

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WALTER J. JOHNSON, MARSHALL M. :  
SCOTT, GERALD LERANTH, OLIVER J. :  
WALDSCHMIDT, ERNA BYRNE, :  
CHRISTINA PITTS, MILDRED :  
PIZZINO, JOHN P. SKOCIR, :  
HELEN RYZNAR, ANNABELLE :  
WOLTER, CHERRY ANN LE NOIR, :  
DORIS M. PIPER, LYNN M. :  
KOZLOWSKI, EDWARD L. BARLOW, :  
IRVING NICOLAI, AND ANN C. TEBO, :

Complainants, :

vs. :

COUNTY OF MILWAUKEE, a body :  
Corporate; AMERICAN FEDERATION :  
OF STATE, COUNTY AND MUNICIPAL :  
EMPLOYEES, AFL-CIO; DISTRICT :  
COUNCIL 48, AMERICAN FEDERATION :  
OF STATE, COUNTY AND MUNICIPAL :  
EMPLOYEES, AFL-CIO, and JOSEPH :  
ROBISON, its Director; LOCAL 594, :  
AFSCME, affiliated with District :  
Council 48; LOCAL 645, AFSCME, :  
affiliated with District :  
Council 48; LOCAL 882, AFSCME, :  
affiliated with District Council 48; :  
LOCAL 1055, AFSCME, affiliated :  
with District Council 48; :  
LOCAL 1654, AFSCME, affiliated :  
with District Council 48; and :  
LOCAL 1656, AFSCME, affiliated :  
with District Council 48, :

Respondents. :

Case CLXI  
No. 29581 MP-1322  
Decision No. 19545-B

Appearances:

Mr. Raymond J. LaJeunesse, Jr., Staff Attorney, National Right to Work Legal Defense Foundation, Inc., 8001 Braddock Road, Springfield, Virginia 22160, and Lindner, Honzik, Marsack, Hayman and Walsh, S.C., Attorneys at Law, by Ms. Phoebe M. Eaton, 700 North Water Street, Milwaukee, Wisconsin 53202, appearing on behalf of the Complainants.

Mr. George E. Rice, Deputy Corporation Counsel, and Mr. Robert G. Ott, Principal Assistant Corporation Counsel, Room 303, Courthouse, Milwaukee, Wisconsin 53233, appearing on behalf of Respondent Milwaukee County.

Kirschner, Weinberg, Dempsey, Walters and Willig, Attorneys at Law, by Mr. Larry P. Weinberg and Ms. Barbara Kraft, Suite 800, 1100 17th Street, N.W., Washington, D.C. 20036, and Zubrensky, Padden, Graf and Maloney, Attorneys at Law, by Mr. James P. Maloney, Suite 706, 606 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, appearing on behalf of Respondent AFSCME International.

Lawton and Cates, Attorneys at Law, by Mr. John H. Bowers, 110 East Main Street, Madison, Wisconsin 53703, appearing on behalf of Respondents District Council 48, Local 594, Local 645, Local 882, Local 1055, Local 1654, Local 1656, and Robison.

INITIAL FINDINGS OF FACT AND  
INITIAL CONCLUSIONS OF LAW

The above-named Complainants having filed an amended complaint on March 19, 1982 with the Wisconsin Employment Relations Commission alleging that the above-named Respondents had committed and were committing prohibited practices within

the meaning of the Municipal Employment Relations Act; and the Commission having, on April 15, 1982, appointed Christopher Honeyman as Examiner in this matter; and the parties having, on August 13, 1982, filed with the Examiner a stipulation disposing of certain factual issues; the Examiner, being fully advised in the premises, makes and issues the following

INITIAL FINDINGS OF FACT

1. That Complainants Walter J. Johnson, Edward L. Barlow, Erna Byrne, Lynn Kozlowski, Cherry A. Le Noir, Irving E. Nicolai, Doris M. Piper, Christina Pitts, Mildred Pizzino, Helen Ryznar, Marshall M. Scott, Oliver J. Waldschmidt, and Annabelle Wolter, are individuals residing in Milwaukee, Wisconsin; that Complainant Gerald Leranth is an individual residing in South Milwaukee, Wisconsin; that Complainant John P. Skocir is an individual residing in Mequon, Wisconsin; and that Complainant Ann C. Tebo is an individual residing in Wauwatosa, Wisconsin.

2. That Respondent Milwaukee County, hereinafter referred to as the County, is a municipal employer and has its principal offices at Milwaukee County Courthouse, Milwaukee, Wisconsin.

3. That Respondent American Federation of State, County and Municipal Employees, hereinafter referred to as AFSCME, is a labor organization and has its principal offices at 1625 L Street, N.W., Washington, D.C.

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

5. That Respondents Local 594, AFSCME; Local 645, AFSCME; Local 882, AFSCME; Local 1055, AFSCME; Local 1654, AFSCME; and Local 1656, AFSCME, hereinafter referred to collectively as the Locals, are labor organizations chartered by, subordinate to, and affiliated with AFSCME, and have their offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.

6. That at all times material herein the Respondent affiliated labor organizations, herein jointly referred to as the Unions, have represented employes of the County in various bargaining units consisting of numerous classifications of employes, for purposes of collective bargaining concerning wages, hours and conditions of employment; that at various times material herein the individual Complainants named in paragraph 1, above, have been employed in various of said bargaining units; and that the Unions and the County have been parties to successive collective bargaining agreements concerning the wages, hours and conditions of employment of all employes in said bargaining units.

7. That on or about February 16, 1973, the Unions and the County entered initially into an agreement entitled "fair share", which became effective on or about March 10, 1973, and provided in relevant part as follows:

(1) Effective in accordance with the provisions of paragraph (4) of this Section, and each pay period thereafter during the term of the current collective bargaining agreement between the parties, and unless otherwise terminated as hereinafter provided, the employer shall deduct from the biweekly earnings of the employes specified herein an amount equal to such employe's proportionate share of the cost of the collective bargaining process and contract administration as measured by the amount of dues uniformly required of all members, and pay such amount to the treasurer of the certified bargaining representative of such employe within ten (10) days after such deduction is made, provided:

. . .

(c) In order to insure that any such deduction represents the proportionate share of each employe in the bargaining unit of the cost of collective bargaining and contract administration, and recognizing that the dues of the

constituent Locals of District Council 48, the only certified bargaining representative, vary from one Local to another, it is agreed as follows:

. . .

3. The Union agrees that no funds collected from non-members under this fair share agreement will be allocated for, or devoted directly or indirectly to, the advancement of the candidacy of any person for any political office.

8. That since entering into the initial fair share agreement, the Unions and the County have entered into successive collective bargaining agreements containing similar provisions to that cited in Finding of Fact No. 7.

9. That pursuant to said fair share agreements, the County has deducted from the wages of employes in the bargaining units covered by the aforesaid agreements, who are not members of the Unions, sums of money denominated as fair share deductions, in the same amounts as the amounts of dues paid by members of the Unions, and has transmitted said sums to the District Council, which in turn has transmitted portions of said sums to the Locals and to AFSCME, as well as to the Milwaukee County Labor Council, the Wisconsin State AFL-CIO, and the Wisconsin Coalition of American Public Employees (CAPE).

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

- (1) Gathering information in preparation for the negotiation of collective bargaining agreements.
- (2) Gathering information from employes concerning collective bargaining positions.
- (3) Negotiating collective bargaining agreements.
- (4) Adjusting grievances pursuant to the provisions of collective bargaining agreements.
- (5) Administration of ballot procedures on the ratification of negotiated agreements.
- (6) The public advertising of Respondent Unions' positions (a) on the negotiation of, or provisions in, collective bargaining agreements, and (b) on other subjects.
- (7) Purchasing books, reports, and advance sheets used in (a) negotiating and administering collective bargaining agreements, (b) processing grievances, and (c) activities for purposes other than those identified in (a) and (b).
- (8) Paying technicians in labor law, economics and other subjects for services used (a) in negotiating and administering collective bargaining agreements, (b) in processing grievances, and (c) in activities other than those identified in (a) and (b).
- (9) Organizing within the bargaining units in which Complainants are employed.
- (10) Organizing bargaining units in which Complainants are not employed.
- (11) Seeking to gain representation rights in units not represented by Respondents, including units where there is an existing designated representative.

- (12) Defending Respondents against efforts by other unions or organizing committees to gain representation rights in units represented by Respondents.
- (13) Proceedings regarding jurisdictional controversies under the AFL-CIO constitution.
- (14) Seeking recognition as exclusive representative of bargaining units in which Complainants are not employed.
- (15) Serving as exclusive representative of bargaining units in which Complainants are not employed.
- (16) Training in voter registration, get-out-the-vote, and campaign techniques.
- (17) Supporting and contributing to charitable organizations.
- (18) Supporting and contributing to political organizations and candidates for public office.
- (19) Supporting and contributing to ideological causes.
- (20) Lobbying for legislation or regulations or to effect changes in legislation or regulations before Congress, state legislatures, and state or federal agencies.
- (21) Supporting and contributing to international affairs.
- (22) Supporting and paying affiliation fees to other labor organizations which do not negotiate the collective bargaining agreements governing Complainants' employment.
- (23) Membership meetings and conventions held, in part, to determine the positions of employes in Complainant's bargaining units on provisions of collective bargaining agreements covering their employment or on grievance administration pursuant to the provisions.
- (24) Membership meetings and conventions held, in part, for purposes other than those identified in (23).
- (25) Publishing newspapers and newsletters which, in part, concern provisions of the collective bargaining agreements covering Complainants' employment, or grievance administration pursuant to their provisions.
- (26) Publishing newspapers and newsletters which, in part, concern subjects other than those identified in (25).
- (27) Impasse procedures, including factfinding, mediation, arbitration, strikes, slow-downs, and work stoppages, over provisions of collective bargaining agreements.
- (28) The prosecution or defense of litigation or charges (a) to obtain ratification, interpretation, or enforcement of collective bargaining agreements, (b) concerning issues other than those identified in (a).
- (29) Social and recreational activities.
- (30) Payments for insurance, medical care, retirement, disability, death, and related benefit plans.
- (31) Administrative activities allocable, in some part, to each of the activities described in categories (1) through (29).

11. That the activities of the Unions, their officers and agents, described in categories numbered (16), (17), (18), (19) and (21), as set forth in para. 10, supra, and the expenditures by the Unions for such activities, do not relate to

its representational interest in the collective bargaining process or to the administration of collective bargaining agreements.

12. That the activities of the Unions, their officers and agents, described in categories set forth in para. 10, supra, and numbered as follows:

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

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

13. That the activities of the Unions, their officers and agents, described in the categories set forth in para. 10, supra, and numbered as follows:

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

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

14. That with respect to the activities described in categories (27) and (28b) as set forth in para. 10, supra, expenditures by the Unions, their officers and agents, relating to illegal strikes and the concomitants thereof, engaged in by municipal employes, cannot properly be related to the representational interest of the Unions in the collective bargaining process and contract administration involving employes in the collective bargaining units in which the Complainants are employed; but that, however, expenditures by the Unions, their officers and agents, for the legal activities described in said categories are properly related to the representational interest of the Unions in the collective bargaining process and contract administration involving the Complainants and other employes in the collective bargaining units involved herein.

15. That expenditures of the Unions for the activities set forth in categories numbered (29) and (30), as set forth in para. 10, supra, when constituting compensation to persons for services rendered in the representational interest of the Unions, constitute costs incurred in the collective bargaining process and contract administration involving the Complainants and other employes in the collective bargaining units involved herein.

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

#### INITIAL CONCLUSIONS OF LAW

1. That the following activities relate to the ability of the Respondent Unions to carry out their representational interest as the exclusive collective bargaining representative of employes in the employ of the Respondent County, in the collective bargaining process and contract administration with Respondent County, within the meaning of the provisions of the Municipal Employment Relations Act:

- (a) Gathering information in preparation for the negotiation of collective bargaining agreements;
- (b) Gathering information from employes concerning collective bargaining positions;
- (c) Negotiating collective bargaining agreements;
- (d) Adjusting grievances pursuant to the provisions of collective bargaining agreements;
- (e) Administration of ballot procedures on the ratification of negotiated agreements;
- (f) The public advertising of positions on the negotiation of, or provisions in, collective bargaining agreements, as well as on matters relating to the representational interest in the collective bargaining process and contract administration;
- (g) Purchasing books, reports, and advance sheets used in matters relating to the representational interest in the collective bargaining process and contract administration;
- (h) Paying technicians in labor law, economics and other subjects for services used in matters relating to the representational interest in the collective bargaining process and contract administration;
- (i) Organizing within the bargaining units in which Complainants are employed;
- (j) Organizing bargaining units in which Complainants are not employed;
- (k) Seeking to gain representation rights in units not represented by Respondent Unions, including units where there is an existing designated representative.
- (l) Defending Respondent Unions against efforts by other unions or organizing committees to gain representation rights in units represented by Respondent Unions;
- (m) Proceedings regarding jurisdictional controversies under the AFL-CIO constitution;
- (n) Seeking recognition as the exclusive representative of bargaining units in which Complainants are not employed;
- (o) Serving as exclusive representative of bargaining units in which Complainants are not employed;
- (p) Lobbying for collective bargaining legislation or regulations or to effect changes therein, or lobbying for legislation or regulations affecting wages, hours and working conditions of employes generally before Congress, state legislatures, and state and federal agencies;
- (q) Supporting and paying affiliation fees to other labor organizations which do not negotiate the collective bargaining agreements governing Complainants' employment, to the extent that such support and fees relate to the representational interest of unions in the collective bargaining process and contract administration;
- (r) Membership meetings and conventions held, in part, to determine the positions of employes in Complainants' bargaining units on provisions of collective bargaining agreements covering their employment or on grievance administration pursuant to the provisions thereof;

- (s) Membership meetings and conventions held, in part, for purposes relating to the representational interest in the collective bargaining process and contract administration;
- (t) Publishing newspapers and newsletters which, in part, concern provisions of the collective bargaining agreements covering Complainants' employment, or grievance administration pursuant to their provisions;
- (u) Publishing newspapers and newsletters which, in part, relate to activities which have been determined herein to constitute proper expenditures of fair share deductions;
- (v) Lawful impasse procedures to resolve disputes arising in collective bargaining and in the enforcement of collective bargaining agreements;
- (w) The prosecution or defense of litigation or charges to enforce rights relating to concerted activity and collective bargaining, as well as collective bargaining agreements;
- (x) Social and recreational activities, as well as payment for insurance, medical care, retirement, disability, death and related benefit plans for persons who receive same in compensation for services rendered in carrying out the representational interest in the collective bargaining process and contract administration; and
- (y) Administrative activities allocable to each of the categories described in categories (a) through (x) above,

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

2. That the following activities do not relate to the ability of the Respondent Unions to carry out their representational interest as the exclusive collective bargaining representative of employes in the employ of Respondent Milwaukee County, in the collective bargaining process and contract administration with Respondent Milwaukee County, within the meaning of the provisions of the Municipal Employment Relations Act:

- (a) Training in voter registration, get-out-the-vote, and campaign techniques;
- (b) Supporting and contributing to charitable organizations, political organizations and candidates for public office, ideological causes and international affairs;
- (c) Public advertising on matters not related to the representational interest in the collective bargaining process and contract administration;
- (d) Purchasing books, reports, advance sheets utilized in matters not related to the representational interest in the collective bargaining process or contract administration;
- (e) Paying technicians for services in matters not related to the representational interest in the collective bargaining process and contract administration;
- (f) Lobbying for legislation or regulations, or to effect changes therein, not related to the representational interest in the collective bargaining process and contract administration, or with respect to matters not related generally to wages, hours or conditions of employment, before Congress, state legislatures and federal and state agencies;

- (g) Supporting and paying affiliation fees to other labor organizations which do not negotiate the collective bargaining agreements governing the employment of the Complainants to the extent that such support and fees do not relate to the representational interest of Respondent Unions in collective bargaining and contract administration involving Complainants, or for activities of such other labor organizations which do not relate to matters involving otherwise proper expenditures of fair share deductions.
- (h) Membership meetings and conventions held, in part, with respect to matters which do not relate to activities which have been determined herein to relate to proper expenditures of fair share deductions;
- (i) Publishing newspapers and newsletters which, in part, do not relate to activities which have been determined herein to constitute proper expenditures of fair share deductions;
- (j) Unlawful strike activity and concomitants thereof, and the prosecution or defense of such activity, or on matters related thereto, and the prosecution or defense of activity not related to the representational interest in collective bargaining or contract administration;
- (k) Social and recreational activities for members where such activities are not related to the representational interest in the collective bargaining process and contract administration;
- (l) Payments for insurance, medical care, retirement, disability, death and related benefits to persons who do not receive same as compensation for services rendered in carrying out the representational interest in the collective bargaining process and contract administration; and
- (m) Administrative activities allocable to each of the categories described in categories (a) through (l) immediately above;

and that, therefore, expenditures by the Respondent Unions for said activities cannot be properly included in determining the cost of collective bargaining and contract administration for the purpose of establishing the sums of money required to be paid to Respondent Unions pursuant to fair share agreements existing between Respondent Unions and Respondent Milwaukee County, within the meaning of Sec. 111.70(1)(h) of the Municipal Employment Relations Act.

Dated at Madison, Wisconsin this 7<sup>th</sup> day of February, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Christopher Honeyman, Examiner

MEMORANDUM ACCOMPANYING INITIAL FINDINGS OF FACT AND  
INITIAL CONCLUSIONS OF LAW

This matter is before the Commission on referral from the Circuit Court for Milwaukee County. On July 10, 1973 a complaint substantially identical to that filed herein was filed before that Court by the Complainants; the subsequent history of this matter may best be explained by describing it as a companion case to Browne, et al. v. Milwaukee Board of School Directors, et al., a case filed at about the same time in the same Court involving many of the same issues and litigants. The Browne case served as test case concerning a number of constitutional and procedural arguments, but, like this matter, it was referred to the WERC in 1977 by the Milwaukee County Circuit Court. Browne has continued to serve as the leading case in Wisconsin in this area of law, and the final Commission decision in Browne has not been issued at this time.

The Commission's Initial Findings of Fact and Initial Conclusions of Law 1/ in Browne describes the Court and Commission proceedings in that case in detail. As this matter follows Browne in all respects relating to the first phase of these bifurcated proceedings, it is unnecessary to repeat the lengthy explanation of the cases' history and the arguments of the parties detailed in Browne. The discussion here will therefore be confined to essentials.

In the amended complaint filed in this case, Complainants argue that the Respondent County has engaged in and is engaging in prohibited practices within the meaning of Sec. 111.70(3)(a)1, 3 and 6 of the Municipal Employment Relations Act by requiring Complainants to pay and by deducting, without individual employee authorization, fair share fees which are in excess of their proportionate share of the cost of collective bargaining and contract administration. The complaint also alleges that the Respondent Unions have engaged in and are engaging in prohibited practices in violation of Sec. 111.70(3)(b)1, 2 and 3 of MERA by requiring and inducing Respondent County to require such fair share deductions to be made. The gist of the complaint is that a significant number of the Unions' activities and expenditures, for which fair share deductions are utilized, are unrelated to collective bargaining and contract administration. Respondents Unions and County filed answers admitting various factual allegations and denying commission of any prohibited practices; Respondent County also filed a cross-complaint against Respondent Unions based on alleged agreements between the Unions and County holding the County harmless in all fair-share related litigation.

In Browne the parties agreed that the proceeding would be bifurcated, with the categories of expenditures being determined, as to whether each relates or fails to relate to collective bargaining and contract administration, in the first stage, and reserving to a second stage the determination of how much money is spent for each of those activities. The parties in this proceeding agreed, at a prehearing conference, to the same format. The Findings of Fact and Conclusions of Law herein have been arrived at by stipulation. As the stipulation is patterned on the Commission's Findings in Browne, it is obviously unnecessary for the undersigned to discuss the reasons why the stipulation has been adopted.

Among various questions pending in this matter at this time are three motions. Respondent Unions have moved for an order postponing any action on this proceeding until such time as the Commission's final decision in Browne has been issued. At the prehearing conference, the undersigned denied that motion for purposes of Stage 1 of this proceeding; it remains pending for purposes of Stage 2, and has not been decided with respect to that Stage. The Complainants have moved for an order determining that this proceeding may be maintained as a class action; an order denying this motion, with accompanying memorandum, is issued by the undersigned separately today. And the Complainants have moved for an interlocutory order requiring the escrowing of fair share deductions of the Complainants once the undersigned has found as a fact that any portion of the fair share fees is being used for purposes prohibited by Section 111.70, Wis. Stats.

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1/ Decision No. 18408, February, 1981.

An inference could fairly be drawn that some degree of expense must be involved in the long list of activities found not chargeable to fair share payors in this case as in Browne. The request for escrowing, however, is in the nature of an injunction. It is well settled that injunctive relief may be granted only, among other criteria, if there is a significant danger of irreparable injury. Whether the holding of funds for a time is irreparable need not be discussed here, because the utter absence of any prior Commission or Court ruling venturing a conclusion as to the dollar amount or percentage of fair share payments likely to be spent by any labor organization for such purposes as have been found not chargeable to fair share payors makes any attempt to divine such an amount pure speculation at this time. Because it is speculative, it is impossible to say whether the amount involved is substantial or relatively insignificant. For this reason alone injunctive relief would not be warranted at this time. 2/

Dated at Madison, Wisconsin this 7<sup>th</sup> day of February, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Christopher Honeyman, Examiner

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2/ Browne, Dec. No. 18408, supra, at page 34; also Gerleman et al. v. Milwaukee Board of School Directors, et al., Dec. No. 16635-A, at page 28.