectively added. As in Browne, we have concluded that the dates from which such relief is to be granted are the dates the respective Complainants first became subject to fair-share deductions, subject to Sec. 111.07(14), Stats., rather than the dates they first made their dissent known to the Respondent Associations. This is based upon our conclusion that Hudson is to be applied retroactively and the holding in Hudson that a union cannot lawfully exact a fair-share fee before it has established certain procedural safeguards, including the adequate prior notice to all fair-share fee payors. That particular requirement being the basis for the requirement that dissent be made known to the union in order to be entitled to relief. Browne, Dec. No. 18408-G at 90 and n. 67.

Prospective Relief

We have considered the parties' arguments with regard to what would constitute the appropriate prospective relief in these cases if defects are found in the Respondent Associations' notice and procedures, and have concluded that, with the exception of requiring an advance rebate 51/ the prospective relief granted in Browne and Johnson is also appropriate in these cases. We held the following in Browne regarding prospective relief:

> The Supreme Court held in Hudson that a union must establish certain procedural safeguards before it may exact a fair-share fee from the non-members it represents. While Complainants assert this requires that the Respondent be orderd to cease and desist from deducting any fair-share fees in the bargaining units involved, we do not agree that such an order is necessary to adequately protect Complainants' First Amendment rights. The Respondent Unions have made a substantial and good faith effort to satisfy the requirements of Hudson after that decision was published. Although we have found certain aspects of the Respondent Unions' notice and procedures deficient, they are not so deficient as to justify a cease and desist order. We have concluded that Complainants' interests, and the interests of all the fee payors, will be adequately protected by requiring the Respondent Unions to escrow all fair share monies the Unions have received, plus interest, and are receiving from all employes in the instant bargaining units, including Complainants, (net of advance rebates which are to be continued) since the date of the Hudson decision, and to continue such escrowing and advance reduction arrangements

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50/ The January 1, 1983 date in Browne and Johnson was the result of stipulations by the parties that controlled the refunds for the period prior to that date. Regarding the pre-decision and post-decision interest ordered, the rate set forth in Sec. 814.04 (4), Stats., at the time the complaints in these cases were filed was, and is, twelve percent (12%) per annum.

51/ We required the unions in Browne and Johnson to continue an existing advance rebate, i.e., an amount they have themselves determined not to be chargeable to dissenting fair-share fee payors. Dec. No. 18408-G at 91, n. 71.

until the proper disbursement of that escrow can be determined for the entire period involved by application of the Respondent Unions' revised and approved procedures.

More specifically, we are requiring the Respondent Unions to continue the advance rebates and to place the full amounts deducted since the U.S. Supreme Court's decision in Hudson on March 4, 1986, and currently being deducted from all fair-share fee payors, including Complainants, and not advance rebated, 71/ plus interest at the rate of seven percent (7%) per annum on the fees collected from the date they were collected until the date they are placed in escrow, in an interest-bearing escrow account outside the control of Respondent Unions, such as we have held to be required. Said escrowing of the fees will continue until the Commission has determined after hearing (unless Complainants agree a hearing is not necessary) that the Respondent Unions are prepared to provide adequate notice and the procedural safeguards required by Hudson have been established, and after said approved notice has been given and the time for filing an "objection" or "challenge" has run, whereupon: (1) the fees collected from fair-share fee payors who have not filed a "challenge," and the appropriate interest, will be disbursed in accordance with the approved procedures, (2) the fair-share fees thereafter collected will be disbursed or escrowed in accordance with the approved procedures, and (3) the fees of "challengers," including Complainants, will remain escrowed until a decision on the proper fee amount has been rendered by an impartial decisionmaker 72/ covering the period from and after the date of the U.S. Supreme Court's decision in Hudson, at which time the monies in escrow will be disbursed in accord with said decision.

71/ The advance reduction for objectors/challengers, including Complainants, will continue.

72/ We note that a new dissent period and a new arbitration will be required and their application will date back to date of the decision in Hudson. This action should in no way be taken to reflect on the integrity of Arbitrator Weisberger, as it is the union's, rather than the arbitrator's, responsibility to see that the notice and procedures are adequate.

Dec. No. 18408-G at 91-92.

The Respondent Associations have contended that the Mueller Arbitration should be considered valid and that they should not be required to provide a new arbitration in its place. We have found that the information contained in the Respondent Associations' April 24, 1986 notice was defective because it did not contain audited financial information for Respondents NEA and WEAC and contained no financial information whatsoever for the Respondent UniServs or Local Associations. 52/ We remain persuaded at this point that a new arbitration is needed where the notice provided to the fair-share fee payors was defective. We are convinced that it would be inappropriate to impose upon Complainants the results of the arbitration held under the notice and procedures that they had

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52/ To some extent those deficiencies might explain the relatively small number of fair-share payors who registered their dissent after receiving the April 24, 1986 notice alluded to by the Respondent Associations in asserting the relatively small impact of any defects in its notice.

successfully challenged, and that it would be inequitable to impose such a result merely because Complainants could have participated in the arbitration had they wished.

Dated at Madison, Wisconsin this 1st day of September, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld /s/
Stephen Schoenfeld, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner

APPENDIX "A"

FAIR SHARE AGREEMENT

A. There will be no Fair Share agreement for the 1980-81 school year between the Clinton Community School District (District) and the Clinton Education Association (Association), nor will there be any deduction made by the District for dues from the salaries of members or non-members of the Association until the beginning of the 1981-82 school year.

B. The Association, as the exclusive representative of all the employees in the bargaining unit, will represent all such employees fairly and equally. No employee shall be required to join the Association, but membership in the Association shall be available to all employees who apply, consistent with the Association's constitution and bylaws. Effective July 1, 1981, all employees of the bargaining unit shall be required to pay their fair share of the costs of representation as determined by the WERC guidelines as remanded to it by the Supreme Court Case of Browne vs. Milwaukee Board of School Directors and certified by the Association. If the WERC has not rendered a decision by July 1, 1981, the amount to be deducted shall be that certified by the Association consistent with Wisconsin Statutes 111.70(1)(h)(i.e. the cost of negotiations and contract maintenance.)

C. Effective thirty (30) days after the date of initial employment of a teacher or thirty (30) days after the opening of school in the fall semester, the District shall deduct from the semi-monthly earnings of all employees in the collective bargaining unit, except exempt employees, their fair share of the cost of representation by the Association. The amount of deduction shall be divided into sixteen (16) payments to be deducted from sixteen (16) paychecks. The amounts deducted shall be paid to the treasurer of the Association on or before the end of the month following the month in which such deduction was made. The District will provide the Association with a list of employees from whom deductions are made with each monthly remittance to the Association.

Employees in the collective bargaining unit beginning after the start of the school year will have their fair share of the cost of representation by the Association pro-rated as certified by the Association.

1. Exempt employees are those employees who are members of the Association and whose dues are deducted and remitted to the Association by the District pursuant to Dues Deduction Agreement (or paid to the Association in some other manner authorized by the Association). The Association shall notify the District of those employees who are exempt from the provisions of this agreement (by the first day of September of each year) and shall notify the District of any changes in its membership affecting the operation of the provisions of this agreement thirty (30) days before the effective date of change.

2. The Association shall notify the District of the amount certified by the Association to be the fair share cost of representation by the Association, as cited above in Section B, by September 1, 1981.

3. The Association agrees to inform the District of any change in the amount of such fair share costs, made necessary only by legislative changes, court decisions, or annual Association alterations, thirty (30) days before the effective date of change.

D. The Association, (The Wisconsin Education Association Council), UniServ and NEA, shall indemnify and shall save the District, Board Members, Administrators and District's Agents harmless against any and all claims, demands, suits, or other forms of liability, including court costs that shall arise out of or by reason of action taken or not taken by the District, Board Members, Administrators and District's agents under this section, provided such action or nonaction was the result of the exercise of good faith on the part of the District, Board Members, Administrators or District's Agents and in reliance on any lists or certificates which have been furnished to the District pursuant to this agreement provided that the defense of any such claims, demands, suits, or other forms of liability shall be under the control of the Association and its attorneys, except that the District shall control all aspects of the question of the good faith of its action or nonaction. However, nothing in this section shall be interpreted to preclude the District from participating in any legal proceedings challenging the application or interpretation of this agreement through representatives of its own choosing and at its own expense.

If an error is discovered with respect to deductions under this provision, the District shall correct said error by appropriate adjustments in the next paycheck of the employee or the next submission of funds to the Association. In the event that the Association, its officers or agents engage in or encourage any Clinton strike, work stoppage, or work slowdown, the deductions and payments of fair share contributions made in accordance with this agreement shall be terminated forthwith by the District.

Signed this 1-2 day of [illegible], 1980.

For the Board:

[illegible]

For the Association:

Barbara H. Noll
President

APPENDIX "B"

Article XV I Fair Share Agreement

A. All employees in the bargaining unit shall be required to pay, as provided in this Article, their fair share of the costs of representation by the Association. No employee shall be required to join the Association, but membership in the Association shall be available to all employees who apply, consistent with the Association's Constitution and Bylaws.

B. Effective thirty (30) days after the date of initial employment of a teacher or thirty (30) days after the opening of school in the fall semester, the District shall deduct from the semi-monthly earnings of all employees in the collective bargaining unit, except exempt employees, their fair share of the cost of representation by the Association, as provided in Section 111.70(1)(Wis. Stats., and as certified to the District by the Association, and pay said amount to the treasurer of the Association on or before the end of the month following the month in which such deduction was made. The District will provide the Association with a list of employees from whom deductions are made with each monthly remittance to the Association.

1. For purposes of this Article, exempt employees are those employees who are members of the Association and whose dues are deducted and remitted to the Association by the District pursuant to the Dues Deduction Agreement (or paid to the Association in some other manner authorized by the Association). The Association shall notify the District of those employ who are exempt from the provisions of this Article (by the first day of September of each year) and shall notify the District of any changes in its membership affecting the operation of the provisions of this Article thirty (30) days before the effective date of such change.

2. The Association shall notify the District of the amount certified by the Association to be the fair share of the cost of representation by the Association, referred to above (two weeks prior to any required fair share deduction.)

3. Employees in the bargaining unit who begin employment after the start of the school year will have their fair share of the cost of representation by the Association pro-rated as certified by the Association.

C. The Association agrees to certify to the District only such fair share costs as are allowed by law, and further agrees to abide by the decisions of the Wisconsin Employment Relations Commission and/or courts of competent jurisdiction in this regard. The Association agrees to inform the District of any change in the amount of such fair share costs thirty (30) days before the effective date of change.

D. The Association shall provide employees who are not members of the Association with an internal mechanism within the Association which will allow those employees to challenge the fair share amount certified by the Association as the cost of representation and to receive, where appropriate, a rebate of any monies determined to have been improperly collected by the Association. A copy of the non-member fair share rebate procedure shall be provided to each non-member by September 1.

E. The Association, (and the Wisconsin Education Association Council,) does (do) hereby indemnify and shall save the District harmless against any and all claims, demands, suits, or other forms of liability, including court costs, that shall arise out of or by reason of action taken or not taken by the District, which District action or non-action is in compliance with the provisions of this Article, and in reliance on any lists or certificates which have been furnished to the District pursuant to this Article; provided that the defense of any such claims, demands, suits, or other forms of liability shall be under the control of the Association and its attorneys. However, nothing in this section shall be interpreted to preclude the District from participating in any legal proceedings challenging the application or interpretation of this Article through representatives of its own choosing and at its own expense.

APPENDIX "C"

LEGAL:092782

EDWARD B. KRINSKY, ARBITRATOR
2021 CHAMBERLAIN AVENUE
MADISON, WISCONSIN 53705
(608) 257-1060 OR 231-1698

In the Matter of Arbitration Between

Wisconsin Education Association Council

-and-

Ron Jordi

AAA
51 39 0327 81

Appearances: Bruce Meredith, Staff Counsel, for WEAC

Ron Jordi

During Spring, 1981, the American Arbitration Association informed the undersigned of his selection as arbitrator in the above-captioned case. Arbitration, in this case, is the final step of an internal WEAC procedure entitled "Non-Member Fair Share Procedure."

A hearing was held at Madison, Wisconsin, on July 23 and August 20, 1981. At the hearing both parties had the opportunity to present evidence, testimony and arguments. The record was completed with the submission of post-hearing briefs which were received from Mr. Jordi on March 22, 1982, and from WEAC on May 22, 1982.

On September 10, 1979, Mr. Jordi informed the president of the Sauk Prairie Education Association (SPEA) of his desire not to be a member of SPEA or the organizations with which SPEA is affiliated: South Central United Educators (SCUE), Wisconsin

Education Association Council (WEAC) and National Education Association (NEA). On October 2, 1979, Jordi was furnished a copy of the Non-Member Fair Share procedure.

Jordi initiated the procedure on October 4, 1979. Voluminous correspondence followed, which is not detailed here, with certain exceptions. In a January 16, 1980 letter to WEAC president DuVair, Jordi stated:

> I feel that my fair share contribution of 200.00 dollars (100%) is out of proportion and that a dollar amount $40.00 dollars (20%) is a more equitable amount for services received in our two year contract.

DuVair replied on February 28, 1980, in part as follows:

> Your association has determined the approximate amount to be $3.00 which you have received.

In a letter to Jordi on November 21, 1980, WEAC president Stout, wrote, in part, as follows:

> Please be advised that the WEAC Board of Directors . . . determined that the amount which will be refunded for possibly political and/or ideological activities for 1979-80 will be set at $1.53 . . . The estimate for NEA was $3.61 . . .

These rebate amounts were not deemed satisfactory by Jordi, and he ultimately invoked the arbitration procedure of the rebate procedure.

The rebate procedure, as published in 1978, provided that

> . . . any non-member covered by a fair share agreement may file a written notification with the local collective bargaining representative that the non-member objects to the expenditure of any portion of his or her fair share payment for any purpose not permitted by Wisconsin Statute 111.70 . . .

The procedure states also:

> Should the non-member still be dissatisfied with the amount of proposed rebate, the non-member may request the dispute be submitted to binding arbitration . . . The decision of the arbitrator shall be final and binding; however, the arbitrator shall not have authority to modify any WEAC constitutional provision or bylaw and shall issue his/her decision in accordance with applicable law.

The issue to be determined in this case is the amount of rebate to which a fair share person is entitled for the 1979-80 and 1980-81 fiscal years.

Prior to the hearing in this case, the Wisconsin Supreme Court issued its Browne decision.* The Court upheld the trial court's intepretation of Sec. 111.70(2), Stats, and said, "The statute itself forbids the use of fair-share funds for purposes unrelated to collective bargaining or contract administration." The Court left to the Wisconsin Employment Relations Commission the task of making a factual determination concerning fair share dues.

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*Browne v Milwaukee Bd. of School Directors, 83 Wis.2d,316

In a subsequent ruling, also prior to the hearing in this case, the WERC issued its Browne decision.* That case involved unions affiliated with AFSCME, and in it the WERC detailed the kinds of expenses which are or are not appropriately paid for by fair share payers. It was this decision that provided the most recent guidelines for addressing the appropriateness of the amount of fair share payments rebated by the WEAC under its internal procedures.

Since the hearing, but prior to this Award, the WERC has made a decision in a companion case which deals specifically with the WEAC as the Union involved. Since the decision is similar to Browne, but involves the WEAC, the arbitrator will refer to it, the Gerleman decision, in making his decision.**

In its decision, the WERC made the following "initial conclusions of law":

> 1. That expenditures by Milwaukee Teachers Education Association, Wisconsin Education Association Council, and National Education Association, for the following activities, during the pertinent periods involved herein, are properly included in determining the sums of money which should have been exacted from the earnings of the Complainants herein, and the members of the class they represent, pursuant to the fair-share agreements in existence, at all times material herein, between the Milwaukee Teachers Education Association and the Milwaukee Board of School Directors, within the meaning of Sec. 111.70(1)(h) of the Municipal Employment Relations Act:

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*Case XCIX No. 23535 MP-82 Decision No. 18408.

**Case C No. 23558 MP-897 Decision No. 16635-A.

(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 and resolving grievances pursuant to the provisions of collective bargaining agreements,

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

(f) Advertising of union positions on the negotiation of, or with respect to the provisions in, collective bargaining agreements,

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

(h) Paying technicians in labor law, economics and other subjects for services rendered in supporting their representational interest in the collective bargaining process and contract administration,

(i) Organizing employes within the bargaining unit in which Complainants are employed, and in units in which Complainants are not employed,

(j) Seeking to gain and/or retain representation rights in units in which Complain ants are not employed, and serving as the bargaining representative of such employes,

(k) 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,

(l) Furnishing staff and financial assistance for the participation in procedures to resolve impasses in collective bargaining, including strikes and concomitants thereof when permitted by law,

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

(n) Publishing newspapers, newsletters, reports, surveys, etc., which in part, relate to the collective bargaining process and contract administration,

(o) The prosecution or defense in litigation relating to the collective bargaining process and contract administration,

(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) Expenditures for social and recreational activities, and payments for insurance, medical care, retirement, disability, death, and related benefits, when such activities and payments constitute compensation to persons for services rendered in the representational interest of labor organizations, and as such, constitute costs incurred in the collective bargaining process and contract administration, and

(r) Administrative costs allocable to each of the categories set forth in (a) through (q) above,

2. That expenditures by Milwaukee Teachers Education Association, Wisconsin Education Association Council, and National Education Association, for the following activities, during the pertinent periods involved herein, are not, within the meaning of Sec. 111.70(1)(h) of the Municipal Employement Relations Act, properly included in determining the sums of money which should have been exacted from the earnings of the Complain ants herein, and the members of the class they represent, pursuant to the fair-share agreements in existence, at all times material herein, between the Milwaukee Teachers Education Association and the Milwaukee Board of Schools Directors:

(a) Advertising on matters not related to the representational interest in the collective bargaining process and contract administration,

(b) Purchasing books, reports, and advance sheets not relating to the representational interest in the collective bargaining process and contract administration,

(c) Paying technicians for services rendered for purposes other than supporting the representational interest in the collective bargaining process and contract administration,

(d) Lobbying for legislation or regulations not relating to labor relations, or the collective bargaining process or contract administration,

(e) Membership meetings, assemblies, and conventions held, in part, for discussion and consideration of matters other than the representational interest, the collective bargaining process or contract administration,

(f) Publishing newspapers, newsletters, reports, surveys, etc., which, in part, relate to matters other than the collective bargaining process or contract administration,

(g) 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,

(h) 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,

(i) Expenditures for social and recreational activities, and payments for insurance, medical care, retirement, disability, death and related benefits, when such activities and payments do not constitute compensation to persons for services rendered in the representational interest of said labor organizations, and as such do not constitute costs incurred in the collective bargaining process or contract administration,

(j) Training in voter registration, get-out-the-vote, techniques, as well as political campaign techniques,

(k) Supporting and contributing to charitable organizations,

(l) Supporting and contribution to political organizations and candidates for public office,

(m) Supporting and contributing to idealogical causes, and

(n) Administrative costs allocable to each of the categories set forth in (a) and (m) above.

As can be readily seen, the WERC set forth the guidelines for determining which payments are or are not appropriate. It left for further hearings, if necessary a determination of the amounts of money owing the complainants.

In this arbitration case, the arbitrator is asked to determine the amounts to be rebated, and he will do so, using the WERC's Gerleman guidelines. In its memorandum portion of the Gerleman decision, the WERC set out the test that it used in reaching its decision.

> 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.

Additional quotations from the Gerleman memorandum are made below, where relevant to the arbitrator's decision.

The following amounts were regarded by WEAC as a fair share payer's obligation in the years in question:

	1979-80	1980-81
SPEA	$ 12	$ 13
SCUE	60	71
WEAC	86	91
NEA	42	45

Subsequent to the hearing in this case, in its post-hearing brief, WEAC reconsidered its position in light of the WERC's guidelines in Browne, and determine that it was appropriate for it to rebate a larger amount of money to Jordi than it had done previously. For the years in question in this case, 1979-80 and 1980-81, WEAC decided that the following rebates are appropriate:

	1979-80	1980-81
SPEA	$3.08	$4.45
SCUE	1.00	1.00
WEAC	9.12	9.56
NEA	8.95	9.59

These amounts are in addition to the $3.00 rebated already in each of these years for expenditures for direct political action.

Before turning to the facts of this case, it should be noted that there is also a dispute in this case concerning the scope of the decision, i.e., who is covered by the decision. WEAC takes the position that the rebates ordered in this decision apply

solely to the list of people submitted by Jordi when he invoked the internal rebate procedure, provided that they did not become members of WEAC during the fiscal year, and provided also that they informed WEAC in writing by September 5, 1981, that they wished to be covered by this proceeding.

Jordi takes the position that the decision should apply to all fair share payers in the state, whether or not they asked to be covered by this proceeding.

The following analysis is based on the record before the arbitrator. Mr. Jordi represented himself in these proceedings. As a result there was very little in the way of probing cross-examination of witnesses called by WEAC. The arbitrator did not view it as his role to undertake the role of counsel for Jordi. Thus, the arbitrator's conclusions about the appropriateness of WEAC expenditures should only be read in the context of the record made in this case. Another case, presented differently and with more thorough questioning and investigation, might yield different results.

FACTS AND DISCUSSION

WEAC, in its brief, acknowledged that some expenditures should be rebated fully. The arbitrator has accepted the WEAC decision to rebate items fully, and no analysis of those expenditures is made here. WEAC has determined that other expenditures should be rebated partially. The arbitrator has reviewed the evidence

concerning these expenditures and has decided whether the partial rebates and the amounts are appropriate. The arbitrator has also reviewed the expenditures deemed by WEAC to be non-rebatable as well as the numerous categories of expenditures which WEAC feels cannot be easily analyzed but should be allocated as rebatable or non-rebatable in the same proportion as is determined as appropriately rebatable or non-rebatable for the expenditures which can be easily analyzed.

The following discussion relates to fiscal year 1979-80.

SPEA (1979-80)

WEAC acknowledges that the following SPEA expenditures should be rebated:

Scholarships:	$300.00
SPEA awards breakfast:	135.93
Total	$435.93

In addition there were negotiations expenses ($134.09) and two negotiations dinners ($376.31). The arbitrator agrees with WEAC that these expenditures are appropriately non-rebatable. The only other expenditure was $3.00 for postage, and the arbitrator agrees with WEAC that postage expenses can be considered as allocated in the same proportion (rebatable/non-rebatable) as other expenses, absent evidence to the contrary.

Thus $435.93 is rebatable out of a total expenditure of $946.33 (46% rebatable). The 1979-80 SPEA dues were $12. Thus the amount of SPEA dues rebatable to Jordi is (46% x $12) = $5.52.*

SCUE (1979-80)

The record indicates the following concerning SCUE expenses. The Executive Director spends his time in negotiations (35%), giving negotiations advice (35%), processing grievances (20%) and in membership promotion and office management. These are non-rebatable, in the arbitrator's opinion.

Additional expenditures are made for task forces, ad hoc committees and in-house training which, according to the Executive Director, are for negotiations and training for local negotiators. These are non-rebatable also.

There is a newsletter put out by SCUE, all of which relates to collective bargaining and organizing, and which is therefore non-rebatable.

There is an annual membership promotion meeting which is non-rebatable.

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*WEAC suggests a different calculation method based on the fact that SPEA has accumulated a surplus of $1700 which the grievant may benefit from eventually. The expenditure of that surplus will alter the proportion of rebatable/non-rebatable expenditures in the year(s) in which it is spent, and need not be considered here, in the arbitrator's opinion.

Additional SCUE expenditures are for governance meetings of SCUE. Since the activities of SCUE appear to be all collective bargaining related, these are apparently non-rebatable.

The expenditures of SCUE governance include having liaison with the WEAC Board of Directors and the NEA Representative Assembly. There are also expenditures for sending teachers as delegates to the WEAC Delegate Assembly. The proportion of this money that would be rebatable would depend on the proportion of WEAC and NEA expenditures that are found to be rebatable.

There is also money in the SCUE budget for an in-service day for the benefit of SCUE members. No evidence was presented concerning what occurs at this function.

There is also a contingency fund, which is used to cover shortfalls in existing budgeted areas.

What amount of SCUE dues are rebatable then? The "doubtful" budgeted areas are: a proportion of the funds for WEAC delegates (the total budgeted is $1.80 per member); teacher in-service (the total budgeted is .82 per member). Since the proportion of WEAC dues found rebatable (see below) is 10.8%, the amount of doubtful expenditures is therefore reduced to 10.8% x $2.62 = 28¢. However to assure coverage of any questionable expenditures WEAC has voluntarily rebated $1.00 of SCUE dues which is the figure that the arbitrator will utilize.

WEAC (1979-80)

WEAC has agreed that the following expenditures should be considered as totally rebatable: "Attendance at the Democratic & Republican State Conventions ($100)"; "Women Cadre" ($3,111); Membership in Wisconsin CAP ($10,187); Membership in NCSEA ($2,812); WEAC Convention expenses for Children's Code ($3,552); NEA Convention expenses for Congressional contact team ($2,709); Committees for: "School Bell Awards" ($2,049); "Outreach Public Relations Awards" ($346); "In-Service Education and Teacher Centers" ($12); "Teacher Involvement in the Certification Process" ($5); Curriculum & Instruction Committee ($10,992); Human Relations Committees ($9,347). WEAC has made some of these expenditures rebatable not because it concedes their non-relatedness to collective bargaining or contract administration, but because of the inadequacy of the record in demonstrating that they are non-rebatable.

There are other expenditures which WEAC believes are partially rebatable:

The head of the Business Service Department spends a very small percentage of his time advising members about investments. WEAC has voluntarily agreed that 5% of his activities should be rebated ($3,768), and the arbitrator agrees that this is an appropriate determination.

WEAC has agreed to rebate the cost of bookeeping services provided by UniServs in proportion to their rebatable expenses. Using SCUE as a model, and calculating that SCUE has rebatable expenditures of about 2%, WEAC agrees to rebate 5% of the bookkeeping services, and the arbitrator agrees that amount is appropriate ($2,057).

The WEAC legislative department spends almost all of its time analyzing bills, and acting on measures that directly affect wages, hours and working conditions. Because, however, there was testimony that the director spends a very small percentage of his time on bills unrelated to collective bargaining, WEAC has voluntarily agreed to rebate 2% of the department's expenditures ($2,659). The arbitrator would concur with this determination based on the record of this case.

WEAC also employes four "political action consultants" and pays 5/6 of their salaries from dues. Their duties include: lobbying or getting members "to get involved in the process to help us either pass or defeat legislation" (this is the "vast majority" of their time); working with the membership in screening individuals for the Legislature; putting information together for PAC endorsement; involvement in and/or volunteer lobbying in elections. In the director's opinion, less than 1/6 of their time in fact is devoted to direct political activity. Thus, in the view of WEAC, the 5/6 funded by dues is non-rebatable, but as with the rest of the legislative division's

activities, WEAC is voluntarily rebating 2% ($2,885), and the arbitrator feels that the record supports such a determination.

WEAC puts out a publication called "Update" for keeping leadership and staff informed of significant bargaining developments. It also puts out "News and Views" which is distributed to all members containing collective bargaining as well as material of interest to teachers as educators. "To simplify matters" WEAC has agreed to rebate 50% of the cost of these publications ($62,883) although it believes that they can be defended as non-rebatable publications.

The arbitrator has reviewed numerous issues of both of these publications and has concluded that the 50% rebatable figure is reasonably related to the contents of the publications.

WEAC employs a media consultant. He spends approximately 15% of his time assisting with lobbying, and as noted earlier, only a very small percentage of lobbying efforts are for non-collective bargaining related bills. Additionally 10-15% of his work, WEAC concedes, is entirely rebatable, involving support of political candidates. The other 70-75% of his activity is devoted to public relations aimed at improving the image of teachers in the community with the objective of improving teacher working conditions through greater support for education. WEAC concedes that 10% of this 70% may be non-

related to teacher working conditions, and thus WEAC is voluntarily rebating a total of 22% of the costs of the media consultant ($11,161), and 10% of the cost of a major WEAC promotional plan ($2,935).

The consultant described the bulk of his public relations duties as:

> . . . such things as bargaining, representation at elections, helping teachers develop strategies for presenting their bargaining proposals to the local, school bond referendums. At the state level . . . media relations or community relations, areas that have to do with enhancing the public perception of teachers.

Given the evidence in the record, without a finer percentage breakdown of the consultant's activities the rebate voluntarily offered by WEAC would appear to be appropriate.

The WEAC employs an "instructional and professional development consultant." The consultant was unable to be present at the hearing, but WEAC offered to stipulate that his duties are allocated as follows: 40% dealing with WEAC issues on advisory committees with the DPI and Legislature; 15% dealing with individual teacher calls on certification; 15% working on inservice and special education committees; and 30% coordinating the WEAC convention.

While arguing that all of these activities can be justified as non-rebatable, WEAC "concedes that certain aspects of professional development, on the surface, may appear not to be related to

collective bargaining." It recognizes the activities of the consultant in coordinating the convention and dealing with teacher in-service programs as falling into this category. WEAC offers to regard 50% of these activities as rebatable. In its brief it calculates this figure as 50% of 30%. However, these activities constitute 45% of the consultants time, so the rebate figure should be (50% of 45%) 22-1/2% which is $14,659, not the $9,773 determined by WEAC.

WEAC offers to rebate 5% ($23,374) plus $251 of the WEAC costs of administering UniServ programs. It does so by using SCUE as typical of its UniServs, and it conceded (see prior discussion) that 5% of SCUE activities might be considered rebatable. Based on the evidence presented in this record, the arbitrator regards that rebate as appropriate.

WEAC employs "regional coordinators" who negotiate, process grievances, and substitute for UniServ directors. Since WEAC has agreed to rebate 5% of UniServ funding, it also agrees to rebate 5% of the cost of regional coordinators. Since these coordinators also supervise the "political action consultants," which takes up about 2% of their time, and since WEAC has voluntarily rebated 2% of the political action consultants' work, it is willing to rebate an additional 1% of the regional coordinator's time for their supervision. Thus WEAC voluntarily rebates a total of 6% ($20,487), which the arbitrator views as appropriate.

WEAC puts on an annual leadership conference. A review of the conference programs indicates that most, but not all of the courses deal with collective bargaining and/or contract related matters. However, rather than present a lengthy and costly analysis of these conferences, WEAC has agreed to rebate 50% of the expenses of the conference ($27,177), and the arbitrator finds that to be appropriate.

WEAC has a legal and negotiations department. The record indicates that almost all of its activities relate to collective bargaining matters. One exception is $5,000 which was spent on litigation before the State Elections Board, which WEAC is willing to rebate fully.

The record indicates that "significantly less than 1%" of time is spent on drafting legislation, and a portion of this may not be directly related to collective bargaining and contract administration. Therefore, WEAC voluntarily concedes that (.5%) should be rebated ($3,188), making a total of $8,188 rebated from the legal department. The arbitrator believes that these rebates are appropriate.

WEAC spends money on governance, including the WEA and NEA coventions and the NEA Board of Directors. It has voluntarily rebated $25,800 plus $4,597 from these categories. The arbitrator believes that these rebates are appropriate.

WEAC expends money for committees. Some are associated with particular departments, and WEAC is voluntarily rebating the same percentage for these committees as was determined appropriate for the departments associated with them: legislative committee (5% = $411); public relations committees (25% = $2,428).

The arbitrator has also reviewed the budget items which WEAC claims should be treated as 100% non-rebatable. He does not find any of these determinations to be inappropriate.

The arbitrator has also reviewed those budget items which WEAC contends should be considered allocable in the same rebatable/non-rebatable proportion as those expenditures in the categories, considered above, in which breakdowns could be specifically made. That is to say, once the specific proportion of rebatable/non-rebatable expenditures has been established for the items specifically analyzed, the same proportion should be used for allocating the more general expenses. These more general expenses include: bookkeeping, physical facilities, print shop, expenses of executive secretary and secretary, expenses of board of directors, president's office and representative assembly, the contingency fund, and coordination of the various governing committees. In the arbitrator's view, this method of allocating expenditures between rebatable and non-rebatable ones is appropriate.

The result of the changes made by the arbitrator is to increase the WEAC's rebatable percentage from 10.6 which WEAC has volunteered to 10.8%. This makes the WEAC rebate to Jordi 10.8% x $86 = $9.29.

NEA

A portion of the fair share payments go to the NEA. WEAC has conceded in its brief that certain NEA expenditures should be fully rebated. These are expenditures for "National Political Party Conventions" ($255,909); "Attorney Referral Program" ($132,136); "Migrant Education and Rights" ($172,796); "First American Education" ($67,804); "Relevant Pre-Service and In-Service Education" ($602,851); "Educational Research Responsive to Practitioners" ($345,737); "Influence Public Policies on Education" ($1,093,084); "Print and Nonprint Materials ($89,913); "Committees" ($36,845); "World Confederation of Organizations of the Teaching Profession" ($406,000); "Coalition of American Public Employees" ($114,000); "International Relations" ($124,354).

The WEAC has conceded that other NEA expenditures should be viewed as partially rebatable. WEAC will rebate 15% of the NEA's legislative expenditures. This is appropriate because more than 75% of the legislative effort is directly related to collective bargaining, and WEAC concedes that of the remaining 25%, 60% of it (15%) is for legislation not related to collective bargaining. The rebatable total, therefore, for legislative expenditures is $238,147.

WEAC concedes that 10% of NEA's budget for "Legal Defense System" is spent on matters not related to collective bargaining. It bases this concession on the fact that WEAC spends 1% of its legal expenses on non-collective bargaining matters, and it is willing to concede the higher expenditure, 10% ($502,148) for NEA. The arbitrator will accept this figure based on the WEAC assumptions, there being nothing in the record on which to argue for a contrary figure.

WEAC willingly rebates 25% ($1,078,576) of NEA's "Coordination of Services to Affiliates" expenditures. Based on WEAC's experience, WEAC believes that a 25% rebate is much higher than a close analysis of the expenditures would warrant, but it concedes 25% "to simplify the matter."

The arbitrator does not have a basis in the record on which to conclude that a contrary figure is warranted.

WEAC is willing to rebate 75% ($2,657,749) of the cost of publishing "Today's Education" which is not covered by advertising. (50% of costs are covered by advertising; the rebate is thus 75% of the remaining 50% which is $1,296,182.) Since the arbitrator was not presented with copies of "Today's Education" he has no basis upon which to reach a different conclusion, and he will thus accept the WEAC concession on this item.

WEAC is also willing to rebate 50% of the cost of other internal communications. The arbitrator has reviewed issues of "NEA Advocate," "NEA Reporter" and "NEA Now" and finds the 50% rebate to be appropriate ($1,051,871).

With regard to the expenditures for "Communications with General Public," the record indicates that this expenditure, aimed at improving the image of the teacher, is similar to the one made by WEAC's media consultant. WEAC proposes to rebate 10% of the NEA expenditure as it did in its own case, and based on the record before him the arbitrator deems the 10% rebate appropriate ($73,850).

In keeping with its earlier determination regarding UniServ expenditures, WEAC is willing to voluntarily rebate 5% of NEA expenditures for this purpose. The amount is $629,272. The arbitrator finds this to be appropriate, based on the record in this case.

In keeping with its treatment of WEAC legal expenses, WEAC is willing to rebate 10% of the expenses of NEA's "Deputy Executive Director and General Counsel" ($43,292). The arbitrator finds this to be appropriate, based on the record in this case.

WEAC takes the position that numerous other NEA expenditures are not rebatable at all. The arbitrator has reviewed these categories of expenditures and there are few of them on which he disagrees with the WEAC's determination. One item is the

"Subsistence Loan Program" ($312,744). The WERC in Gerleman, at page 24 and 25, found fully rebatable "Interest Free Loans" which, it said, appears on its face to te unrelated to the costs of collective bargaining and contract administration. However, because the Union has voluntarily rebated 10% of the category in which this item is contained, the arbitrator believes that the additional rebate should be approximately $281,470.

The WERC reached the same conclusion with respect to "Members Liability Insurance." Thus, in the arbitrator's opinion, the NEA "Professional Liability Insurance" should be rebatable ($1,843,842).

There are other categories of NEA expenditures which WEAC has determined cannot be easily analyzed but should be rebated in the same proportion as those expenditures found specifically to be rebatable. The arbitrator has reviewed those categories and agrees with the WEAC's determinations.

The results of these modifications by the arbitrator is that the percent of NEA dues deemed rebatable is 27.8%, not the 21.3% suggested by WEAC. The fair share assessment in 1979-80 was $42.00, and the rebate is therefore $11.68.

The result of all of the above changes is to give Jordi the following rebates for 1979-80.

SPEA	$ 5.52
SCUE	1.00
WEAC	9.29
NEA	11.68
	$27.49

1980-81

For 1980-81 the SPEA dues were $13. The rebatable percentage in that year was 81%, since most of the budget was spend on scholarships and on awards breakfast. The rebate to the grievant is thus $10.53.

As in 1979-80, the SCUE rebate for 1980-81 is $1.00 made voluntarily by WEAC. The arbitrator finds this figure appropriate. The WEAC expenses for 1980-81 were analyzed in the same manner as for 1979-80. The only signfiicant changes in types of expenditures was a $9,332 "supplemental appropriations" which it has agreed to rebate in its entirety because its allocation was not specified.

The result shows that the 1980-81 rebatable percentage is also 10.8%. This makes the amount to be rebated 10.8% of $91.00 = $9.83 for 1980-81.

WEAC suggests since it does not have the final NEA audited report as yet for NEA, that the rebatable percentage for 1979-80 for NEA be used also for 1980-81. WEAC asserts that the functional changes in the budgets are very few and not significant. It estimates that if anything the changes would reduce the rebatable percentage

in 1980-81. The arbitrator concurs in the WEAC view that the 1979-80 percentage should also be used in 1980-81.

The result is to make the amount rebatable from NEA for 1980-81 be $45.00 x 27.8% = $12.51.

The result of all of the above changes is to give Jordi the following rebates for 1980-81:

SPEA	$10.53
SCUE	1.00
WEAC	9.83
NEA	12.51
	$33.87

There remains the issue mentioned earlier with regard to the scope of this Award. WEAC is willing to apply it to Jordi and to the others on the original list when Jordi began the proceeding, provided that anyone on the list who later joined does not get a rebate for the fiscal year in which he/she joined. WEAC also would require that to be covered by the Award, such individual would have to have so notified WEAC of their desire to be covered by September 5, 1981.

It is the arbitrator's view that their appearance on the original list is sufficient for determining that the individuals are covered by this Award, provided that they did not join the Union in the fiscal year in question.

The arbitrator does not have the authority under the rebate procedure to apply his Award statewide, as Jordi asserts should be done. While it is logical that the UniServ, WEAC and NEA rebates would be applicable throughout the state, and WEAC might choose to so apply them for the sake of consistency, the arbitrator does not have the power to order that it be done.

Based on the above facts and discussion the arbitrator hereby makes the following AWARD. WEAC is hereby ordered to rebate to Jordi and to the individuals who signed the original list when this proceeding was initiated, the following amounts, determined as described above: $27.89 for 1979-80, and $33.87 for 1980-81, provided that the rebate not be paid to any individual who joined the Union during the fiscal year for which the rebate would be applicable.

Dated this 24 day of September, 1982.

Edward B. Krinsky, Arbitrator

APPENDIX "D"

NON-MEMBER FAIR SHARE REBATE PROCEDURE

1. GENERAL

In addition to the rights provided in Section 3-8 of the Bylaws of the Wisconsin Education Association Council (WEAC), any non-member covered by a fair share agreement may file a written notification with the local collective bargaining representative that the non-member objects to the expenditure of any portion of his or her fair share payment for any purpose not permitted by Wisconsin Statute 111.70. Until such time as the WERC issues a ruling defining what other categories of union expenditures are rebatable, WEAC shall rebate only political expenditures. For the purpose of this rebate procedure, political expenditures are defined as:

A. The administration of an independent political action committee;

B. The determination and/or publicizing of an organizational preference for a candidate for political office;

C. Efforts to enact, defeat, repeal or amend legislation which is not related to the working conditions (legislation establishing collective bargaining, professional negotiations or some other system of employer-employee relations shall be deemed related to working conditions), welfare, or working environment of employees represented by the NEA and/or its affiliates; or

D. Contributions to charitable, religious or ideological causes.

2. NOTIFICATION OF OBJECTIONS

All notification of objections shall contain the following information:

A. The name and address of the non-member;

B. The position and school district in which the non-member is employed;

C. The name of the WEAC affiliate which is the collective bargaining representative for the bargaining unit in question;

D. The amount of the deduction required of fair share persons; and

E. The reasons for the objection(s) and the organization(s) from which a rebate is requested (local, UniServ, WEAC, NEA).

3. INITIAL PROCESSING

A. Upon request, the local association shall assist the individual in setting forth his or her objection(s). The local association shall forward the notification of objection(s) to the UniServ unit (or to WEAC, if the local is not a UniServ unit).

B. All specific and general objections must be filed within the first sixty days of each membership year (September 1 - October 30) or within 60 days after the non-member becomes covered by a fair share agreement. However, if a person objects to a specific expenditure, made at other times, he/she may file a specific request for rebate within 60 days of the expenditure. The Union may waive the above time limitations if the person can demonstrate compelling reasons for the delay in filing.

C. Upon receipt of the rebate request, the WEAC will promptly evaluate the non-member's request for rebate and notify the non-member of the percentage of the non-member's fair share deducation which is budgeted to be spent for purposes which may not be permitted by Wisconsin Statute 111.70. Where applicable, this percentage shall be broken down by the bargaining unit's composite affiliations: local association, UniServ Council, WEAC/NEA. Based on these calculations, the WEAC will determine an overall sum which shall be rebated to the individual.

4. APPEALS PANEL

Upon receipt of this determination, the individual may either accept the rebate as a full settlement of the non-member's objection or may appeal the initial determination. If the individual accepts the determination, the money shall be immediately transmitted to the individual. If the individual does not accept the determination, the individual may request a hearing before a panel comprised of at least three members appointed by the President of WEAC and subject to the approval of the Board of Directors. All such requests shall be filed with the President of WEAC, copy furnished to the local association, within thirty days after receipt of the initial determination of the estimated potentially rebatable sum. If a hearing is requested, the individual may appear before the panel and present any evidence as to why the proposed figure is unacceptable. Upon request for a hearing by the panel, the Union shall escrow a portion of the non-member's fair share deduction which is at least equal to the amount initially determined to be potentially rebatable. This amount shall remain in escrow until the dispute is resolved. After hearing the objecting member's presentation, the panel may make adjustment to the initial determination of the amount to be rebated.

5. WEAC BOARD OF DIRECTORS REVIEW

If the non-member is still not satisfied, the individual may appeal to the full WEAC Board of Directors. Such an appeal must be filed with the President of WEAC within thirty (30) days after receipt of

the panel's determination. Unless requested by the objecting non-member, the Board of Directors shall not act on the non-member's appeal until all expenditures for the current fiscal year are completed. At such time the Board of Directors shall inform the objecting non-member as to the amount of his or her fair share deduction which is properly rebatable based on actual expenditures.

6. ARBITRATION

A. Should the non-member still be dissatisfied with the amount of proposed rebate, the non-member may request the dispute be submitted to binding arbitration whereby an arbitrator is selected in the order listed below:

1. An arbitrator selected from a list of five arbitrators supplied by the American Arbitration Association (AAA). Selection from the list shall be by the parties striking names alternately from the list, with the appellant striking a name first.

B. The decision of the arbitrator shall be final and binding; however, the arbitrator shall not have authority to modify any WEAC constitutional provision or bylaw and shall issue his/her decision in accordance with applicable law. (1/81)

APPENDIX "E"

1983-84

December 31, 1983

COUNCIL

An Unincorporated Professional Labor Organization

Dear

You have requested that the Wisconsin Education Association Council (WEAC or "Association") return that portion of its fees which should be rebated to you as required by section 111.70(1)(h) and the Association's own Bylaws. The WEAC is able to handle this matter on behalf of itself and all of its local and national affiliates.

As you may know, section 111.70(1)(h) allows a union to collect from non-union members in those locals which have a fair-share agreement an "employe's proportionate share of the cost of the collective bargaining process and contract administration as measured by dues uniformly required of members." The exact meaning of this phrase has been hotly debated; however, the Wisconsin Employment Relations Commission (WERC) has recently issued two important decisions in this regard: Browne v. Milwaukee Board of School Directors, Case XCIX No. 23535 MP-892, Dec. No. 18408 (2/3/81) and Gerleman v. Milwaukee Board of School Directors, Case C, No. 23558 MP-897, Dec. No. 16635-A (5/24/82). The Browne case concerned a group of AFSCME employes; the Gerleman case concerned the expenditures by the Milwaukee Teachers union both as an affiliate of the NEA and as an independent union. In deciding those cases, the WERC issued detailed guidelines delineating which type of expenditures a union could require a "fair-share employe" to support and which type of expenditures require a rebate.

Neither Browne nor Gerleman attempted to decide how specific union expenditures fit into the the general guidelines and the law in this area is still developing. However, WEAC has made a supervised audit of both its and its affiliate union's expenditures and believes it can approximate closely the amount of funds which must be rebated.

WISCONSIN EDUCATION ASSOCIATION COUNCIL
101 W. Beltline Hwy. P.O. Box 8003

As you may be aware, all WEAC affiliates must have an internal rebate procedure which permits informal resolution of any dispute over fair-share rebates. This informal procedure culminates in a final and binding arbitration procedure in which an independent arbitrator is selected to analyze the Association's budget and apply the WERC guidelines developed in Browne and Gerleman.

WEAC has received an award of this type in which Mr. Krinsky, a distinguished Wisconsin arbitrator, analyzed the expenditures of the Sauk Prairie Education Association, the South Central United Educators UniServ district (SCUE), WEAC and the NEA for the school years 1979-80 and 1980-81. In that arbitration, Mr. Krinsky found that NEA should rebate 27.5% of the dues of "fair-share employes" and that the WEAC should rebate approximately 11%. Neither the NEA or WEAC has significantly changed the nature of its expenditures since those two years; however, there has been some minor changes in the law as well as WEAC's expenditures. Under these changes, the WEAC rebate will be increased from 11% to 15%, while the NEA rebate will be decreased from 27.5% to 25%.[1]

The arbitrator also analyzed the SCUE UniServ unit and concluded that nearly all the expenditures of the UniServ unit were for purposes which the union was allowed to retain funds. Since nearly all UniServ units have similar guidelines and programs, the Association does not believe that the "fair-share employes" are entitled to a significant rebate based on the activities of the UniServ unit. In order to minimize a debate on this issue, the Association is willing to rebate 5% of the UniServ deduction. This figure is considerably higher than that required by the arbitrator.

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[1] I am told that there is a possibility that NEA will receive an independent aribtral determination on the amount of its expenditures which should be rebatable for the 1983-1984 school year. As soon as this independent determination is received, the proposed figure will be adjusted to reflect that amount. It is NEA's belief that this amount will be substantially less than the 25% which is currently being utilized. However, the Association will continue to rebate the higher amount until such time as the independent determination is received.

Local association expenditures vary widely, and it is almost impossible to generalize how much money should be rebated. However, the Association will be willing to rebate 15% of your local dues in order to resolve the matter. If you would prefer, WEAC will make a detailed analysis of your local dues in order to make a more accurate determination. This latter assessment may result in either a greater or lesser rebate.

Thus, based on the Association's experience in the prior arbitration award and a detailed analysis of its proposed expenditures for the 1983-84 school year, WEAC is willing to rebate to you the following percentages of your fair-share assessment:

NEA	25%
WEAC	15%
UniServ	05%
Local	15%

Based on your current fair-share assessment, your annual refund is calculated below:

NEA	$
WEAC	
UniServ	
Local	

In addition to these amounts, WEAC has also rebated $4.00 for political action contribution, assuming you are a full-time fair-share person.

You should be aware that during the arbitration proceeding, WEAC conceded numerous expenditures as rebatable in order to save the resources of all the parties involved in the litigation. It is WEAC's sincere belief that all the percentages above, and particularly the NEA's, represent extremely generous rebates which are in excess of those required by law. The WEAC was willing to concede numerous items because "fair-share" litigation is extremely time consuming and costly for everyone. I sincerely believe that it is difficult to imagine a more unproductive way to spend a couple of weeks than arguing over whether an employe is entitled to a $20.00 or $22.00 rebate. Since WEAC believes it has done everything possible to resolve this dispute in a fair and reasonable way, it is our sincere hope that you will accept these figures and resolve the matter immediately.

However, pursuant to the terms of the rebate procedure, you may challenge this determination. There are two ways of doing this. First, you may request an additional audit of the 1983-84 school year after it is completed, and we will then apply the rationale of the Krinsky arbitration award to those expenditures. Personally, I do not believe this would be particularly productive since it is likely that it will affect your rebate by only a couple of cents. However, if you wish, we will do so.

You also have the more viable option of rejecting the proposed amount and proceeding through the rebate procedure. If you wish, we will provide you with an opportunity to address the WEAC Board of Directors, or an authorized subunit thereof, to challenge the proposed percentages. In addition, you may also request arbitration by an independent arbitrator which will be selected from an approved list of WERC or AAA arbitrators. Your right to binding arbitration in no way affects your right to speak to the Board of Directors. Should you request this option, WEAC immediately will escrow, in an interest bearing account, an amount equal to our proposed settlement. At the conclusion of the arbitration process, WEAC will provide you with the exact sum determined by the arbitrator, which may be either more or less than the escrowed amount.

If you wish to arbitrate the dispute in the above manner, WEAC will bear most of the direct expenses related to the arbitation proceeding including the entire cost of the arbitrator. However, WEAC will not reimburse you for any lost time or any personal or legal expenses. WEAC is willing to do this in order to ensure that all "fair-share employes" have an adequate mechanism within the union to vindicate their rights.

You should also be aware that the WERC has implied that you may not be required to exhaust an internal rebate procedure before instituting a complaint with it. If you bring an action before the WERC, you will probably be required to bear all your litigation expenses; and, should you do so, WEAC reserves the right to terminate its internal arbitration procedure. In such a situation, WEAC believes it would be an unproductive utilization of resources to litigate the same matter simultaneously in both forums.

Finally, you should be aware that the WERC has ruled that the premiums on your educators employment liability (EEL) policy is a rebatable item. Consequently, your rebate will include the amount of the dues used for your liability policy for 1983-84. However, we are maintaining coverage at our expense for you until March 1, 1984 (one-half year). At that point, your insurance

will not be in effect, since we do not believe we are required to provide non-members with the free benefits for those items which the WERC has determined are not related to the collective bargaining process. We only point this out because you may wish to explore other alternatives for securing this insurance should you wish to keep this type of coverage in the future. I am enclosing a copy of the policy to assist you in securing coverage.

The Association is enclosing a series of forms on which you can indicate the option you wish to select. We are also enclosing a self-addressed stamped envelope in order to assist you in promptly resolving this issue.

If the Association does not hear from you within 30 days, it will assume that you do not wish to avail yourself of our procedure and will act accordingly.

Of course, the Association would be most pleased if you decided to become a regular member. In this way you could make your views known within the union and become more actively involved in the teaching profession. Your participation in the union will not only help yourself but all other teachers. The Association hopes you will reconsider your decision not to join. If the Association can provide you with any information regarding membership, please contact WEAC or your local association.

If we can be of any further assistance, please let us know.

Sincerely,

Robert F. Moeller
WEAC Business Director

rs
Enclosures

Please Select Only One Option
Please Return within 30 Days

FORM #1

I accept the WEAC determination of my proposed rebate. I understand that this resolves the matter of how much money I should get rebated for the 1983-84 school year.

$_____
Total Amount

_____
(Print Name)

Address: _____

_____

Local Assn.: _____

Date: _____

Signature _____

FORM #2

I accept the WEAC determination of the amount of my rebate for the NEA, WEAC, and UniServ unit for the 1983-84 school year. However, I would like the organization to make a detailed audit of my local association expenditures and inform me of the precise amount that should be rebated. Upon receiving this information, I will then let you know whether I accept that figure or wish to challenge the local determination.

_____
(Print Name)

Address: _____

_____

Local Assn.: _____

Date: _____

Signature _____

FORM #3

I accept WEAC's general determination of the appropriate rebate which I should receive; however, I wish WEAC to make a specific application of the Krinsky arbitration award rationale to the actual 1983-84 expenditures. After a determination of these expenditures, I will then inform WEAC whether I wish to challenge WEAC's application of Mr. Krinsky's arbitration award rationale to the expenditures for 1983-84. I understand that the audit of the 1983-84 expenditures will not be conducted until about October, 1984.

_____
(Print Name)

Address: _____

_____

Local Assn.: _____

Date: _____

Signature _____

FORM #4

I do not wish to accept the WEAC determination as to my rebate. Instead, I wish to pursue my claim to final and binding arbitration, pursuant to the WEAC internal rebate procedure. I understand that WEAC reserves the right to consolidate my claim with other similar claims.

_____
(Print Name)

Address: _____

_____

Local Assn.: _____

Date: _____

Signature _____

I also wish to present my objections to the WEAC Board of Directors. (_____)

APPENDIX "F"

REVISED NON-MEMBER FAIR SHARE REBATE PROCEDURE

1. GENERAL

In addition to the rights provided in Section 3-8 of the Bylaws of the Wisconsin Education Association Council (WEAC), WEAC shall provide any non-member covered by a fair share agreement with a method of obtaining a prompt and fair rebate of any portion of his or her fair share payment which is utilized for any purpose not permitted by Wisconsin Statute § 111.70, the United States Constitution, or the Wisconsin constitution. The rebate procedure shall encompass expenditures made by all independent units of the United Teaching Profession. These combined governance units are referenced to as the Association.

2. INITIAL DETERMINATION OF THE PROPOSED REBATE

A. Prior to the beginning of each fiscal year, WEAC shall analyze the budgets of the NEA, WEAC and the various UniServ Councils and make a determination as to the appropriate rebate which should be provided fair share employees. If feasible, it will analyze local association budgets for the same purpose; however, where no analysis of the local budget is provided, the local president shall make the local's budget available.

B. As soon thereafter as practical, WEAC shall inform all fair share employees of its analysis as well as its determination as to the appropriate rebate. WEAC will also provide to fair share employees budgetary information related to its determinations. Where specific local budgets are unavailable, WEAC shall inform fair share employees of the general nature of local budgets/rebates.

C. (1) In determining the appropriate rebate, WEAC shall rely upon prior arbitration awards and/or administrative and court adjudications. If no appropriate adjudication exists, WEAC shall seek an independent audit of Association budgetary expenditures in order to determine an appropriate rebate.

(2) At, or near, the time an individual is provided budgetary material, the Association shall inform the fair share employee of his or her right to challenge the Association's determination of the proposed rebate as well as inform the employee of

the method by which the employee's challenge should be processed.

3. INITIAL PROCESSING OF A CHALLENGE

Any employee who seeks a rebate of his/her fair share assessment, must file a written objection with the WEAC in accordance with applicable procedure within thirty (30) days from the date the employee receives the budgetary material. For the purpose of this provision, material shall be deemed received three (3) days after it is mailed. The Association may waive the above time limitations if the person can demonstrate good cause for the delay in filing.

4. PROCESSING OF THE CHALLENGE

A) Timing of the Challenge

Upon receipt of a request to challenge the Association rebate determination, the Association shall attempt to resolve the dispute. If resolution is impossible, the challenger may arbitrate the dispute immediately. The arbitration shall utilize the budgeted expenditures and such expenditures as may have occurred. If requested by the individual, WEAC will provide its auditors with the arbitrator's award so that the auditor can analyze WEAC's final audited expenses in light of the arbitrator's ruling and, if favorable to the employee, adjust any rebate in light of the actual project expenditures.

B) Escrow Account

Upon receipt of a challenge, WEAC shall immediately escrow, in an interest bearing account, an amount reflected as the appropriate rebate in prior, relevant arbitration awards and court adjudications plus an appropriate "cushion" determined by WEAC, or, if there are no relevant adjudications, the amount determined by an independent audit plus an appropriate cushion. If there is no such determination, WEAC shall escrow the entire fair share assessment.

5. ARBITRATION

WEAC shall seek from the WERC or AAA a panel of qualified arbitrators. If possible, WEAC and the challenging party shall arrange a method for the joint selection of

arbitrators so as to meet the neutrality requirement of Hudson.[1] If no method is agreed upon, WEAC shall ask the appointing agency to name an arbitrator to hear the dispute. As a condition of appointment, the arbitrator must agree to issue his or her award in an expeditious manner.

The Association reserves the right to consolidate arbitration proceedings so that it is not required to arbitrate the same general dispute in more than one proceeding for each relevant time period.

The arbitrator's award shall be final and binding to the extent permitted by law. If the Association is required to repay an additional sum, it shall do so. In addition, it shall include interest at the highest rate required by law.

The arbitrator shall apply recognized legal concepts in determining the appropriate rebate. The arbitrator shall have no authority to rebate fair share monies unless such a rebate is required by state or federal law.

6. SAVINGS CLAUSE

WEAC reserves the right to modify this procedure at any time if, in WEAC's opinion, such modification is required by state or federal law.

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[1] Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. __, 89 L. Ed. 2d 232, 106 S. Ct. ___ (1986).

APPENDIX "G"

James A. Blank, President

April 24, 1986

Dear Fair Share Employee:

The United States Supreme Court recently modified some requirements for the implementation of fair share agreements. The most significant change is that your collective bargaining representative (Association) must provide an explanation of its budget and expenditures in order to enable you to decide if you wish to object to the activities of the Association and request a return of a portion of your fair share payment.

The Wisconsin Education Association Council (WEAC) has instituted a procedure which we believe complies with the Court's ruling. Part of this procedure entails sending you information regarding our 1985-86 budgeted expenditures and how we analyzed these expenditures in determining rebatable and non-rebatable activities and costs. If, after reading this information, you wish to object to the amount of your fair share certification, you may do so by notifying the WEAC president. We will, upon receipt of your objection, initiate procedures to deal with your objection. These procedures include an arbitration hearing before a neutral arbitrator, if necessary.

The WEAC budget for 1985-86 is a 183 page document which breaks down our activities into divisions and committees, and then to individual projects within the division. Each year we go through our budget and analyze those expenses which are not related to collective bargaining, as that term has been defined in court and administrative litigation. These types of expenditures are rebatable. For example, our legal department on occasion may deal with an item which is not related to the collective bargaining process and therefore is a rebatable item. In such a case we calculate what percent of the legal department's time and resources are spent on these items and then, based upon these calculations, rebate the appropriate portion of those expenses. To determine a final amount, all such organization expenditures are totaled.

Some projects cannot be broken down specifically because they relate to the organization as a whole. These project's expenditures are called "allocable." This means that they are rebatable in the same proportion as the organization's overall expenditures. For example, the president's budget is allocable, since

WISCONSIN EDUCATION ASSOCIATION COUNCIL

101 W Beltline Hwy, P O Box 8003 Madison WI 53708

he or she presumably spends his or her time supervising the entire organization. As a result, expenses associated with the President's duties would be rebatable in the same proportion as the organization's overall expenditures are rebatable.

We are providing you with a synopsis of the WEAC projects for 1985-86 as well as the amount we believe is rebatable. In order to help you understand the legal concepts involved, we are enclosing relevant portions of the Gerleman decision. Currently this is the most exhaustive ruling on what expenditures are allowable. If you wish to review the budget itself you can receive a copy by contacting your local president. If he or she does not have a copy, we will send one immediately to your local president upon request.

Because of time constraints, we are unable to provide a concise summary of the NEA budgetary expenditures. As a result, we are providing you with the NEA's entire budget as well as an impartial arbitrator's analysis of that budget. You will note it makes specific reference to Wisconsin law.

It is impossible for us to give all of you your UniServ and local budgets at this time. There are simply too many documents to coordinate. In general, the vast majority of the UniServ budgets go for salary and expenses of the UniServ Director and the Director's staff. Most of the Director's time is spent directly in actual collective bargaining and grievance processing. We believe only about 2 percent of the UniServ expenses are not related to collective bargaining; however, we rebate 5 percent in order to ensure a full and proper rebate. If we do not enclose a copy of this budget, your local president can give you a copy. Similarly, we also suggest you contact your local president to look at your local budgets. These vary significantly. In general, WEAC believes about 15 percent of local expenditures may not be related to the collective bargaining process.

As indicated, if you object to paying the certified amount for fair share, you should notify the WEAC president at Box 8003, Madison, Wisconsin 53708 of your objection. You have until May 31, 1986, to so object. If we do not hear from you, we will assume you do not object to expenditures for the 1985-86 school year. If you have already notified the Association of your objection, you do not need to send another form.

If you do object, we will promptly deal with your objections by notifying you of your options. This will include information about your right to an arbitration hearing, among other options.

We have also developed procedures for escrowing disputed fair share expenditures. We will explain this to you at that time.

Thank you for your consideration. It is our sincere hope that after reading these materials you will realize more fully the efforts made by your Association on your behalf and will choose to become an active member. We believe active membership is the best way to protect your economic interests and promote educational excellence. If you have questions, please feel free to call our toll-free number listed on the letterhead. Ask for Robert Moeller, Business Director, if you have any questions on the budget. Ask for Attorney Bruce Meredith if you have questions regarding the legal process.

Sincerely,

James A. Blank

JAMES A. BLANK
WEAC President

/pjm

APPENDIX "H"

WEAC BUDGET OVERVIEW

In reviewing these figures, you should be aware that most categories were treated as at least 5 percent rebatable, even though, in some instances, there was no apparent rebatable expenditures or activities. This was done to ensure an appropriate amount of rebate. Furthermore, numerous smaller expenditures were rebated simply because a detailed analysis was not deemed worthwhile. In litigation, WEAC likely will take different positions so rebates might be smaller.

DIVISION #1 (GOVERNANCE)

Project 100 - Board of Directors
Budget $124,207 ($3.07 per member) Rebatable 14.6%[1]

The Board sets the goals and policies of the organization between Representative Assemblies.

Project 101 - President
Budget $143,498 ($3.54 per member) Rebatable 14.6%[1]

This project provides for a full-time president, secretary and attendant expenses.

Project 102 - Representative Assembly
Budget $38,756 ($0.96 per member) Rebatable 14.6%[1]

This is an annual meeting of teacher representatives from each local school district to set the overall WEAC policy.

Project 103 - Wisconsin CAPE
Budget $1,500 ($0.04 per member) Rebatable 100%

This funds our membership in a coalition with other public employee organizations.

Project 104 - Vice-President Attendance at NCSEA Meeting
Budget $2,786 ($0.07 per member) Rebatable 100%

This funds the costs of the vice-president's attendance at meetings of the National Council of State Education Associations.

Project 105 - Contingency Fund
Budget $71,857 ($1.77 per member) Rebatable 14.6%[1]

This project is expended only by separate approval of each item by the Board of Directors. The type of expense varies each year.

Project 106 - NCSEA Membership
Budget $4,100 ($0.10 per member) Rebatable 75%[2]

This is the cost of our membership in the National Council of State Education Associations.

Project 107 - Secretary-Treasurer Attendance at NCSEA Meetings
Budget $2,128 ($0.05 per member) Rebatable 75%[2]

This project funds the attendance of the secretary-treasurer to meetings of the National Council of State Education Associations.

Project 108 - WEAC Convention
Budget $74,572 ($1.84 per member) Rebatable 14.6%[1]

This project funds our annual convention in Milwaukee. Budgeted expenses are offset by budgeted income from vendors, etc.

Project 109 - NEA Convention
Budget $51,959 ($1.29 per member) Rebatable 20%[2]

This represents the cost of sending 43 delegates to the annual NEA convention, at which NEA policies are set.

Project 110 - Alternate to NEA Board of Directors
Budget $4,880 ($0.12 per member) Rebatable 20%[2]

This provides funds for the alternate National Education Association director to attend meetings of the NEA Board.

Project 111 - Leadership Training I
Budget $3,421 ($0.08 per member) Rebatable 14.6%[1]

This project provides leadership development skills to WEAC members in understanding and working within the association.

Project 112 - Leadership Training II
Budget $2,971 ($0.07 per member) Rebatable 14.6%[1]

This is more advanced training for leaders within the association.

Project 113 - Congressional Contact Team
Budget $16,468 ($0.41 per member) Rebatable 50%

This provides funds for members who lobby members of the Wisconsin Congressional delegation. The rebate is based upon nature of topic and contact plus a substantial cushion.

Project 114 - Orientation of New Board Members
Budget $1,160 ($0.03 per member) Rebatable 14.6%[1]

New board members are given basic orientation to the board each year.

Project 115 - Ad-Hoc Retirement Committee
Budget $6,340 ($0.16 per member) Rebatable 0%

Funds a committee to study and make recommendations on the various retirement proposals which come before the Teachers Retirement System.

Project 116 - Women's Cadre - Level III
Budget $2,210 ($0.05 per member) Rebatable 5%

Provides funds to train members in women's leadership possibilities.

Project 117 - UniServ Management Training
Budget $2,714 ($0.07 per member) Rebatable 5%

Provides funds to present the NEA's UniServ management program to 12 UniServ units.

DIVISION #2 (BUSINESS)

Project 201 - Business Director's Office
Budget $115,958 ($2.86 per member) Rebatable 5%

The Business Director is responsible for management of all fiscal affairs, membership records, buildings, personnel records and the printing operations.

Project 202 - Bookkeeping
Budget $63,158 ($1.56 per member) Rebatable 14.6%[1]

Funds the WEAC bookkeeper and related computer expenses.

Project 203 - Membership Processing
Budget $66,573 ($1.64 per member) Rebatable 0%

Funds personnel and computer costs to handle all membership and billing functions.

Project 204 - Reserve Fund
Budget $40,500 ($1.00 per member) Rebatable 14.6%[1]

Provides a reserve fund to enable the WEAC to escape borrowing funds for operations each year.

Project 205 - UniServ Bookkeeping
Budget $76,993 ($1.90 per member) Rebatable 5%

This program provides bookkeeping services for UniServ units at their option and includes staff and computer costs.

Project 206 - Headquarters Office
Budget $287,650 ($7.10 per member) Rebatable 14.6%[1]

To provide physical facilities for the central office, including telephone costs, insurances, etc.

Project 207 - News & Views Publication
Budget $174,104 ($4.30 per member) Rebatable 25%

Provides funds for the WEAC newspaper; the percent rebatable is based upon items covered.

Project 208 - Update & Local Presidents Mailing
Budget $12,480 ($0.31 per member) Rebatable 25%

Funds a weekly (40 weeks) mailing to local leaders dealing with topics related to their position.

Project 209 - Print Shop/Mail Room
Budget $137,326 ($3.39 per member) Rebatable 14.6%[1]

Funds cost of a complete print shop. All WEAC documents except News & Views are printed in-house.

Project 210 - Membership Promotion Materials
Budget $16,650 ($0.41 per member) Rebatable 10%

Funds membership promotion materials and the calendar book distributed to each member.

DIVISION #3 (COLLECTIVE BARGAINING)

Project 301 - Collective Bargaining Director
Budget $133,755 ($3.30 per member) Rebatable 5%

Funds the division director for collective bargaining.

Project 302 - Computer System Conversion
Budget $38,290 ($0.95 per member) Rebatable 0%

Provides funds for computer system upgrading.

Project 303 - Negotiations Specialist
Budget $81,372 ($2.01 per member) Rebatable 5%

Funds a professional staff person to analyze contracts state-wide, and to provide training in negotiations and related activities.

Project 304 - Research
Budget $154,634 ($3.82 per member) Rebatable 5%

Funds to utilize the computer negotiations programs, provide analysis of settlements, and training in research techniques and related activities.

Project 305 - Outside Computer Research
Budget $12,960 ($0.32 per member) Rebatable 5%

This provides WEAC the ability to "rent" time on large computers at NEA, UW - Madison, and use data tapes from other sources. The research is used primarily for bargaining and legal matters.

Project 306 - State Bargaining Goal Committee
Budget $13,248 ($0.33 per member) Rebatable 5%

A committee to identify short- and long-term bargaining goals with the state bargaining program.

Project 307 - Crisis Assistance
Budget $48,079 ($1.19 per member) Rebatable 5%

This project pays arbitration costs for locals involved in collective bargaining arbitrations. It also may be used to support locals in crisis situations.

Project 308 - Statewide Bargaining Conference
Budget $11,250 ($0.28 per member) Rebatable 5%

This project provides for a statewide, two-day fall bargaining conference for one representative from each affiliated local.

Project 309 - Regional Bargaining Training
Budget $16,860 ($0.42 per member) Rebatable 5%

Provides for a regional training program for negotiators.

Project 311 - ESP Coordination
Budget $5,750 ($0.14 per member) Rebatable 5%

This project would provide for representatives of 75 ESP locals to develop methods of facilitating their own coordination and determining their own state-wide bargaining goals.

DIVISION #4 (LEGISLATIVE)[4]

Project 401 - Office of Legislative Director
Budget $239,460 ($5.91 per member) Rebatable 20%

Provides for the director and two lobbyists to support legislation favorable to teachers and education to oppose detrimental legislation.

Project 402 - Passage of Key Legislation
Budget $12,495 ($0.31 per member) Rebatable 20%

Funds various legislative activities designed to influence legislation affecting teachers such as the bargaining bill, school aids, early retirement legislation.

Project 403 - Publication of Information...Involvement of Members in Legislative Process
Budget $10,461 ($0.26 per member) Rebatable 20%

Primarily funds the cost of the Legislative Bulletin publication and to hold meetings on key pieces of legislation.

Project 404 - Research Assistance
Budget $5,000 ($0.12 per member) Rebatable 20%

Provides funds to research the impact on teachers and their employment of bills in the 1985-86 legislative session and to determine actuarially the cost effect of proposed changes on teachers' retirement.

Project 405 - Membership Training and Involvement
Budget $7,800 ($0.19 per member) Rebatable 20%

Provides funds to develop regional training sessions to meet the needs of the region and to provide information to inform members so that they will be more active in the legislative process.

Project 406 - Attendance at Democratic/Republican Conventions
Budget $830 ($0.02 per member) Rebatable 100%

Provides funds for convention attendance.

Project 408 - Political Action Consultant, Eau Claire
Budget $71,334 ($1.76 per member) Rebatable 25%

Provides regional staff to assist in WEAC's lobbying efforts and to organize WEAC members to become active in the legislative/political process.

Project 409 - Political Action Consultant, Neenah
Budget $99,868 ($2.47 per member) Rebatable 25%

Provides regional staff to assist in WEAC's lobbying efforts and to organize WEAC members to become active in the legislative/political process.

Project 410 - Political Action Consultant, Milwaukee
Budget $72,178 ($1.78 per member) Rebatable 25%

Provides regional staff to assist in WEAC's lobbying efforts and to organize WEAC members to become active in the legislative/political process.

Project 411 - PR Media Consultant/Legislative PR
Budget $95,937 ($2.37 per member) Rebatable 20%

Provides staff to deal with public relations for the association on a state-wide level and provide training for local leaders for local programs.

Project 413 - WEAC Community Relations Campaign
Budget $143,000 ($3.53 per member) Rebatable 20%

Primarily a budget for media exposure of the association to the public.

Project 414 - External Polling
Budget $15,000 ($0.37 per member) Rebatable 100%

Designed to organize support for edcuation and educators by improving the image of teachers and ESP members held by opinion-makers and to promote, through publications and programs, improvement of teachers' and ESP members' perception of the teaching profession.

DIVISION #7 (ADMINISTRATION)

Project 701 - Executive Secretary
Budget $163,681 ($4.04 per member) Rebatable 20%

Provides funds for the chief executive officer of the association. An additional 5% beyond WEAC general rebate is provided because of the Executive Secretary's extra lobbying responsibilities.

Project 703 - UniServ/UTP Fund
Budget $833,587 ($20.75 per member) Rebatable 5%

Provides funds for the association's support of the UniServ program through direct grants to UniServ units.

Project 705 - Organizing Membership (Including UW Academic & VTAE)
Budget $48,030 ($1.19 per member) Rebatable 100%[3]

Provides funds to enable the association to compete in efforts to encourage members of the UW system to join ranks with the association.

Project 710 - Leadership Conference
Budget $71,700 ($1.77 per member) Rebatable 15%

The WEAC holds an annual leadership conference in which local leaders are trained in collective bargaining, grievance processing and other skills.

Project 711 - WEAC Leaders Handbook
Budget $600 ($0.01 per member) Rebatable 15%

To provide a single source reference for basic structural, governance, and budgetary information about the Association. The rebate reflects WEAC's general expenditures.

Project 712 - Eau Claire Office
Budget $133,459 ($3.60 per member) Rebatable 10%

Provide funds for the office and staff to coordinate the WEAC programs within all UniServ and non-UniServ affiliates.

Project 721 - Organizing Coordination
Budget $125,056 ($3.09 per member) Rebatable 50%[3]

Funds activities designed to install WEAC affiliates as the bargaining agent in all VTAE districts.

Project 722 - VTAE Negotiators Meeting
Budget $1,189 ($0.03 per member) Rebatable 5%

Four day meetings of VTAE negotiators. Meetings follow annual bargaining conference to determine and overcome problems in coordinated bargaining.

Project 723 - Women Interns
Budget $25,070 ($0.62 per member) Rebatable 15%

The purpose of this program is to provide women interested in securing staff positions with an opportunity to experience professional staff work. The rebate reflects the general WEAC rebate.

Project 724 - Tech Memo
Budget $4,601 ($0.11 per member) Rebatable 10%

Provides funds for a publication to VTAE members regarding issues in the VTAE system.

Project 727 - VTAE Bargaining Conference
Budget $4,750 ($0.12 per member) Rebatable 5%

One weekend-long conference early in fall for chief negotiators and bargaining team members.

Project 728 - Instruction & Professional Development
Budget $90,078 ($2.22 per member) Rebatable 15%

Provides for staff to coordinate programs in Teacher Education and Professional Standards, Curriculum & Instruction, Human Relations and Special Education. Also coordinates the WEAC convention and monitors the Department of Public Instruction.

Project 729 - Teacher Evaluation Conference
Budget $3,175 ($0.08 per member) Rebatable 5%

Purpose is to inform local leaders and staff about current philosophies and practices and WEAC's position on teacher evaluation.

DIVISION #8 (LEGAL)

Project 801 - General Legal Services
Budget $680,226 ($16.80 per member) Rebatable 5%

The division will carry out a program of legal services through staff counsel and various cooperating law firms. Most expenditures are for contract enforcement and protection of teacher rights.

Project 802 - Outside Counsel
Budget $56,471 ($1.39 per member) Rebatable 10%

Provides outside counsel when necessary due to work load.

Project 803 - Legal Services to Locals Under Mediated or Other Agreements
Budget $164,519 ($4.06 per member) Rebatable 5%

Provides legal services to Madison Teachers, Green Bay teachers, and to UniServ Council #10 per agreements.

Project 804 - Corporate Legal Services
Budget $67,210 ($1.66 per member) Rebatable 14.6%[1]

Provides use of outside counsel to advise and handle matters related to the business management of the association (e.g., contracts for services, labor relations and personnel matters, tax and real estate problems, etc.

Project 805 - Educators Employment Liability Insurance
Budget $15,695 ($0.39 per member) Rebatable 100%

Provides funds for servicing the general liability coverage of all members and purchasing the coverage for non-unified support members. The WERC has ruled this is a member-only benefit; therefore, WEAC has decided to provide this service only to members.

Project 806 - Political Action Legal Services
Budget $3,270 ($0.08 per member) Rebatable 100%

Provides legal services to WEAC-PAC, WEAC locals and UniServ PACs in matters related to political action.

Project 807 - Rebates of Cost for Mediated Agreement Programs
Budget $40,500 ($1.00 per member) Rebatable 5%

To rebate to locals requesting such rebate in a timely fashion that portion of their dues equivalent to the cost of the mediated agreements/legal services.

Project 809 - Milwaukee Desegregation Suit
Budget $250,504 ($6.19 per member) Rebatable 5%

Provides for the defense of the employment rights of suburban Milwaukee teachers through entry into the Milwaukee Desegregation Suit.

COMMITTEES

Project 121 - Legislative Committee Meetings
Budget $11,169 ($0.26 per member) Rebatable 20%

This committee reviews legislative priorities so as to formulate a comprehensive legislative program.

Project 122 - Legislative Committee Implementation of Legislative Program
Budget $2,340 ($0.06 per member) Rebatable 20%

Provides funds for the Legislative Committee to coordinate its activities through attending meetings of UniServ.

Project 131 - Public Relations Committee Meetings
Budget $9,945 ($0.25 per member) Rebatable 25%

Funds for the committee to assist WEAC PR personnel in the coordination and planning of the annual School Bell Awards and OUTREACH Award, PR School programs at the Leadership Conference, and other WEAC PR projects.

Project 132 - Public Relations Committee School Bell Awards
Budget $2,130 ($0.05 per member) Rebatable 100%

Funds to recognize news media reporters for their distinctive contributions to education news reporting through a cooperative WEAC and local affiliate public service program.

Project 133 - Public Relations PR School
Budget $1,775 ($0.04 per member) Rebatable 25%

Funds to train UniServ public relations teams and local leaders in basic and advanced public relations concepts and skills.

Project 134 - Public Relations OUTREACH Awards
Budget $600 ($0.01 per member) Rebatable 25%

An awards program to encourage local teachers' associations and UniServ units to develop local public relations programs designed to improve the public and self-image of Wisconsin teachers, and improve the climate for education in Wisconsin in order to assist in bargaining goals.

Project 141 - VTAE Committee Meetings
Budget $9,980 ($0.25 per member) Rebatable 15%

The committee deals with issues of importance to VTAE members.

Project 151 - Teacher Education & Professional Standards (TEPS) Committee Meetings
Budget $9,288 ($0.23 per member) Rebatable 15%

The committee deals with issues regarding teacher certification and licensing.

Project 152 - TEPS Committee In-service Education
Budget $950 ($0.02 per member) Rebatable 50%

Funds for the TEPS committee to consider issues in in-service education.

Project 153 - TEPS Committee Review & Involvement with Teacher Training Institutions
Budget $1,883 ($0.05 per member) Rebatable 50%

Funds for the TEPS committee to provide a process for teacher involvement in the upgrading of teacher training programs in institutions offering certification under the DPI program approval process.

Project 154 - TEPS Committee WEAC Involvement on DPI/NCATE Review Teams
Budget $515 ($0.01 per member) Rebatable 50%

Funds to enable participation on DPI/NCATE review teams.

Project 161 - Curriculum & Instruction Committee (C&I) Meetings
Budget $9,964 ($0.25 per member) Rebatable 50%

Funds for the committee to meet and deal with issues involving curriculum and instruction.

Project 162 - C&I Committee Curriculum Update
Budget $700 ($0.02 per member) Rebatable 50%

Funds to disseminate information regarding current curriculum trends which may affect students and teachers in Wisconsin schools.

Project 163 - C&I Committee Education in the 80's and Beyond
Budget $1,100 ($0.03 per member) Rebatable 50%

Funds for the C&I committee to explore implications of changing technology and techniques and trends as they affect classroom teachers, students and society as a whole.

Project 164 - C&I Committee Educational Opportunities for All Students
Budget $740 ($0.02 per member) Rebatable 50%

Funds to enable the C&I committee to deal with possibilities regarding talented and gifted programs as they affect teachers.

Project 165 - C&I Committee LEAST Discipline
Budget $500 ($0.01 per member) Rebatable 100%

Funds to work with UniServ units to prepare a group of teachers trained in the LEAST discipline method.

Project 166 - C&I Committee IPD Conference
Budget $3,505 ($0.09 per member) Rebatable 50%

Funds to get teachers involved in issues relating to instruction and professional development from an association point of view.

Project 167 - C&I Committee Fine Arts Subcommittee
Budget $1,000 ($0.03 per member) Rebatable 100%

To build a coalition of educators to support state public school activities in the arts and to develop community support for arts in the schools.

Project 171 - Special Education Committee Meetings
Budget $9,420 ($0.23 per member) Rebatable 50%

To provide for committee meetings to consider issues in special education.

Project 181 - Teachers Rights Commission Meetings
Budget $6,832 ($0.17 per member) Rebatable 100%

Funds meetings to enable the committee to structure itself in such a fashion as to carry out any judicial review function or investigation as may be assigned by the WEAC Board of Directors.

Project 191 - Human Relations Committee Meetings
Budget $9,253 ($0.23 per member) Rebatable 100%

Funds for the committee to meet and consider human relations issues.

Project 192 - Human Relations Committee Awareness & Skills Development Program
Budget $1,943 ($0.04 per member) Rebatable 50%

Funds to provide human relations in-service programs dealing with such topics as violence in schools, students' rights and advocacy, implementation of Chapter 115 and PL94-142, stress/tension and/or other areas of interpersonal relationships.

Project 193 - Human Relations Committee Resource Center
Budget $945 ($0.02 per member) Rebatable 100%

Funds to continue to revise and update the present Human Relations catalog and to review and purchase new human relations materials.

Project 196 - Human Relations Committee Awareness & Training for WEAC Leaders and Members
Budget $1,805 ($0.04 per member) Rebatable 14.6%[1]

Funds to create in WEAC leaders and members an awareness of discriminatory practices relating to race, age, sex, marital status and ethnic background, which affect both teachers and students, and the association's role in helping teachers to eliminate such practices.

Project 197 - Human Relations Committee Minority Caucuses
Budget $300 ($0.01 per member) Rebatable 14.6%[1]

Provides funds for new caucuses of the Asians and Native Americans within the association.

Project 200 - Credentials & Elections Committee Meetings
Budget $7,837 ($0.19 per member) Rebatable 14.6%[1]

Provides funds for the committee to deal with duties regarding internal association voting for officers, the Representative Assembly, etc.

Project 211 - Constitution Committee Meetings
Budget $3,696 ($0.09 per member) Rebatable 14.6%[1]

Committee meets to consider drafting of proposed constitutional changes and presenting proposed amendments prior to and at WEAC Representative Assembly.

Project 221 - Resolutions Committee Meetings
Budget $3,300 ($0.08 per member) Rebatable 14.6%[1]

Committee meets to accept, reject, edit or initiate resolutions for the consideration of the WEAC Representative Assembly and to review all WEAC continuing resolutions to make recommended deletions, combinations and re-wordings for more concise language.

Project 231 - Student WEA Meetings
Budget $5,438 ($0.13 per member) Rebatable 100%

Provide funds for six executive committee meetings and one organizational meeting for executive officers of the Student WEA.

Project 232 - Student WEA Leadership Development & Involvement
Budget $2,256 ($0.06 per member) Rebatable 100%

Funds to create an effective organization by developing the potentials of Student WEA leaders and advisors through involvement in WEAC and NEA Student member meetings.

Project 233 - Student WEA Membership & Public Relations
Budget $1,176 ($0.03 per member) Rebatable 50%

Provides funds for membership promotion within the Student WEA.

Project 234 - Student WEA Fall Workshop
Budget $4,559 ($0.11 per member) Rebatable 100%

Funds to increase awareness of educational issues through workshop sessions and to provide members with current organizing techniques to establish stronger local chapters.

Project 235 - Student WEA Representative Assembly
Budget $1,471 ($0.04 per member) Rebatable 100%

Funds to create an effective organization through a statewide meting of representatives from all chapters.

Project 251 - Minority Involvement Committee Meetings
Budget $7,429 ($0.18 per member) Rebatable 14.6%[1]

Committee meets to monitor, evaluate and initiate programs and activities that will ensure ethnic minority participation in WEAC.

Project 252 - Minority Involvement Committee Participation in WEAC Leadership Conference
Budget $800 ($0.02 per member) Rebatable 14.6%[1]

Program designed to encourage ethnic minorities to participate in the regular WEAC Leadership Conference.

Project 253 - Minority Involvement Committee NEA Minority Involvement Program
Budget $3,250 ($0.08 per member) Rebatable 14.6%[1]

Program designed to provide an opportunity for ethnic minorities to identify key national issues and participate in meetings to deal with them.

Project 254 - Minority Involvement Committee Winter Conference
Budget $7,780 ($0.19 per member) Rebatable 14.6%[1]

Provides funds for the Minority Involvement Committee to hold a winter training conference.

Project 256 - Minority Involvement Committee WEAC Convention Booth
Budget $300 ($0.01 per member) Rebatable 14.6%[1]

Funds to organize one booth at the WEAC convention to develop teacher awareness of resources available from the DPI and/or NEA regarding ethnic minorities.

[5] See below.
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[1] (Per general allocation of WEAC services)
[2] (NEA general rebate used plus a small cushion)
[3] (After these calculations, the WERC reaffirmed its earlier decision to allow organizing expenses. Since the federal law in unclear in its scope of organizing expenses, a 50% to 100% rebate was utilized, depending upon the nature of the organizing.)
[4] (Note: WERC has upheld expenditures for most forms of lobbying undertaken by WEAC. See Gerleman on pages #9 & 26. WEAC is rebating 20% in order to ensure a full rebate and to protect against any changes in federal law.)
[5] All rebate amounts will be pro-rated for partial year fair-share and for ESP fair-share payers or any other fair-share payers who do not pay full active membership dues equivalent amounts.

APPENDIX "I"

NATIONAL EDUCATION ASSOCIATION of the United States

PROGRAM BUDGET
FISCAL YEAR 1985-86

PRESENTED TO THE REPRESENTATIVE ASSEMBLY
WASHINGTON, D.C.
JULY 1985

nea

REPORT OF THE COMMITTEE ON PROGRAM AND BUDGET

PREFACE

The program budget recommended for fiscal year 1985-86 is balanced with an estimated income of $97,557,500, recommended expenditures of $96,581,925, and a one percent contingency of $975,575 as required by the Bylaws. The estimated dues income for 1985-86 as shown on page two is based on an expected full-time equivalent membership of 1,710,400.

The 1985-86 programs continue the emphasis on membership promotion and organizing at all levels and are designed to apply NEA resources, talent, and commitment as efficiently as possible to accomplish the Association's goals for the coming year. The budget conforms to all mandates of NEA governance documents and governing bodies.

Input hearings on the budget were held by the Committee at each of the six regional leadership conferences, the Fall Conference of the National Council of Urban Education Associations (NCUEA), and the Human and Civil Rights Conference. Input was received from NEA Standing Committees, Caucuses, National Council of State Education Associations (NCSEA), NCUEA, governance and non-governance affiliates, and individual members. All of the input and recommendations were carefully considered and utilized by the Committee as it constructed and developed the programs in the proposed budget.

The Committee has met four times during the year to develop and review budget proposals as needs and priorities of the Association became apparent. Each member of the Committee has fully reviewed two or more administrative areas during the preparation process. The Committee also has reviewed the proposed budget with the Executive Committee and the Board of Directors to keep them informed of the budget development and receive their input and recommendations.

It should be noted that relatively few items in the budget are free of policy or mandate as set by the Board of Directors, the Representative Assembly, and the Constitution and Bylaws. It has been the Committee's task to assign financial resources to accomplish these policy directives, as well as to respond to the immediate needs of the Association.

The 1985-86 budget continues to reflect cooperation among the NEA and its state and local affiliates. Many programs have been designed to respond to expressed affiliate needs, and a large number are cooperative administered.

Chairperson:	Keith Geiger, Vice-President
Vice-Chairperson:	Roxanne E. Bradshaw, Secretary-Treasurer
Members:	James M. Davenport, Director for Michigan William A. Dorsey, Director for Ohio Harry A Gagliardi, Jr., Director for Connecticut Leon P. Horne, Director for Washington L. Alice Peters, Director for New Jersey Hal E. Vick, Director for California
Staff Liaison:	Michael Dunn, Deputy Executive Director

NATIONAL EDUCATION ASSOCIATION
BUDGETED
MEMBERS* AND INCOME

MEMBERS	1984-85	%	1985-86	%
Active	1,400,000	85.4%	1,410,500	82.5%
Active Members for Life	115,000	6.9%	114,000	6.7%
Agency Fee	10,000	.6%	12,000	.7%
Educational Support	52,000	3.2%	78,500	4.5%
Retired - Annual	24,000	1.5%	38,700	2.3%
Retired - Life	16,000	.9%	27,700	1.6%
Other	5,000	.3%	5,000	.3%
Student	20,000	1.2%	24,000	1.4%
TOTAL MEMBERS	1,642,000	100.0%	1,710,400	100.0%
MEMBERSHIP INCOME				
Active	$86,800,000	96.2%	$93,093,000	95.4%
Active Members for Life	-	-	-	-
Agency Fee	620,000	.7%	792,000	.8%
Educational Support	1,612,000	1.8%	2,590,500	2.7%
Retired - Annual	200,000	.2%	182,000	.2%
Retired - Life	-	-	-	-
Other	150,000	.1%	160,000	.2%
Student	200,000	.2%	240,000	.2%
Sub-Total	$89,582,000	99.2%	$97,057,500	99.5%
Less Allowances	-	-	(250,000)	(.3%)
Sub-Total	$89,582,000	99.2%	$96,807,500	99.2%
Other Income:				
Investment Income and Interest	$ 450,000	.5%	$ 500,000	.5%
Income from Fees and Services	300,000	.3%	250,000	.3%
Sub-Total	$ 750,000	.8%	$ 750,000	.8%
TOTAL INCOME	$90,332,000	100.0%	$97,557,500	100.0%

In accordance with Bylaw 2-7, membership dues for 1985-86 will be: Active $66; Educational Support $33; Retired $2, $5, or $10; Reserve $33; Staff $33; Associate $5; and Student $10. The amount of Active and Educational Support dues allocated to UniServ in 1985-86 will be $13. The Bylaw allows reduced dues for Active and Educational Support members under the following conditions:

(1) in the first year of eligibility to become a member, dues shall be commensurate with the portion of year remaining from the date of joining;
(2) if employed for fifty percent or less of normal schedule, dues shall be one-half of regular dues; and
(3) if laid-off because of a reduction in force, dues shall be one-half of regular dues.

Membership income for 1985-86 has been calculated in accordance with the above. For all practical purposes, Active Members for Life are paid in full.

* Membership numbers are based on full-time equivalents.

ADMINISTRATIVE BUDGET BY AREA

	RESTATED APPROVED 1984-85	%	PROPOSED 1985-86 BUDGET	%	DIFFERENCE
AFFILIATE SERVICES	$34,870,693	38.6%	$37,981,582	39.0%	$3,110,889
COMMUNICATIONS	11,217,616	12.4%	12,185,437	12.5%	967,821
GOVERNMENT RELATIONS	2,949,945	3.3%	3,137,270	3.2%	187,325
HUMAN AND CIVIL RIGHTS	2,445,452	2.7%	2,685,063	2.7%	239,611
INSTRUCTION AND PROFESSIONAL DEVELOPMENT	3,138,948	3.5%	3,270,137	3.3%	131,189
LEGAL SERVICES	8,325,439	9.2%	8,399,023	8.6%	73,584
POLITICAL AFFAIRS	1,871,580	2.1%	2,007,135	2.0%	135,555
RESEARCH	4,353,295	4.8%	5,243,663	5.4%	890,368
ADMINISTRATION	7,048,518	7.8%	7,285,156	7.5%	236,638
BUSINESS AND FINANCE	4,295,061	4.8%	4,742,960	4.9%	447,899
DATA PROCESSING	4,419,485	4.9%	4,288,070	4.4%	(131,415)
GOVERNANCE	5,280,792	5.8%	5,356,429	5.5%	75,637
SUB-TOTAL	$90,216,824	99.9%	$96,581,925	99.0%	$6,365,101
CONTINGENCY	115,176*	.1%	975,575	1.0%	860,399
TOTAL	$90,332,000	100.0%	$97,557,500	100.0%	$7,225,500

* Unallocated balance as of April 1985.

AFFILIATE SERVICES

Affiliate Services is responsible for providing and/or coordinating most NEA programs and services to affiliates and members through a system of regional offices and staff located in six major cities across the country.

Programs administered directly through Affiliate Services are membership recruitment and promotion, leadership development, new member organizing, collective bargaining, crisis assistance, UniServ grants, UniServ and management training. In addition, the field components of three other program areas -- Government Relations, Human and Civil Rights, and Political Affairs -- are delivered through the regional office staff.

The 1985-86 budget places emphasis on the following programs:

- Expanding the NEA membership base with Educational Support Personnel, Higher Education faculty and staff, retired members, and students.
- Organizing for political action, membership growth, legislative action, and collective bargaining.
- Providing information and program systems support for state affiliates.
- Training UniServ and management staff, urban and state affiliate leadership.
- Designing and implementing cooperative projects with state affiliates.

	1984-85	1985-86
MEMBERSHIP PROMOTION AND RECRUITMENT	$2,817,174	$2,867,026
Program 1.1: Develop membership promotion materials and design membership recruitment programs to assist state affiliates in maintaining 90% of potential.	377,298	239,806
Program 1.2: Provide direct assistance for up to 12 targeted state affiliates in the implementation of a comprehensive membership recruitment program based on building effective locals and supporting state affiliate organizational and program development.	1,813,788	2,174,355
Program 1.3: Implement a program of membership recruitment and service for retired members that includes preretirement seminars, publications, a newsletter, support for an advisory committee, and an annual meeting.	441,569	269,067
Program 1.4: Develop and implement an NEA student member program. Provide service component to promote the program through development of materials and model state and institutional programs. Provide staff support to the Student Advisory Committee.	184,519	183,798
LEADERSHIP PROGRAM	$1,252,490	$1,573,538
Program 2.1: Provide training through the regional offices to affiliate leaders as an integral part of Affiliate Services projects in membership recruitment and development, organizing, negotiations, and contract enforcement. Develop comprehensive training projects with state affiliates.	535,320	819,438

AFFILIATE SERVICES (continued)	1984-85	1985-86
Program 2.2: Plan and conduct one summer conference for state presidents, presidents-elect/vice-presidents, secretary-treasurers/treasurers. Plan and conduct six regional workshops/meetings for state presidents.	134,717	143,232
Program 2.3: Provide for the coordination of NEA urban data retrieval, information dissemination, and problem solving. Plan and conduct three regional seminars for leadership from the 200 largest locals and up to 30 urban settings grouped according to experience; provide support services to NCUEA.	166,206	241,151
Program 2.4: Provide training consultation and support for regional staff; research, develop, and validate one new package or revise an existing leadership training package.	416,247	359,717
Program 2.5: Plan and conduct one preconvention conference for student members. Provide specialized training to student chair following election at preconvention conference.	-	10,000
STAFF TRAINING	$1,760,052	$1,778,436
Program 3.1: Provide a systematic program of career development for both pre- and post-ten year UniServ staff in order to support the local, state, and national program priorities and to insure effective delivery of services to locals and members.	1,079,890	1,141,553
Program 3.2: Provide ongoing support and coordination of UniServ program operations to state affiliates through the regional offices and provide for systematic training of UniServ coordinators to assure overall program effectiveness. Implement the program in six regions.	650,162	606,883
Program 3.3: Encourage the employment of minorities and women in state professional staff positions through the development of at least six affirmative action projects with state affiliates.	30,000	30,000
COORDINATION OF SERVICES TO AFFILIATES	$2,232,910	$1,358,177
Program 4.1: Develop and coordinate a comprehensive management consultation and support system for state affiliates, including assistance to state executive directors on management techniques and practices; conduct one national and six regional training conferences. Provide staff support to the Standing Committee on Affiliate Relations. Provide staff support to NCSEA.	238,867	316,695
Program 4.2: Administer cooperative projects program designed to: (a) assist affiliates with organizational difficulties; (b) deal with designated human and civil rights concerns; and (c) assist 11 state affiliates in maintaining services through jointly funded projects.	1,701,670	657,818

AFFILIATE SERVICES (continued)	1984-85	1985-86
Program 4.3: Coordinate information collection and dissemination of information surveys and reports to state affiliates. Administer the NEA local and state compliance program. Assist in planning and conducting organizational and programmatic evaluations.	186,781	180,213
Program 4.4: Continue the development of a management training and development program for executive level affiliate management.	105,592	203,451
BARGAINING AND NEGOTIATIONS SUPPORT	$1,218,239	$1,066,028
Program 5.1: Provide consultation and assistance for up to eight state affiliates in the development and improvement of negotiated contracts through individually designed cooperative projects. Provide on-site staff assistance through the regional offices.	439,298	403,132
Program 5.2: Assist affiliates in securing and maintaining effective negotiated contracts; improve contract enforcement procedures through research, analysis of trends and a multi-phase national training program.	171,821	167,992
Program 5.3: Assist affiliates in extraordinary bargaining and job action situations through consultant staff, shared staff, and the National Education Employees Assistance Fund.	487,120	314,904
Program 5.4: Establish a climate favorable for passage of a collective bargaining law in non-bargaining states through cooperative projects designed to support local de facto collective bargaining.	120,000	180,000
FIELD SUPPORT FOR LEGISLATION AND POLITICAL AFFAIRS	$1,955,941	$2,258,655
Program 6.1: Provide, in cooperation with Government Relations, field support and coordination of NEA's national legislative program.	987,970	1,130,465
Program 6.2: Provide, in cooperation with Political Affairs, field support and coordination of NEA's political action program.	967,971	1,128,190
ORGANIZATIONAL MAINTENANCE	$5,906,993	$7,349,368
Program 7.1: Organize, strengthen and/or secure representation rights in up to 20 urban affiliates.	1,195,585	1,403,065
Program 7.2: Secure exclusive recognition for local affiliates where a competing organization is the recognized representative.	855,513	1,417,175
Program 7.3: Assist locals to overcome challenges to representation rights. Provide shared staffing as requested.	1,044,835	724,314

AFFILIATE SERVICES (continued)	1984-85	1985-85
Program 7.4: Assist state and local affiliates in planning and implementing projects to organize and recruit Educational Support Personnel members. Provide staff support for the Educational Support Personnel national conference. Provide staff support to the Special Committee on Educational Support Personnel.	965,840	1,876,894
Program 7.5: Develop and implement a multifaceted program focus on Higher Education; organize and secure exclusive recognition in up to 15 new higher education units; provide staff support for the higher education national conference. Provide staff support to the Committee on Higher Education.	1,382,127	1,927,920
Program 7.6: Organize and/or secure exclusive recognition in five units in New York and assist in organizing projects in the Northeast Region.	463,093	-
UNISERV	$17,726,894	$19,730,354
Program 8.1: Implement the UniServ program in accordance with UniServ policies and guidelines and provide support for the UniServ Advisory Committee.	206,894	217,354
Program 8.2: Maintain a national network of UniServ staff as described in association policies through the UniServ grant system.	17,520,000	19,513,000
TOTAL	$34,870,693	$37,981,582

COMMUNICATIONS

Communications is responsible for informing the Association's 1.7 million members and the public of NEA policies, programs, and accomplishments. The Communications area regularly reports to NEA members, leaders, and affiliates through its internal network of printed publications and electronic media. Communications also works to shape public opinion and enhance the public's view of NEA and public education through news dissemination, public service information, paid advertising, and efforts to improve the quality of television programming.

The 1985-86 Communications budget provides for the following programs:

- All-member publications (NEA TODAY, an every-member newspaper, and Today's Education, an annual, career-oriented source book designed for use throughout the school year).
- A weekly newsletter for Association leaders (NEA NOW).
- A weekly electronic news service to all state affiliates.
- Ad hoc publications prepared for specialized constituencies, such as Higher Education, Vocational Education, and Educational Support Personnel.
- Direct satellite television transmission from NEA Headquarters to 30 state affiliates by adding nine states to the existing 21 state network.
- Television production facilities to produce training, organizing, information and motivational videotapes supporting various Association program activities.
- A national media campaign featuring paid spots on network television to display the Association's commitment to excellence in education.
- Use of satellite to link NEA with television stations across the country for press statements and interviews.

COMMUNICATIONS (continued)

- Production and distribution of a quality cable television program to show the achievements and challenges of the public schools to the general public.
- Advertising and articles in national publications to display NEA's commitment to excellence in education and to generate support for key objectives of NEA's Action Plan.

	1984-85	1985-86
INTERNAL COMMUNICATIONS	$8,081,682	$8,458,914
Program 1.1: Coordinate communication among leaders, staff, and affiliates through a Communications Center, a writing center, photographic assistance to affiliates, electronic News Service to state affiliates, and publication of This Week at NEA. Maintain a Publishing Production Center to produce camera-ready typeset copy for NEA publications.	1,146,804	1,248,684
Program 1.2: Publish and distribute 43 issues of NEA NOW to 115,000 Association leaders and representatives.	900,974	901,960
Program 1.3: Publish and distribute to all members eight issues of NEA Today, comprising Association news and professional interest materials for members.	2,624,953	2,873,765
Program 1.4: Publish and distribute Association promotion materials and informational and organizational communications to Higher Education, Vocational Education, Educational Support Personnel, and other specialized constituencies.	575,851	548,340
Program 1.5: Publish and distribute 152-page annual, Today's Education, including advertising, to all members in two editions, Elementary/Secondary and Educational Support.	1,991,782	1,891,920
Program 1.6: Publish, sell, and distribute specialized professional development and curriculum resource materials consistent with Association program and policy positions.	(15,000)	(11,000)
Program 1.7: Provide television production, videotaping duplication, and other telecommunication services for NEA program areas and affiliates.	606,008	633,133
Program 1.8: Produce a national video teleconference transmitted by NEA to state affiliates to support federal legislation and political organizing objectives.	50,000	65,000
Program 1.9: Maintain a television communications network for transmission of news, information, and training programming to 30 state affiliates via satellite.	200,310	307,112
EXTERNAL COMMUNICATIONS	$3,135,934	$3,726,523
Program 2.1: Generate and maintain relationships with the media; secure favorable media coverage of the achievements and needs of public education; secure coverage of Association activities. Provide support to the Committee on National Public Relations.	987,434	1,053,718

COMMUNICATIONS (continued)	1984-85	1985-86
Program 2.2: Provide a national media campaign to reach American public via paid spots on national network television; produce complementary radio, television, and print ads for public service placement by state affiliates; solicit state affiliate participation in buying local television placement for national spots on a matched cost basis.	1,848,500	1,848,500
Program 2.3: Place a biweekly column by the NEA President in the Washington Post and Education Week; provide reprints of the President's column to affiliates for local placement; and provide funds to state affiliates for paid advertising in crisis and organizing situations.	300,000	320,000
Program 2.4: Produce a series of television programs on education issues and principles of NEA's Action Plan for Educational Excellence for dissemination to the public via cable television.	-	318,205
Program 2.5: Market magazine articles and print ads that display NEA's commitment to excellence in education and promote support for the principles of NEA's Action Plan.	-	186,100
TOTAL	$11,217,616	$12,185,437

GOVERNMENT RELATIONS

Government Relations is responsible for promoting NEA's federal legislative agenda as adopted by the Representative Assembly, monitoring activities of the Administration and federal agencies, and keeping affiliates and members informed of these programs and activities.

The lobbying staff maintains continuous contact with members of Congress and congressional staff and committees. They advocate for the legislative program on behalf of NEA's objectives and build support among other groups.

The intergovernmental relations staff works with the executive branch and its agencies and has major responsibility for monitoring and analyzing federal regulations. The staff also works with a wide variety of intergovernmental organizations such as the Education Commission of the States, National Conference of State Legislators, National Conference of Mayors, League of Cities, and broad-based coalitions. In addition, they provide clearinghouse information and technical assistance to state associations on legislative initiatives that are national in scope but legislated at the state level.

The information and program services staff prepares and coordinates congressional and other governmental testimony for NEA, provides information and publishes position papers and relevant materials for NEA publications, and prepares material for the legislative teleconference.

The Congressional Contact Teams -- members selected by state affiliates to lobby members of Congress -- coordinate grassroots support and involvement in the NEA legislative program. Lobby-by-Mail is an automated program to allow quick response to congressional initiatives.

In working with NEA affiliates, Government Relations, like Political Affairs, relies heavily on NEA's regional structure and the Government Relations field staff who are funded in Affiliate Services.

GOVERNMENT RELATIONS (continued)	1984-85	1985-86
ACHIEVE FEDERAL LEGISLATION	$ 911,569	$ 946,756
Program 1.1: Lobby members of Congress, their staffs, and key committees (Education, Labor, Judiciary, Appropriations, Budget, etc.) regarding NEA legislative goals. Develop support from other groups for NEA's legislative program as contained in Tier I (federal funding and collective bargaining), Tier II (asbestos abatement, Equal Rights Amendment, etc.), and Tier III (retirement, income taxes, etc.). Provide staff support for the Committee on Legislative and Financial Support for Public Education and for the NEA Friend of Education Award.	911,569	946,756
INTERGOVERNMENTAL RELATIONS	$ 398,127	$ 482,386
Program 2.1: Coordinate NEA activities with government agencies, state associations, and other national organizations to implement objectives of NEA and to respond to state-level activities of groups with national goals, including such issues as ERA, constitutional convention for a balanced budget, and the programs of intergovernmental groups and/or the American Legislative Exchange Council.	398,127	482,386
INFORMATION AND PROGRAM SERVICES	$1,640,249	$1,708,128
Program 3.1: Provide support for a grassroots NEA member lobby program of at least two Congressional Contact Team members per Congressional District to influence Congress.	583,950	613,949
Program 3.2: Maintain and utilize an annually updated system for pre-authorized mail for 300,000 members for communicating with Congress on key issues.	397,291	394,158
Program 3.3: Identify key issues for NEA voting record; communicate legislative and intergovernmental issues/activities regularly and frequently to affiliates, members, Congressional Contact Team coordinators, and regional staff. Develop testimony, policy papers, brochures, briefing memos, and other information vehicles to present NEA goals to Congress and inside and outside the organization.	607,758	652,771
Program 3.4: Conduct a national legislative teleconference to promote the passage of the NEA legislative agenda.	51,250	47,250
TOTAL	$2,949,945	$3,137,270

HUMAN AND CIVIL RIGHTS

Human and Civil Rights is responsible for monitoring rights programs relating to education, providing liaison with the national human and civil rights movement, and implementing rights programs within the Association.

NEA Human and Civil Rights programs are designed to:

- ° Maintain NEA as the leading institution in the advancement of human and civil rights in education.
- ° Inform affiliates and members of human and civil rights issues related to NEA and public education.
- ° Advocate strategies to assist affiliates and members in advancing human and civil rights.
- ° Monitor internal Association matters with regard to human and civil rights.

Human and Civil Rights programs provide assistance, information, and strategies to help members and affiliates deal with such matters as: minority and women's leadership training, affirmative action employment, desegregation, minority issues, minority religious and cultural group issues, academic freedom, freedom of inquiry, race and sex equity, equal employment opportunity, equity in educational technology, rights of members in the evaluation process, and missing and abused children.

	1984-85	1985-86
LEADERSHIP PROGRAMS	$1,043,876	$1,104,739
Program 1.1: Provide program development assistance and cadre training to assist state affiliates in achieving minority involvement objectives. Support two state-based Minority Leadership Training programs: Organizational Awareness and Leadership Skills. Conduct up to six regional minority leadership seminars. Provide program assistance grants to five states. Assess minority involvement and leadership development in all states. Monitor and address issues of importance to members of each ethnic minority group. Produce and distribute information on selected issues. Support ethnic minority observances, i.e., Black History Week, Asian Pacific Islander Week, National Hispanic Heritage Week, Native American Awareness Week. Establish and maintain cooperative relationships with national organizations concerned with minority issues. Provide staff support for the Committee on Minority Affairs.	48[illegible],126	525,127
Program 1.2: Support the delivery of Multicultural Sex Equity Training programs by providing cadre training and supporting state training delivery of: Personal Leadership Skills, Group Process Skills, and Organizational Analysis Skills. Maintain a peer trainer network to provide training to state cadres. Review all training and revise if necessary. Assess women's involvement in all states. Provide staff assistance to the Women's Concerns Committee.	311,300	310,641
Program 1.3: Conduct a conference on the concerns of minorities and women prior to the 1986 Representative Assembly.	101,552	123,734
Program 1.4: Provide technical assistance and project grants to state affiliates to assess and address problems of interpersonal relations.	149,898	145,237

HUMAN AND CIVIL RIGHTS (continued)	1984-85	1985-86
QUALITY INTEGRATED EDUCATION	$350,820	$258,502
Program 2.1: Provide assistance and project grants to assist states in achieving quality integrated education. Initiate efforts on desegregation, drug abuse, violence in the schools, teenage suicide, student competency tests, and extremist groups. Disseminate information to leaders and members on various aspects of quality integrated education.	197,923	154,863
Program 2.2: Provide affiliates and members with materials on child abuse; members' rights and responsibilities; techniques for dealing with suspected child abuse; and child abuse prevention programs. Provide grants to affiliates for programs to inform and train members. Cooperate with national organizations concerned with missing children and promote member assistance in locating such children. Maintain cooperative relationship with national organizations on the issue of child abuse and missing children.	152,897	103,639
AFFIRMATIVE ACTION	$ 31,693	$ 63,600
Program 3.1: Maintain a clearinghouse for information on seniority and affirmative action; analyze and report on progress towards affirmative action employment objectives of the Association; assist states in developing and implementing effective affirmative action employment plans. Monitor NEA, UniServ affirmative action efforts and address issues relative to affirmative hiring and retention.	31,693	63,600
HUMAN RELATIONS	$184,155	$211,648
Program 4.1: Provide annual recognition of individuals and affiliates for outstanding efforts in human and civil rights through a national awards program and banquet. Provide staff assistance to the Committee on Human Relations.	56,629	82,825
Program 4.2: Provide staff support to conduct the national conferences to provide information and strategies for dealing with human and civil rights issues.	115,719	128,823
Program 4.3: Conduct a national writing competition for high school students in cooperation with the Association for the Study of Afro-American Life and History to honor H. Councill Trenholm.	11,807	-
FREEDOM TO TEACH AND TO LEARN	$309,919	$378,604
Program 5.1: Maintain the Center for Freedom of Inquiry to provide information and strategies to members and affiliates in advocating the freedom to teach and to learn; and to defeat the increased efforts of extremists in attacks on public education and school employees, and in promotion of censorship and sectarian practices in	309,919	378,604

HUMAN AND CIVIL RIGHTS (continued)	1984-85	1985-85
public schools. Maintain cooperative working relationships with national organizations that support freedom of inquiry. Provide staff assistance to the Committee on Civil Rights.		
EQUITY ISSUES	$524,989	$667,970
Program 6.1: Advocate sex equity and promote effective federal and state anti-discrimination laws, regulations, and enforcement in cooperation with national organizations and through continuation of coalitions formed for passage of the Equal Rights Amendment. Assist state affiliates in advocating sex equity and in developing the capacity to achieve comparable worth, pay equity.	303,084	295,957
Program 6.2: Advocate equity and promote federal and state anti-discrimination laws and regulations; counter discrimination based on race, religion, disability, national origin. Review and monitor evaluation procedures and educational technology regarding equity for minorities and females. Inform members of rights. Develop prototype state programs on race equity and educational technology. Provide information to members on minority religious and cultural groups. Continue support for NAACP Legal Defense Fund.	221,905	372,013
TOTAL	$2,445,452	$2,685,063

INSTRUCTION AND PROFESSIONAL DEVELOPMENT

Instruction and Professional Development (IPD) is responsible for programs relating to excellence in the education profession and in learning opportunities. The 1985-86 IPD budget incorporates the following programs:

Excellence in the Education Profession:

- Analyzing trends and providing information regarding teacher certification standards and issues; working with state affiliates to strengthen certification standards; and establishing NCATE as the national agency for accountability and quality control of teacher preparation programs.
- Expanding and disseminating information on school personnel, evaluation practices, and consulting with affiliates on public policy issues related to evaluation.
- Assessing and reporting to members the impact of technology on education employment and the stratification of positions, as well as the impact on higher education of developing post-secondary education services provided by business.

Excellence in Learning Opportunities:

- Providing to affiliates publications designed to help members make the best use of technology and increasing the capacity of the NEA Educational Computer Service to maintain high standards in education software development.
- Providing financial support to the NEA Mastery Learning Project, and assistance to state and urban affiliates to establish conditions which support effective teaching practices.
- Developing and testing in local affiliates an instrument to collect "effective schools" data; providing to affiliates guidelines for the management of building-based school improvement plans.

- Encouraging parental involvement in student learning through broadened local implementation of the Teacher-Parent Partnership Program, and collaboration with the PTA in the production of joint pamphlets.
- Advocating lifelong learning opportunities.
- Providing assistance to affiliates dealing with critical education reform issues.
- Providing financial support to the National Foundation for the Improvement of Education for administration and proposal development functions.

	1984-85	1985-86
EXCELLENCE IN THE EDUCATION PROFESSION	$1,713,627	$1,616,186
Program 1.1: Analyze trends and provide information to state affiliates to ensure that teacher certification standards are maintained and strengthened. Provide grants and technical assistance to ten state affiliates to support specific strategies to achieve stronger standards for initial and continuing certification. Establish NCATE as the national agency for accountability and quality control of teacher preparation programs; insure full participation of NEA members in all aspects of NCATE. Conduct a pre-Representative Assembly conference on teacher certification and professional standards. Publish and disseminate four brochures for student members in collaboration with the American Association of Colleges for Teacher Education and the Association of Teacher Educators.	876,341	816,122
Program 1.2: Expand and update for all school personnel the Evaluation Data Base Manual developed during 1984-85. Produce and disseminate to NEA state and local affiliates modules for evaluation based on the purposes and methods of evaluation; provide grants and technical assistance to ten affiliates seeking to impact state and local policy development; train IPD state staff, UniServ staff, and regional staff to utilize the Evaluation Data Base and modules for evaluation practice. Establish a capacity for efficient communication with regional staff and state affiliates; analyze the use of tests for evaluation and continuing certification.	637,710	688,766
Program 1.3: Assess the impact of technology on employment practices and stratification of positions for instructional and support personnel. Examine current trends in higher education enrollment and programs and post-secondary education provided by business to determine employment trends and service needs of the future.	199,576	111,298
EXCELLENCE IN LEARNING OPPORTUNITIES	$1,425,321	$1,653,951
Program 2.1: Promote the use of the NEA Educational Computer Service as a means by which education personnel advocate for high standards in software development. Expand the capacity of NEA affiliates to help members make the best use of technology through a series of four publications.	160,900	117,881

INSTRUCTION AND PROFESSIONAL DEVELOPMENT (continued)	1984-85	1985-86
Program 2.2: Support the NEA Mastery Learning Project to define the procedures and support required to establish mastery as the standard for excellence in education. Consult with experts in curriculum, instructional methods, and student assessment techniques to provide six publications and a training program for locals to support improved student learning. Provide grants and technical assistance for up to eight urban projects to support improved teaching methods. Provide administrative support to the National Foundation for the Improvement of Education.	464,650	588,684
Program 2.3: Develop data collection instrument for use by affiliates based on factors identified in effective schools research such as clarity of instructional objectives, adequate materials to support appropriate teaching techniques, and time to teach. Develop guidelines for local affiliates to initiate building-based school improvement plans by identifying bargaining and other strategies to govern local building-based improvement procedures. Provide staff support to conduct the national conferences to explore the bargaining, instructional, and organizing support required by building-based improvement procedures. Provide staff support to the IPD Committee.	354,428	468,731
Program 2.4: Encourage parental involvement in student learning: through the Teacher-Parent Partnership Program implemented in two locals in six targeted states by providing materials and training to site leaders, and provide additional prototype activities for follow-up to current pilot sites; and in collaboration with the National PTA develop a series of four pamphlets for dissemination through both organizations on issues such as maintaining communication with schools, students as active learners, and how to select educational software.	289,669	252,561
Program 2.5: Advocate for diverse lifelong learning opportunities with program emphasis on support for early childhood development and adult education programs as well as sound vocational education programs. Provide staff support to the Vocational, Technical, and Practical Arts Educators Committee.	20,321	105,654
Program 2.6: Provide grants and technical assistance for up to 12 states to conduct state IPD conferences on instructional effectiveness.	135,353	120,440
TOTAL	$3,138,948	$3,270,137

LEGAL SERVICES

Legal Services is responsible for administering six programs designed to provide NEA members with comprehensive legal protection and to protect officers and staff from personal financial liability in the event of lawsuits resulting from their authorized work for the association.

- The Kate Frank/DuShane Unified Legal Services Program (ULSP) provides legal assistance to members nationwide in challenging adverse job actions. The program is operated jointly by NEA and state affiliates.
- The Educators Employment Liability (EEL) Program provides protection for members from personal financial liability when they are sued by parents and students as a result of employment-related activities.
- The Association Professional Liability (APL) Program protects officers and staff of NEA and its state and local affiliates in suits brought against them as a result of their authorized work for the association.
- The NEA Fidelity Bond protects the associations at the national, state, and local levels from financial loss as the result of dishonest acts by staff, officers, or members of the association.
- The Attorney Referral Program (ARP) provides low-cost legal assistance for members' personal legal problems not related to employment. NEA members who seek the counsel of participating law firms receive consultations at no charge and additional services at fees that are 30% below customary rates.
- The Organizing Activity Legal Assistance Program provides financial reimbursement to state affiliates for legal expenses incurred in connection with certain organizing activities.

	1984-85	1985-86
LEGAL SERVICES PROGRAM	$8,325,439	$8,399,023
Program 1.1: Administer the Kate Frank/DuShane Unified Legal Services Program (ULSP), a nationwide job defense program, in accordance with guidelines approved by the NEA Board of Directors. Provide technical assistance to state affiliates in managing program costs and promoting NEA's commitment to job protection.	6,345,457	6,284,980
Program 1.2: Administer the Educators Employment Liability (EEL) Program, the Association Professional Liability (APL) Program, and the NEA Fidelity Bond.	1,918,507	1,932,508
Program 1.3: Administer the Attorney Referral Program: promote and monitor the program in states where it has been set up; assist new states in establishing the program.	61,475	61,535
Program 1.4: Administer the organizing activity legal assistance program, a two-year pilot program, to provide financial reimbursement to state affiliates for certain organizing activities.	-	120,000
TOTAL	$8,325,439	$8,399,023

POLITICAL AFFAIRS

Political Affairs is responsible for administering NEA's bipartisan political action program, the purpose of which is to secure the election of pro-education candidates for federal office.

In pursuing that goal, Political Affairs coordinates the operation of NEA-PAC, NEA's political action arm, conducts fundraising activities, and maintains liaison

with the Democratic and Republican Parties, other political organizations, labor unions, government officials, and the Federal Election Commission.

Political Affairs also develops and implements training programs for members and staff on all phases of campaigning and electoral politics, including fundraising, phone banks, voter registration, and get-out-the-vote campaigns. In working with affiliates, Political Affairs, like Government Relations, relies heavily on NEA's regional structure and the Government Relations field staff who are funded in the Affiliate Services budget.

	1984-85	1085-86
POLITICAL ACTION	$1,871,580	$2,007,135
Program 1.1: Administer the affairs of the NEA Political Action Committee: conduct two NEA-PAC Council meetings; implement candidate endorsement process; assist the state affiliates, through the regional offices, in implementing NEA-PAC collection systems; conduct special fundraisers; and provide staff support to NEA-PAC Council meetings.	678,015	713,907
Program 1.2: Maintain a political data systems and services capability that provides base political data on all members, tracks members who are political activists, assists in NEA-PAC fundraising, and facilitates the election of pro-education candidates for public office.	446,280	472,626
Program 1.3: Assist state and local affiliates, through the regional offices, in organizing and training a minimum of 30,000 members for political activity within the Democratic and Republican Parties, using the NEA Series on Practical Politics.	356,227	382,030
Program 1.4: Secure membership support for congressional candidates endorsed by NEA-PAC; gather survey information for potential candidate support; and support local and state membership programs for political action.	365,344	397,951
Program 1.5: Participate in Democratic and Republican Party meetings, midterm conventions, and other party activities to establish education as a significant platform issue and to secure support for the NEA legislative program.	25,714	40,621
TOTAL	$1,871,580	$2,007,135

RESEARCH

Research is responsible for providing timely and accurate data and information in usable form to NEA affiliates and administrative areas. To accomplish this, Research is organized into four functional areas:

The Research Computer Network provides a data base of information on school districts and population, as well as standard computer applications, to the state affiliates for legislative, political, and bargaining activities.

Strategic Information Services develops research based information to enable the Association to plan strategies, respond to important current compensation and related issues, identify developing trends, and supply information in response to special requests from leaders and staff.

Through Surveys the Association analyzes and reports the opinions of teachers and other members, provides the state and local affiliates with necessary data about instruction and membership promotion, and conducts analyses of the organizational implications of current issues and trends.

Economics and Collective Bargaining provides information on school finance and employee compensation and working conditions. It is used for organizing, bargaining, and legislative activities at all levels of the Association.

	1984-85	1985-86
RESEARCH COMPUTER NETWORK	$1,845,133	$1,837,522
Program 1.1: Develop and enhance computer software, documentation, and training for a Research Computer Network in support of programmatic areas for NEA and its affiliates. Provide support for state terminals, printers, and communication lines and provide instruction on collection and interpretation of research data and information. Develop training modules and deliver training and consultation to NEA programmatic areas, state and regional staff, and affiliate leadership on use of data and information, with emphasis on RCN data.	1,415,928	1,440,046
Program 1.2: Develop data systems and data capture to support political action for affiliates and NEA program areas to be provided over the Research Computer Network in coordination with Political Affairs.	165,696	178,005
Program 1.3: Consult with NEA Research staff on data analysis and computer applications for projects or studies. Analyze data for research publications and consult with staff on technical program development.	263,509	219,471
STRATEGIC INFORMATION SERVICES	$781,725	$994,546
Program 2.1: Provide consultation to the Association and its affiliates using data based information for planning and developing action strategies on issues related to compensation systems and the human and material resources required to achieve educational excellence. Produce periodic reports and special publications on current issues of strategic importance to the bargaining, educational, and organizing priorities of the Association and its affiliates in elementary, secondary, and higher education. Identify emerging trends and anticipate developments with significant implications for organizational priorities and programs. Provide access to selected automated and printed data on statistics and special topics or referrals on information sources and their uses in response to requests from the leadership and staff of the Association and its affiliates.	765,153	975,452

RESEARCH (continued)	1984-85	1985-86
Program 2.2: Provide technical assistance to support the NEA Resolutions Committee.	16,572	19,094
SURVEYS	$ 802,664	$1,300,406
Program 3.1: Design, revise, and conduct prepackaged and unique opscan surveys in conjunction with state and local affiliates up to the current system's capacity to respond to 350 requests for surveys from the field. Decentralize certain parts of the opscan survey system.	263,118	280,216
Program 3.2: Design and conduct four mail and nine telephone opinion surveys for state and local affiliates and provide training in telephone polling skills.	136,818	167,575
Program 3.3: Design, conduct, and interpret three mail and 20 telephone surveys for other NEA programs.	260,784	433,467
Program 3.4: Design and conduct three national mail surveys; two public opinion telephone surveys; two member opinion telephone surveys; and coordinate placement of questions on national public opinion polls.	141,944	419,148
ECONOMICS AND COLLECTIVE BARGAINING	$ 923,773	$1,111,189
Program 4.1: Provide current information, policy analysis, and consultation on economic and school finance issues to enable leadership of NEA and affiliates to present a well-reasoned case, backed by facts, to fund education at a level that will assure high quality and appropriate compensation, working conditions, and provision for retirement for education personnel.	334,182	352,875
Program 4.2: Develop reports and analyses of current conditions and prospective trends in compensation, working conditions, pensions, and other benefits in the education sector to enable leadership of NEA and affiliates to present a well-reasoned case for appropriate compensation of educatior personnel.	407,499	404,839
Program 4.3: Provide information to enable NEA members and state affiliate staff assigned to monitor retirement issues, and member trustees of public employee retirement systems to keep up with developments in the retirement and employee benefit fields. Provide staff support to the NEA Standing Committee on Benefits.	182,092	353,475
TOTAL	$4,353,295	$5,243,663

ADMINISTRATION

Administration is responsible for the overall supervision and execution of all Association programs. It provides staff support for the Executive Officers, Executive Committee, Board of Directors, Review Board, Committee on Program and Budget, Committee on Constitution, Bylaws, and Rules, and Committee on Peace and International Relations. Additional functions include:

- ° Providing legal assistance to officers and staff of NEA and its affiliates.
- ° Maintaining contacts with education organizations in other countries.
- ° Supervising employee relations, personnel and benefits administration, coordinating staff training, and negotiating and monitoring staff contracts.
- ° Maintaining the Association's property in a manner conducive to the health and safety of officers, staff, and visitors.
- ° Providing printing and mailing facilities to support NEA programs.
- ° Administering the Association's corporate insurance.
- ° Maintaining the Association's purchasing operation and health services.
- ° Coordinating contractual and logistical arrangements for NEA meetings.

	1984-85	1985-86
ADMINISTRATIVE SERVICES	$7,048,518	$7,285,156
Program 1.1: Provide funding for the Executive Director, Deputy Executive Director, Assistant Executive Director for Governance and Policy Coordination, and their respective staffs; provide staff support to Executive Officers, Executive Committee, and Board of Directors; provide oversight and supervision of all Association activities and staff; provide capacity for long-range planning function; and provide staff support to standing and other committees and activities.	1,734,523	1,934,225
Program 1.2: Provide legal assistance to officers and staff of NEA and its affiliates; plan and coordinate annual meeting of the National Association of School Personnel Attorneys.	831,920	904,520
Program 1.3: Provide assistance to international educators and organizations; assist state affiliates in establishing and supporting committees and cadres of members to promote peace and international relations activities; coordinate with outside organization to disseminate instructional materials on peace and global education; provide staff support for the Committee on Peace and International Relations.	298,707	299,622
Program 1.4: Negotiate and administer staff contracts, personnel management, benefits administration, and staff development.	774,358	884,048
Program 1.5: Provide funding for archives, health services, internal services, and purchasing; fund administration and upkeep of the building and property of the Association to maintain conditions conducive to the health and safety of officers, staff, and visitors to NEA headquarters; provide funding for general casualty and liability insurance, telephone switchboard, and support services of printing, and the receipt and distribution of mail.	3,181,505	2,999,741
Program 1.6: Coordinate all contractual and logistical arrangements for NEA meetings.	227,505	263,000
TOTAL	$7,048,518	$7,285,156

BUSINESS AND FINANCE

Business and Finance is responsible for the fiscal operations of the Association. The major functions of the area are:

- Accounting, including receipt and disbursement of all funds as well as maintenance of accounting records.
- Preparation of periodic financial reports for NEA governance, and the annual audit.
- Administration of NEA's banking and investment activities.
- Administration of NEA's standardized membership processing system and on-line accounting system for NEA affiliates.

This area also provides administrative accounting services to the Political Affairs area, staff assistance to the Elections and Credentials Committees, and allocation, certification, and registration of NEA Representative Assembly delegates.

	1984-85	1985-86
BUSINESS SERVICES	$4,295,061	$4,742,960
Program 1.1: Provide funding to carry out basic accounting functions of NEA, including receipt and disbursement of funds, maintenance of accounting records, preparation of periodic financial reports for NEA governance and applicable tax returns, payment of membership processing rebate and collection of membership dues from state affiliates, and provide funding for annual audit and interest on borrowing.	1,230,920	1,257,645
Program 1.2: Provide funding for technical and consultative services to state affiliates and assist affiliates in conversion to the on-line accounting system.	675,810	746,000
Program 1.3: Provide accounting services to the NEA Political Action Committee.	82,450	83,335
Program 1.4: Provide funding for maintenance of national membership records and processing services, and for service and training support to states operating under the standardized membership systems; provide funding for the allocation, certification, and registration of delegates to the Representative Assembly; provide staff support to the Credentials Committee and the Elections Committee.	2,705,881	2,655,980
TOTAL	$4,295,061	$4,742,960

DATA PROCESSING

Data Processing is responsible for maintaining computerized information on various NEA programs for state and local affiliates and NEA administrative areas to use in carrying out this function.

Data Processing has two computers and a sophisticated software configuration located at NEA headquarters as well as three regional centers located in Denver, Colorado; Burlingame, California; and Washington, D.C. The regional centers are key input centers for the standardized membership system, which in 1985-86 will provide service for 44 states with approximately 1,096,055 members.

Data Processing is responsible for the research, development, and implementation process for office automation technologies within the NEA environment. In addition to these functions, Date Processing will continue to provide consulting services to the state affiliates in the area of technology planning.

Other major users of Data Processing are:

Affiliate Services -- UniServ grants and UniServ directors' training activity, leadership training data, and special organizing programs are maintained.

Government Relations and Political Affairs -- Membership lists for political purposes, surveys and polling, and voting records of legislators are maintained.

Research -- The Research Computer Network is available to all state affiliates. Surveys of all types and descriptions are processed through Data Processing; local school budgets, salary schedules, and contracts are maintained; and financial data for federal and state governments are maintained.

	1984-85	1985-86
DATA PROCESSING SERVICES	$4,419,485	$4,288,070
Program 1.1: Provide funding to carry out data processing functions of NEA, including computerized accounting and reporting system, statistical processing for research and program evaluation, regionalized membership processing system, bargaining support system network, consultative services to affiliates, and office automation implementation for NEA.	2,410,951	2,192,436
Program 1.2: Provide funding for three regional processing centers in Burlingame, California; Denver, Colorado; and Washington, D.C., to support data entry and computer processing for membership, political affairs, research for state affiliates, DuShane, accounting, payroll, and personnel for the NEA.	2,008,534	2,095,634
TOTAL	$4,419,485	$4,288,070

GOVERNANCE

Through their elected representatives -- the Executive Officers, Executive Committee, Board of Directors, and Representative Assembly -- individual members have a continuing voice in the operation of the Association. The governance structure provides the framework from which emerge the policies and decisions that govern program activities.

Acting as advisory committees to the governing bodies, the standing and special committees are a primary resource for the elected leaders and the Representative Assembly in the formulation of policy. The Review Board is vested with judicial powers that are described in the Constitution and Bylaws.

GOVERNANCE (continued)	1984-85	1985-86
REPRESENTATIVE ASSEMBLY	$1,589,076	$1,649,525
Program 1.1: Resolutions Committee - Provide financial support for the 5-member Editing Committee and 121-member full Committee for a 3-day spring meeting in Washington and a 3-day meeting prior to the Annual Meeting.	266,655	270,627
Program 1.2: Committee on Constitution, Bylaws, and Rules Provide financial support for 5-member Committee for two 2-day meetings in Washington, a 1-day meeting prior to the Annual Meeting, and expenses during the Annual Meeting; also includes costs related to special hearings, as necessary.	27,800	27,800
Program 1.3: Credentials Committee - Provide financial support for 5-member Committee for two 2-day meetings in Washington, a 2-day meeting prior to the Annual Meeting, and expenses during the Annual Meeting.	19,520	20,476
Program 1.4: Elections - Provide financial support for the conduct of elections at the Representative Assembly.	25,665	17,611
Program 1.5: Committee on Program and Budget - Provide financial support for 8-member Committee for three 3-day regular meetings in Washington, meetings in conjunction with Board meetings, and subcommittee participation in regional and other meetings.	26,662	26,662
Program 1.6: Distribution of Reports - Provide reports and documents of the Representative Assembly.	163,002	172,777
Program 1.7: Convention Guests - Provide financial support for invited visitors at the Annual Meeting, including international guests and speakers.	9,472	9,472
Program 1.8: Annual Meeting Arrangements - Provide financial support for instructional issues sessions, rental of facilities, hall decorations, labor, television, sound and communication systems, busing, stenographer, parliamentarian, and Friendship Night for the 1986 Annual Meeting; begin planning for the 1987 Annual Meeting.	1,030,950	1,084,750
Program 1.9: Past Presidents - Provide financial support for ATA-NEA Past Presidents to attend the Annual Meeting.	19,350	19,350
BOARD OF DIRECTORS	$1,754,795	$1,675,793
Program 2.1: Official Meetings - Provide financial support for 120 members for two 2-day and two 3-day meetings in Washington, a 1-day meeting in conjunction with the Annual Meeting, and full expenses during the Annual Meeting.	755,309	610,157
Program 2.2: In-State Expenses - Provide financial support for 107 state directors in performance of official duties within their home states, and student and retired directors, consistent with established guidelines.	325,400	365,450

GOVERNANCE (continued)	1984-85	1985-86
Program 2.3: Out-of-State Meetings - Provide financial support for 107 state, two student, and three retired directors to attend one NEA-sponsored meeting outside their home states; also includes funding for minority directors to attend regional MLP conferences.	54,400	67,500
Program 2.4: At-Large Expenses - Provide financial support for four at-large directors elected at the Representative Assembly in connection with activities of constituent groups.	13,400	17,400
Program 2.5: At-Large Out-of-State Meetings - Provide financial support for four at-large directors elected at the Representative Assembly to attend one NEA-sponsored meeting outside their home states.	1,600	2,000
Program 2.6: Regional Leadership Conferences - Provide financial support for one conference in each of the six NEA regions.	275,450	280,450
Program 2.7: Directors' Benefits - Provide financial support for travel credit allowance based on 45 overnights and reimbursement for lost/stolen/damaged items.	26,500	31,500
Program 2.8: Support Services - Provide technical support for meetings of the Board of Directors and individual directors; provide support for carrying out specific directives of the Board.	53,251	53,251
Program 2.9: Substitute/Salary Loss - Reimburse substitute costs or loss of salary when directors are absent from school on official NEA business.	75,000	75,000
Program 2.10: Committees - Provide financial support for six internal and four special committees of the Board, as well as Board liaisons to nongovernance affiliates.	174,485	173,085
EXECUTIVE COMMITTEE	$ 750,585	$ 877,483
Program 3.1: Executive Officers' Salary and Employee Benefits - Provide salaries and fringe benefits for the three Executive Officers: President, $79,301; Vice-President, $67,358; Secretary-Treasurer, $67,358; plus 20 percent employee benefits for each.	246,941	256,819
Program 3.2: Executive Officers' Living Allowance - Provide financial support for the three Executive Officers' living allowance, based on 20 percent of salary, as well as moving expenses for officers.	49,156	50,802
Program 3.3: Executive Officers' Other Travel - Provide financial support for travel of the three Executive Officers while in the performance of their official duties.	60,000	90,000

GOVERNANCE (continued)	1984-85	1985-86
Program 3.4: Executive Officers' Benefits - Provide financial support for companions of the three Executive Officers to accompany the officer to the Annual Meeting and to one international meeting; provide reimbursement for lost/stolen/damaged items.	10,500	12,900
Program 3.5: Other Travel - Provide financial support for travel of the six members of the Executive Committee while on official NEA business; provide for others to travel on Association business as requested by the President.	100,700	124,700
Program 3.6: Released-Time Arrangements - Provide financial support for released-time for the six members of the Executive Committee.	130,000	140,000
Program 3.7: Officers' Benefits - Provide financial support for a taxable stipend for the six members of the Executive Committee, as well as reimbursement for lost/stolen/damaged items.	24,600	38,100
Program 3.8: Official Meetings - Provide financial support for nine meetings of the Executive Committee, including four in conjunction with the Board of Directors, attendance at the Board meeting held in conjunction with the Annual Meeting, expenses during the Annual Meeting, and a 3-day retreat.	87,466	83,014
Program 3.9: Other Meetings - Provide financial support for one 1-day meeting of the NEA President and presidents of state affiliates.	-	39,926
Program 3.10: Support Services - Provide technical support for meetings of the Executive Committee and individual Committee members; provide support for carrying out specific directives of the Committee.	41,222	41,222
OTHER GOVERNANCE	$1,186,336	$1,153,628
Program 4.1: Standing Committees - Provide financial support for nine standing committees, one advisory committee, and NEA representatives to NCATE.	268,315	268,315
Program 4.2: Review Board - Provide financial support for the nine-member Review Board.	15,752	15,752
Program 4.3: World Confederation of Organizations of the Teaching Profession - Pay NEA dues in the WCOTP.	555,000	465,000
Program 4.4: NEA Handbook, Proceedings, and Minutes - Produce and distribute NEA Handbook, Proceedings, and Minutes.	75,249	50,565

GOVERNANCE (continued)	1984-85	1985-86
Program 4.5: International Travel - Provide financial support for NEA representatives visiting international teacher organizations, representatives of international teaching organizations visiting NEA, participation in the North American Regional WCOTP Conference, and participation in the WCOTP Assembly.	95,000	64,000
Program 4.6: Small States - Provide supplemental grants to certain small states whose dues efforts meet or exceed the national average, with use of funds limited to programmatic needs.	177,020	200,000
Program 4.7: National Conferences - Provide financial support to hold three national issues conferences, each covering the themes of instruction and professional development, human and civil rights, and collective bargaining, and two national constituent conferences, one for higher education and one for educational support personnel.	-	89,996
TOTAL	$5,280,792	$5,356,429

ADMINISTRATIVE AREA: AFFILIATE SERVICES

	RESTATED 1984-85 BUDGET	1985-86 PROPOSED BUDGET	DIFFERENCE
Professional	105.00	110.00	5.00
Support	37.00	36.00	(1.00)
Total	142.00	146.00	4.00
Salaries and Benefits	$ 8,449,625	$ 9,327,035	$ 877,410
Overtime	17,745	20,950	3,205
Travel Credit Allowance	192,000	203,656	11,656
Total Personnel Costs	$ 8,659,370	$ 9,551,641	$ 892,271
Travel - Staff	2,645,400	2,895,800	250,400
Travel - Other	1,318,608	1,361,648	43,040
State and Local Projects	21,348,644	23,522,750	2,174,106
Publication Costs	-	-	-
Office Expenses	431,278	458,353	27,075
Administrative Expenses	207,688	247,375	39,687
Machinery and Equipment	4,435	8,000	3,565
Materials and Supplies	257,150	162,500	(94,650)
Outside Services	152,300	155,700	3,400
Sub-Total	$35,024,873	$38,363,767	$3,338,894
Service Charges:			
Data Processing	14,450	14,070	(380)
Printing	132,110	157,050	24,940
Mailing	82,520	106,385	23,865
Telecommunications	1,300	1,200	(100)
Photo	100	800	700
Communications	2,300	1,600	(700)
Recovery - External	(386,960)	(663,290)	(276,330)
TOTAL	$34,870,693	$37,981,582	$3,110,889

ADMINISTRATIVE AREA: COMMUNICATIONS

	RESTATED 1984-85 BUDGET	1985-86 PROPOSED BUDGET	DIFFERENCE
Professional	34.75	35.75	1.00
Support	27.25	29.25	2.00
Total	62.00	65.00	3.00
Salaries and Benefits	$ 2,934,638	$ 3,258,630	$323,992
Overtime	24,500	18,000	(6,500)
Travel Credit Allowance	250	-	(250)
Total Personnel Costs	$ 2,959,388	$ 3,276,630	$317,242
Travel - Staff	216,600	211,600	(5,000)
Travel - Other	135,100	124,100	(11,000)
State and Local Projects	-	-	-
Publication Costs	5,877,146	5,902,746	25,600
Office Expenses	294,210	274,510	(19,700)
Administrative Expenses	97,257	138,465	41,208
Machinery and Equipment	12,540	12,540	-
Materials and Supplies	270,300	251,300	(19,000)
Outside Services	3,046,675	3,673,553	626,878
Sub-Total	$12,909,216	$13,865,444	$956,228
Service Charges:			
Data Processing	128,150	154,093	25,943
Printing	70,000	70,000	-
Mailing	96,700	96,700	-
Telecommunications	17,000	17,000	-
Photo	-	-	-
Communications	2,500	2,500	-
Recovery - Internal	(78,000)	(93,000)	(15,000)
Recovery - External	(1,927,950)	(1,927,300)	650
TOTAL	$11,217,616	$12,185,437	$967,821

ADMINISTRATIVE AREA: GOVERNMENT RELATIONS

	RESTATED 1984-85 BUDGET	1985-86 PROPOSED BUDGET	DIFFERENCE
Professional	19.25	19.25	-
Support	10.25	11.25	1.00
Total	29.50	30.50	1.00
Salaries and Benefits	$1,544,625	$1,709,090	$164,465
Overtime	9,000	8,000	(1,000)
Travel Credit Allowance	6,250	4,300	(1,950)
Total Personnel Costs	$1,559,875	$1,721,390	$161,515
Travel - Staff	190,101	152,159	(37,942)
Travel - Other	225,490	185,940	(39,550)
State and Local Projects	212,500	268,500	56,000
Publication Costs	-	-	-
Office Expenses	82,874	105,204	22,330
Administrative Expenses	96,350	109,542	13,192
Machinery and Equipment	22,600	17,100	(5,500)
Materials and Supplies	-	-	-
Outside Services	362,250	369,250	7,000
Sub-Total	$2,752,040	$2,929,085	$177,045
Service Charges:			
Data Processing	158,330	158,610	280
Printing	12,020	12,020	-
Mailing	21,215	21,215	-
Telecommunications	5,000	15,000	10,000
Photo	1,040	1,040	-
Communications	300	300	-
TOTAL	$2,949,945	$3,137,270	$187,325

ADMINISTRATIVE AREA: HUMAN AND CIVIL RIGHTS

	RESTATED 1984-85 BUDGET	1985-86 PROPOSED BUDGET	DIFFERENCE
Professional	18.25	18.25	-
Support	13.25	13.25	-
Total	31.50	31.50	-
Salaries and Benefits	$1,565,725	$1,671,340	$105,615
Overtime	-	-	-
Travel Credit Allowance	7,250	7,300	50
Total Personnel Costs	$1,572,975	$1,678,640	$105,665
Travel - Staff	119,100	131,100	12,000
Travel - Other	198,000	177,250	(20,750)
State and Local Projects	245,500	281,500	36,000
Publication Costs	-	-	-
Office Expenses	47,872	37,290	(10,582)
Administrative Expenses	130,300	228,700	98,400
Machinery and Equipment	3,825	1,800	(2,025)
Materials and Supplies	-	-	-
Outside Services	-	12,000	12,000
Sub-Total	$2,317,572	$2,548,280	$230,708
Service Charges:			
Data Processing	-	-	-
Printing	100,530	103,550	3,020
Mailing	22,850	27,213	4,363
Telecommunications	500	750	250
Photo	750	750	-
Communications	3,250	4,520	1,270
TOTAL	$2,445,452	$2,685,063	$239,611

ADMINISTRATIVE AREA: INSTRUCTION AND PROFESSIONAL DEVELOPMENT

	RESTATED 1984-85 BUDGET	1985-86 PROPOSED BUDGET	DIFFERENCE
Professional	21.50	21.50	-
Support	15.50	15.50	-
Total	37.00	37.00	-
Salaries and Benefits	$1,893,760	$2,005,875	$112,115
Overtime	10,378	1,800	(8,578)
Travel Credit Allowance	8,000	6,500	(1,500)
Total Personnel Costs	$1,912,138	$2,014,175	$102,037
Travel - Staff	168,676	133,352	(35,324)
Travel - Other	245,180	158,388	(86,792)
State and Local Projects	237,500	253,500	16,000
Publication Costs	-	-	-
Office Expenses	95,044	95,000	(44)
Administrative Expenses	181,968	185,950	3,982
Machinery and Equipment	13,693	13,981	288
Materials and Supplies	-	200	200
Outside Services	138,600	266,200	127,600
Sub-Total	$2,992,799	$3,120,746	$127,947
Service Charges:			
Data Processing	500	1,550	1,050
Printing	52,650	93,700	41,050
Mailing	20,824	23,403	2,579
Telecommunications	10,200	8,138	(2,062)
Photo	2,975	2,200	(775)
Communications	59,000	20,400	(38,600)
TOTAL	$3,138,948	$3,270,137	$131,189

Reconciliation of Personnel - Approved 1984-85 to Restated 1984-85

	Prof.	Support
Approved by 1984-85 Representative Assembly	22.50	15.50
Transfer management position	(1.00)	-
Restated 1984-85	21.50	15.50

ADMINISTRATIVE AREA: LEGAL SERVICES

	RESTATED 1984-85 BUDGET	1985-86 PROPOSED BUDGET	DIFFERENCE
Professional	4.00	4.00	-
Support	5.00	5.00	-
Total	9.00	9.00	-
Salaries and Benefits	$ 378,800	$ 429,900	$ 51,100
Overtime	3,800	3,450	(350)
Travel Credit Allowance	3,000	3,000	-
Total Personnel Costs	$ 385,600	$ 436,350	$ 50,750
Travel - Staff	34,450	38,800	4,350
Travel - Other	12,000	17,500	5,500
State and Local Projects	5,918,000	5,940,000	22,000
Publication Costs	-	-	-
Office Expenses	29,104	25,964	(3,140)
Administrative Expenses	1,485	1,585	100
Machinery and Equipment	3,200	10,824	7,624
Materials and Supplies	3,500	3,500	-
Outside Services	1,850,600	1,867,500	16,900
Sub-Total	$8,237,939	$8,342,023	$104,084
Service Charges:			
Data Processing	49,150	18,500	(30,650)
Printing	31,500	31,100	(400)
Mailing	3,200	4,400	1,200
Telecommunications	-	-	-
Photo	-	-	-
Communications	3,650	3,000	(650)
TOTAL	$8,325,439	$8,399,023	$ 73,584

ADMINISTRATIVE AREA: POLITICAL AFFAIRS

	RESTATED 1984-85 BUDGET	1985-86 PROPOSED BUDGET	DIFFERENCE
Professional	7.25	7.25	-
Support	6.25	7.25	1.00
Total	13.50	14.50	1.00
Salaries and Benefits	$ 702,425	$ 762,630	$ 60,205
Overtime	-	-	-
Travel Credit Allowance	5,250	5,600	350
Total Personnel Costs	$ 707,675	$ 768,230	$ 60,555
Travel - Staff	116,450	112,250	(4,200)
Travel - Other	173,000	165,000	(8,000)
State and Local Projects	200,000	350,000	150,000
Publication Costs	-	-	-
Office Expenses	65,300	65,300	-
Administrative Expenses	48,010	47,610	(400)
Machinery and Equipment	3,420	3,420	-
Materials and Supplies	-	-	-
Outside Services	375,125	307,625	(67,500)
Sub-Total	$1,688,980	$1,819,435	$130,455
Service Charges:			
Data Processing	123,000	105,000	(18,000)
Printing	29,000	46,700	17,700
Mailing	25,000	30,500	5,500
Telecommunications	3,600	3,600	-
Photo	1,000	1,100	100
Communications	1,000	800	(200)
TOTAL	$1,871,580	$2,007,135	$135,555

ADMINISTRATIVE AREA: RESEARCH

	RESTATED 1984-85 BUDGET	1985-86 PROPOSED BUDGET	DIFFERENCE
Professional	28.50	30.50	2.00
Support	17.50	16.50	(1.00)
Total	46.00	47.00	1.00
Salaries and Benefits	$2,311,200	$2,512,375	$201,175
Overtime	6,500	6,500	-
Travel Credit Allowance	2,000	2,000	-
Total Personnel Costs	$2,319,700	$2,520,875	$201,175
Travel - Staff	99,553	162,115	62,562
Travel - Other	87,201	88,201	1,000
State and Local Projects	595,000	560,000	(35,000)
Publication Costs	-	-	-
Office Expenses	128,543	132,043	3,500
Administrative Expenses	28,809	24,583	(4,226)
Machinery and Equipment	36,641	37,368	727
Materials and Supplies	37,400	37,400	-
Outside Services	495,125	1,139,170	644,045
Sub-Total	$3,827,972	$4,701,755	$873,783
Service Charges:			
Data Processing	374,160	362,000	(12,160)
Printing	84,630	111,990	27,360
Mailing	59,993	61,378	1,385
Telecommunications	3,000	3,000	-
Photo	-	-	-
Communications	3,540	3,540	-
TOTAL	$4,353,295	$5,243,663	$890,368

Reconciliation of Personnel - Approved 1984-85 to Restated 1984-85

	Prof.	Support
Approved by 1984-85 Representative Assembly	29.50	18.50
Transfer Archives to Administration	(1.00)	(1.00)
Restated 1984-85	28.50	17.50

ADMINISTRATIVE AREA: ADMINISTRATION

	RESTATED 1984-85 BUDGET	1985-86 PROPOSED BUDGET	DIFFERENCE
Professional	36.00	36.00	-
Support	72.00	70.00	(2.00)
Total	108.00	106.00	(2.00)
Salaries and Benefits	$4,463,316	$4,912,415	$449,099
Overtime	89,880	92,575	2,695
Travel Credit Allowance	6,000	6,000	-
Total Personnel Costs	$4,559,196	$5,010,990	$451,794
Travel - Staff	225,647	247,247	21,600
Travel - Other	91,095	84,895	(6,200)
State and Local Projects	40,000	80,000	40,000
Publication Costs	16,000	19,000	3,000
Office Expenses	1,284,216	1,273,331	(10,885)
Administrative Expenses	351,281	377,654	26,373
Machinery and Equipment	136,055	121,690	(14,365)
Materials and Supplies	598,850	600,050	1,200
Outside Services	962,088	1,008,988	46,900
Sub-Total	$8,264,428	$8,823,845	$559,417
Service Charges:			
Data Processing	35,467	35,407	(60)
Printing	50,727	47,127	(3,600)
Mailing	17,521	19,651	2,130
Telecommunications	1,850	4,600	2,750
Photo	650	710	60
Communications	550	350	(200)
Recovery - Internal	(1,216,600)	(1,216,600)	-
Recovery - External	(106,075)	(429,934)	(323,859)
TOTAL	$7,048,518	$7,285,156	$236,638

Reconciliation of Personnel - Approved 1984-85 to Restated 1984-85

	Prof.	Support
Approved by 1984-85 Representative Assembly	29.00	70.00
Transfer Archives from Research	1.00	1.00
Transfer Purchasing from Business & Finance	1.00	3.00
Transfer Manager from IPD	1.00	
Unbudgeted Manager, Executive Office	1.00	
Unbudgeted Director, Internal Operations	1.00	
Reclassification - Support to Professional	2.00	(2.00)
Restated 1984-85	36.00	72.00

ADMINISTRATIVE AREA: BUSINESS & FINANCE

	RESTATED 1984-85 BUDGET	1985-86 PROPOSED BUDGET	DIFFERENCE
Professional	14.00	14.00	-
Support	25.00	25.00	-
Total	39.00	39.00	-
Salaries and Benefits	$1,676,801	$1,781,050	$104,249
Overtime	15,500	17,500	2,000
Travel Credit Allowance	8,000	8,000	-
Total Personnel Costs	$1,700,301	$1,806,550	$106,249
Travel - Staff	127,300	127,300	-
Travel - Other	124,900	126,100	1,200
State and Local Projects	205,000	205,000	-
Publication Costs	-	-	-
Office Expenses	81,440	87,640	6,200
Administrative Expenses	68,480	68,330	(150)
Machinery and Equipment	49,640	35,040	(14,600)
Materials and Supplies	46,000	44,000	(2,000)
Outside Services	234,000	234,000	-
Sub-Total	$2,637,061	$2,733,960	$ 96,899
Service Charges:			
Data Processing	1,527,500	1,876,500	349,000
Printing	44,000	44,000	-
Mailing	86,000	88,000	2,000
Telecommunications	500	500	-
Photo	-	-	-
Communications	-	-	-
TOTAL	$4,295,061	$4,742,960	$447,899

Reconciliation of Personnel - Approved 1984-85 to Restated 1984-85

	Prof.	Support
Approved by 1984-85 Representative Assembly	15.00	28.00
Transfer Purchasing operations to Administration Internal Operations	(1.00)	(3.00)
Restated 1984-85	14.00	25.00

ADMINISTRATIVE AREA: DATA PROCESSING

	RESTATED 1984-85 BUDGET	1985-86 PROPOSED BUDGET	DIFFERENCE
Professional	34.00	35.00	1.00
Support	29.00	30.50	1.50
Total	63.00	65.50	2.50
Salaries and Benefits	$2,960,700	$3,210,150	$249,450
Overtime	34,500	34,500	-
Travel Credit Allowance	1,000	-	(1,000)
Total Personnel Costs	$2,996,200	$3,244,650	$248,450
Travel - Staff	97,119	115,319	18,200
Travel - Other	-	-	-
State and Local Projects	-	-	-
Publication Costs	-	-	-
Office Expenses	262,206	250,956	(11,250)
Administrative Expenses	106,474	61,974	(44,500)
Machinery and Equipment	2,217,991	2,515,354	297,363
Materials and Supplies	284,080	300,282	16,202
Outside Services	686,840	764,325	77,485
Sub-Total	$6,650,910	$7,252,860	$601,950
Service Charges:			
Data Processing	650,400	650,400	-
Printing	6,000	6,100	100
Mailing	13,000	13,000	-
Telecommunications	-	-	-
Photo	-	-	-
Communications	-	-	-
Recovery - Internal	(2,645,225)	(3,378,690)	(733,465)
Recovery - External	(255,600)	(255,600)	-
TOTAL	$4,419,485	$4,288,070	$131,415

ADMINISTRATIVE AREA: GOVERNANCE

	RESTATED 1984-85 BUDGET	1985-86 PROPOSED BUDGET	DIFFERENCE
Professional	-	-	-
Support	-	-	-
Total	-	-	-
Salary/Substitute Costs	$ 482,141	$ 508,519	$26,378
Travel Credit Allowance	25,000	30,000	5,000
Total Personnel Costs	$ 507,141	$ 538,519	$31,378
Travel - Staff	15,420	20,257	4,837
Travel - Other	2,630,722	2,696,604	65,882
State and Local Projects	177,020	200,000	22,980
Publication Costs	-	-	-
Office Expenses	119,848	125,599	5,751
Administrative Expenses	623,450	563,450	(60,000)
Machinery and Equipment	8,000	14,000	6,000
Materials and Supplies	198,312	159,762	(38,550)
Outside Services	901,491	937,791	36,300
Sub-Total	$5,181,404	$5,255,982	$74,578
Service Charges:			
Data Processing	10,356	2,560	(7,796)
Printing	98,896	95,271	(3,625)
Mailing	46,156	49,836	3,680
Telecommunications	2,660	2,660	-
Photo	120	120	-
Communications	1,200	10,000	8,800
Recovery - External	(60,000)	(60,000)	-
TOTAL	$5,280,792	$5,356,429	$75,637

I N D E X