STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ONEIDA COUNTY (COURTHOUSE), Complainant, vs. ONEIDA COUNTY COURTHOUSE EMPLOYEES, LOCAL 79, AFSCME, AFL-CIO, Respondent.	Case XXXV No. 31692 MP-1483 Decision No. 20893-A
ONEIDA COUNTY COURTHOUSE EMPLOYEES, LOCAL 79, AFSCME, AFL-CIO, Complainant, vs. ONEIDA COUNTY (COURTHOUSE), Respondent.	Case XXXVII No. 31899 MP-1496 Decision No. 20894-A

Appearances:

Mr. Lawrence R. Heath, Corporation Counsel, Oneida County, Oneida County Courthouse, P. O. Box 400, Rhinelander, Wisconsin 54501, appearing on behalf of Oneida County.

Mr. Bruce M. Davey, Lawton & Cates, Attorneys at Law, 110 East Main Street, Madison, Wisconsin 53703-3354, appearing on behalf of Oneida County Employees, Local 79, AFSCME, AFL-CIO.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Oneida County having, on June 8, 1983, filed a complaint with the Wisconsin Employment Relations Commission in which the County alleged that Local 79, Oneida County Courthouse Employees, AFSCME, AFL-CIO, had committed prohibited practices within the meaning of the Municipal Employment Relations Act (MERA); and the Oneida County Courthouse Employees, Local 79, AFSCME, AFL-CIO, having, on July 11, 1983, filed a complaint with the Commission in which Local 79 alleged that Oneida County had committed prohibited practices within the meaning of MERA; and the Commission having, on August 4, 1983, appointed Richard B. McLaughlin, a member of its staff, to act as an Examiner to make and issue Findings of Fact, Conclusions of Law and Order regarding both complaints as provided in Sec. 111.70(4)(a) and in Sec. 111.07 of the Wisconsin Statutes; and a hearing having been conducted on the complaints in Rhinelander, Wisconsin, on August 29, 1983, during the course of which both parties were allowed to amend their complaints and to answer the cross-complaint raised against them, and during the course of which both parties agreed that the cross-complaints could be consolidated for purposes of hearing and of argument; and a transcript of that hearing having been provided to the Examiner on September 29, 1983; and the parties having filed briefs and reply briefs by December 12, 1983; and the Examiner having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Oneida County, hereinafter referred to as the County, is a municipal employer which has its offices located at the Oneida County Courthouse, P.O. Box 400, Rhinelander, Wisconsin 54501, and which, among its various functions, operates a Courthouse and a Highway Department.

2. That Oneida County Employees, Local 79, AFSCME, AFL-CIO, hereinafter referred to either as Local 79 or as the Union, is a labor organization which maintains its offices in c/o 4115 Briarwood Avenue, Wausau, Wisconsin 54401, and which is the exclusive collective bargaining representative for bargaining units composed of certain County Courthouse and Highway Department employes.

3. That Local 79 and the County have been parties to collective bargaining agreements covering bargaining units composed of certain County Courthouse and Highway Department employes at least since 1973; that the collective bargaining agreements covering the Courthouse and Highway Department employes represented by Local 79 have, between 1974 and the present, included provisions governing the deduction of Union dues and of fair share payments from the paychecks of individual employes composing the Courthouse and Highway Department bargaining units; that the collective bargaining agreement between the County and Local 79 in effect in 1975 which covered Courthouse employes contained the following provision:

ARTICLE XX - CHECKOFF OF DUES - FAIR SHARE AGREEMENT

Section 1. The County agrees to deduct from the pay check of each employee who has signed an authorized payroll deduction card a sum certified by the Secretary of Local 79, which are (sic) the Union dues. Deduction will be made from the second payroll period and the total dues will be sent to the Treasurer of Local 79. Deductions may be terminated by the employee giving 30 days written notice to the Union and the Employer or upon termination of employment.

Section 2. The employer agrees that it will deduct from the monthly earnings of all employees in the collective bargaining unit the monthly dues as certified by the Union as the current dues uniformly required of all members, and pay said amount to the treasurer of the Union on or before the end of the month in which such deduction was made. The deduction shall be made from the last payroll period each month.

Changes in the amount of dues to be deducted shall be certified by the Union thirty (30) days before the effective date of the change.

As to new employees, such deduction shall be made from the first paycheck following the first six (6) months of employment.

The employer will provide the Union with a list of employees from whom such deductions are made with each monthly remittance to the Union.

The Union, as the exclusive representative of all the employees in the bargaining unit, will represent all such employees, union and non-union, fairly and equally, and all employees in the unit will be required to pay, as provided in this article, their proportionate share of the costs of representation by the Union. No employee shall be required to join the Union, but membership in the Union shall be made available to all employees who apply consistent with the Union constitution and by-laws. No employee shall be denied union membership because of race, creed, color or sex.

If, for any reason, the fair share agreement shall become null and void, the employer agrees to continue to deduct the monthly dues from the paychecks of all who authorize such deduction on an individual authorization form as outlined above and Section 1 shall again apply. The total amount of

all dues deducted shall be paid to the treasurer of the Union on or before the end of the month in which said deduction was made.

that the collective bargaining agreement between the County and Local 79 in effect for 1975 which covered Highway Department employes contained the following provision:

ARTICLE XXV - DUES CHECK-OFF - FAIR SHARE AGREEMENT

1. The County agrees to deduct from the paycheck of each employee who has signed authorization for payroll deduction of union dues, a sum certified by the Secretary of Local 79 which are (sic) the Union dues. Deduction shall be made from the last payroll period each month and the total sum deducted shall be turned over to the Treasurer of Local 79.

2. Deduction may be cancelled upon thirty (30) days written notice to the employer and the Union or upon termination of employment.

The employer agrees that it will deduct from the monthly earnings of all employees in the collective bargaining unit the monthly dues as certified by the Union as the current dues uniformly required of all members, and pay said amount to the treasurer of the Union on or before the end of the month in which such deduction was made. The deduction shall be made from the last payroll period each month.

Changes in the amount of dues to be deducted shall be certified by the Union thirty (30) days before the effective date of the change.

As to new employees, such deduction shall be made from the first paycheck following the first six (6) months of employment.

The Employer will provide the Union with a list of employees from whom such deductions are made with each monthly remittance to the Union.

The Union, as the exclusive representative of all the employees in the bargaining unit, will represent all such employees, union and non-union, fairly and equally, and all employees in the unit will be required to pay, as provided in this article, their proportionate share of the costs of representation by the Union. No employee shall be required to join the Union, but membership in the Union shall be made available to all employees who apply consistent with the Union Constitution and by-laws. No employee shall be denied Union membership because of race, creed, color or sex.

If, for any reason, the fair share agreement shall become null and void, the employer agrees to continue to deduct the monthly dues from the paychecks of all who authorize such deduction on an individual authorization form as outlined above. (sic) and Section 1 and 2 shall again apply. The total amount of all dues deducted shall be paid to the treasurer of the Union on or before the end of the month in which said deduction was made.

that the County and Local 79 have not changed these provisions in any way in any collective bargaining agreement executed by the County and Local 79 between 1975 and the present; and that the current collective bargaining agreement between Local 79 and the County covering Courthouse employes contains a grievance procedure which provides as follows:

ARTICLE IV - GRIEVANCE PROCEDURE

Section 1. Should differences arise between the Employer and the Union as to the meaning and application of the provisions of this Agreement or as to any question relating to wages, hours of work, or other conditions of employment, or if any employee feels that his/her rights and privileges according to the terms of this Agreement have been violated, every reasonable effort shall be made to settle such differences under the provisions of this Article.

Section 2. The grievance shall be submitted, in writing, to the department head no later than ten (10) working days after the employee knew or should have known of the cause giving rise to the grievance. The department head shall meet with the grievant and the Union representative(s) to discuss the grievance. The department head shall, within five (5) working days, give an answer in writing to the Union.

Section 3. If the grievance is not settled to the satisfaction of the Union, it shall be submitted in writing to the Personnel Committee within ten (10) working days from the date of the department head's answer. The Personnel Committee and the Union shall meet at a mutually agreeable time to discuss the grievance. The Personnel Committee shall, within ten (10) working days from the date the meeting is held, give its answer to the grievance, in writing, to the Union.

Section 4. If the decision of the Personnel Committee is not satisfactory to the grievant and the Union, the Union shall notify the Personnel Committee within ten (10) working days from the date of the Committee's answer, that it intends to process the grievance to arbitration.

Section 5. The County and the Union shall each select one member of the Arbitration Board and the two members selected by the parties shall use their best efforts to select a mutually agreeable Chairman of the Arbitration Board. If the two selected persons are unable to agree on the Chairman within thirty (30) days, either party may request the Wisconsin Employment Relations Commission to appoint the third arbitrator. The parties hereto may mutually agree to waive the panel and proceed directly to the Commission for an arbitrator.

. . .

4. That on December 16, 1982, Cindy Pitts, the Treasurer of Local 79, and Cindy Klabunde, the Secretary of Local 79, prepared, signed, and personally delivered the following letter to the County Clerk:

> This letter is authorization for your office to deduct the amount of the first two hours of regular pay per month from employees paying Union dues as well as Fair Share, commencing with the January deduction, if possible.
>
> Local Union #79 voted affirmatively on the increase at our December, 1982 meeting.

that the County did make dues/fair share deductions for the month of January, 1983 on the basis of the first two hours of regular pay per employe per month for employes composing both bargaining units represented by Local 79; that prior to the change reflected in the December 16, 1982 letter, Local 79 had certified to the County Union dues which were set as an equal dollar amount per employe per month; that, for example, the monthly dues in effect for 1982 and certified by Local 79 to the County were $11.00 per employe per month, while the monthly dues in effect for 1981 and certified by Local 79 to the County were $10.00 per employe per month; that the County effected the dues/fair share deduction resulting from the 1981-1982 change in Union dues from $10.00 to $11.00 per month per employe

after Local 79 certified the change in amount by delivering a letter reflecting the change to the County Clerk's office; that the Personnel Committee of the County Board, upon being informed by the County Corporation Counsel, Lawrence Heath, of the method by which the January, 1983 dues/fair share deduction had been made, took the position that this method could not be continued; that the County Board's position was communicated by Mr. Heath to Daniel Barrington, a staff representative for Wisconsin Council 40, AFSCME, AFL-CIO, in a letter dated January 28, 1983, which is stamped "received" January 31, 1983, and which stated:

> This office has been provided with a copy of a letter dated December 16, 1982 addressed to the Oneida County Clerk from Cindy Klabunde, Secretary and Cindy Pitts, Treasurer of Local 79 a copy of which I am enclosing with this letter. Please be advised that the Chairman of the Personnel Committee has directed the County Clerk to disregard the above noted letter and to recommence the above noted deductions pursuant to the previously certified amount, which I believe is $11.00 per month. It is the position of the County that the Contract provides for a uniform deduction of a specific sum which has been certified by the Union secretary as the amount uniformly required of all members to cover the cost of representation of the bargaining unit. The County does not accept the obligation or responsibility for computing the individual amounts that would be required by the above noted letter by Ms. Klabunde and Ms. Pitts. Should you wish to contact me concerning this matter please feel free to call at your convenience.

that Mr. Barrington is the only addressee of this letter; that the County did take a dues/fair share deduction of $11.00 per employe for the month of February, 1983, from the individual paychecks of employes composing the Courthouse and Highway Department bargaining units represented by Local 79; that the paychecks in which this deduction was made were issued by the County on February 17, 1983; that Local 79 did not discuss the method by which dues were to be calculated with the County prior to its delivery of the December 16, 1982 letter to the County Clerk; and that Local 79 and the County did not specifically discuss the amount of Union dues, or the method by which such an amount would be calculated, during the negotiations which produced the language of Articles XX and XXV set forth in Finding of Fact 3 above, or at any subsequent negotiation sessions concerning a successor agreement.

5. That Cheryl Westbrook, a Union Steward for Local 79, filed, on February 17, 1983, a grievance with the County which stated that the grievance was filed "on behalf of Local 79," listed a "Work Location" of "union employees," and gave February 17, 1983, as the "Date of the alleged infraction"; that the February 17 grievance stated that: "The County is in violation of working agreement between County and Union under Article XX, Section 1 & 2 in that it did not withhold the Union dues as stated in letter of December 16, 1982."; that the County responded to the February 17, 1983 grievance in a letter from Mr. Heath to Mr. Barrington dated February 23, 1983, which stated:

> The Oneida County Personnel Committee has asked me to provide their response to the above noted grievance. The Committee determines that the grievance cannot be accepted as legitimate for a number of reasons.
>
> First, the union was advised by my letter to you of January 28, 1983 that the County would not accept the dues and fair share deductions formula set forth in the letter dated December 16, 1983 from Cindy Klabunde, Secretary and Cindy Pitts, Treasurer, of Local #79 to the County Clerk, Mr. D.R. Macdonald. The grievance dated February 17, 1983, was not timely under artice (sic) IV, Section 2.
>
> Second, even if the filing of the grievance were considered to be timely, the County cannot accept the said letter of December 16, 1982 as authorization concerning a change in dues and fair share deduction amounts. In that regard it is the fundamental position of the County that under a check-off system, the employer can only be expected to deduct a uniform

> sum that is equal in monitary (sic) value from the wages/ salaries of all members of the bargaining units in question. This interpretation is uniform within municipal government and has been recognized by Local #79 ever since the current applicable contract language went into effect. The County cannot accept the responsibility and administrative time which would be required to calculate those amounts. It is to be noted that the union itself did not attempt to calculate those amounts and provide them in the letter of December 16, 1982.
>
> It is the position of the County that the request of Local Union #79, as set forth in the above noted letter of December 16, 1982, would, if accepted, be a violation of the provisions of Sections 1, 2 and 6 of Article XX of the Courthouse contract and it's counter part in the Highway contract.

that Ms. Westbrook sent a letter dated February 25, 1983, to the Chairman of the County's Personnel Committee which stated:

> Enclosed is a copy of a grievance that was served on February 17, 1983 to Mr. Mac Donald, Oneida County Clerk and as of todate (sic) he has not answered the grievance. The Union is proceeding to the next step of our grievance procedure Article IV Section 3. Please contact me with a date so that the Personnel Committee and the Union can meet to discuss this grievance.

that Ms. Westbrook sent a letter dated March 15, 1983, to the Chairman of the County's Personnel Committee which stated:

> On our grievance 1-83 (Union Dues) seeing that Mr. MacDonald did not answer the grievance dated Feb. 17, 1983 of Article IV Section 2 and the Personnel Committee did not answer my letter of Feb. 25, 1983 per Article IV Section 3 I am proceeding to arbitration per Article IV Section 5 of the Union Contract. Our panel member is Mr. Mel (sic) Einerson . . . Please notify me of your selection to the panel.

that Mr. Barrington sent a letter dated April 12, 1983, to Mr. Heath which stated:

> To date, neither Local 79 nor I have received confirmation as to your panel member for the arbitration of the dues deduction grievance. If I receive no notification by April 22, 1983, Local 79 will petition the W.E.R.C. to appoint a member of their staff to hear the matter.

that Mr. Heath sent a letter dated April 28, 1983, to Mr. Barrington which stated:

> I am in receipt of your letter of April 12, 1983. As previously indicated to you in the County's timely response dated February 23, 1983, the position of the County is that the grievance dated February 17, 1983, was not timely under Article VI (sic), Section 2 of the Courthouse Contract. As indicated in that letter, we had previously advised you by separate letter dated January 28, 1983, that the County would not accept the deductions formula set forth in the letter dated December 16, 1982, from Cindy Klabunde, Secretary, and Cindy Pitts, Treasurer, of Local 79, to the County Clerk, Mr. D.R. Macdonald. The grievance dated February 17, 1983, was, therefore, not timely filed.

that Mr. Barrington responded to Mr. Heath's letter of April 28, 1983, in a letter dated May 9, 1983, which stated:

> . . .
>
> Since you have refused to appoint a panel member thus creating the problem of selecting the panel-chair, I have proceeded under the terms of the Labor Agreement and consulted with the

panel. The panel, Mr. Einerson, has selected Mr. Greco as the panel chairman. I am enclosing a copy of notice to Mr. Greco advising him of same.

Should you continue to raise objections to procedural argument, I suggest you appropriately pursue that end during the course of the hearing. I must advise you at this point, that any further attempts to unreasonably protract these proceedings or refusal to arbitrate the matter will require Local 79 to pursue prohibitive (sic) practice proceedings.

. . .

that the County has not agreed at any time subsequent to April 28, 1983, to submit the February 17, 1983 grievance to arbitration; that the grievance has not been submitted to arbitration; that on June 8, 1983, the County, through its Corporation Counsel, submitted a complaint of prohibited practice to the Commission in which the County alleged that Local 79 had violated "Section 111.70(b)(sic)2, 3 and 4 and (c), Wis. Stats.,"; and that on July 11, 1983, Local 79 filed a complaint of prohibited practice with the Commission in which Local 79 alleged that the County had violated "Section 111.70(3)(a)1, 2 and 5, Wis. Stats., by refusing to deduct the amount of monthly dues, as certified by the Union."

6. That neither Local 79 nor the County has requested an Order requiring that the February 17, 1983 grievance be submitted to arbitration; that the grievance filed by Ms. Westbrook on February 17, 1983, was filed within ten working days after Ms. Westbrook knew of the cause giving rise to the grievance which was the payroll deduction of February 17, 1983; that the dues change sought by Local 79 in its letter of December 16, 1982, is governed by Article XX of the collective bargaining agreement covering County Courthouse employes, and by Article XXV of the collective bargaining agreement covering Highway Department employes; that the County's refusal to make dues/fair share deductions in accordance with the December 16, 1982 letter from February, 1983, until the present constitutes a violation of Articles XX and XXV of the aforementioned collective bargaining agreements; and that the County, by refusing to so make dues/fair share deductions, did not undertake any conduct which threatened the independence of Local 79 as an entity devoted to the interests of the County Courthouse and County Highway Department employes it represents as opposed to the County's interests.

CONCLUSIONS OF LAW

1. That the County and Local 79, by their conduct, have forfeited or waived their right to insist that the February 17, 1983 grievance be submitted to arbitration; that the grievance filed by Cheryl Westbrook on February 17, 1983, was timely filed within the meaning of Article IV, Section 2, set forth in Finding of Fact 3 above; and that the violations of Secs. 111.70(3)(a)5 and 111.70(3)(b)4 of MERA alleged in the cross-complaints of the County and Local 79 are properly before the Examiner as cases involving "prohibited practices" within the meaning of Secs. 111.70(4)(a) and 111.07, Wis. Stats.

2. That the change in Union dues sought by Local 79 in the letter of December 16, 1982, is governed by Article XX of the collective bargaining agreement covering County Courthouse employes and by Article XXV of the collective bargaining agreement covering County Highway Department employes; and that the change in dues sought by that letter does not constitute a violation of either Article, and thus does not constitute any violation of Sec. 111.70(3)(b)4 of MERA.

3. That since the dues change sought by Local 79 in its letter of December 16, 1982, was governed by Articles XX and XXV of the collective bargaining agreements covering County Courthouse and Highway Department employes, respectively, Local 79 had no duty to bargain with the County regarding the change reflected in that letter, and did not, therefore, commit any violation of Sec. 111.70(3)(b)3 of MERA by submitting a grievance regarding the County's refusal to make dues/fair share deductions in accordance with that letter.

4. That since the dues change sought by Local 79 in its letter of December 16, 1982, did not violate the collective bargaining agreements covering County Courthouse and County Highway Department employes represented by Local 79, the Union did not, under the circumstances of this case, commit any prohibited practice within the meaning of Sec. 111.70(3)(b)2 or Sec. 111.70(3)(c)

of MERA, by attempting to put that dues change into effect by certifying the change to certain County employes not represented by Local 79.

5. That the County, by refusing to make dues/fair share deductions in accordance with the letter of December 16, 1982 from February, 1983, until the present, has violated Article XX of the collective bargaining agreement covering County Courthouse employes and Article XXV of the collective bargaining agreement covering County Highway Department employes in violation of Sec. 111.70(3)(a)5, and, derivatively, of Sec. 111.70(3)(a)1 of MERA.

6. That, on the circumstances of this case, the County did not, by refusing to make the dues/fair share deductions in accordance with the letter of December 16, 1982 from February, 1983, until the present, undertake any conduct which threatened the independence of Local 79 as an independent entity devoted to the interests of the County Courthouse and County Highway Department employes it represents, as opposed to the County's interests, and, therefore, did not commit any violation of Sec. 111.70(3)(a)2 of MERA.

ORDER 1/

That the County's complaint is dismissed in its entirety.

That the complaint of Local 79 is dismissed regarding the alleged violation of Sec. 111.70(3)(a)2 of MERA.

That to remedy its violation of Sec. 111.70(3)(a)1 and of Sec. 111.70(3)(a)5 of MERA, Oneida County, its officers and agents, shall immediately:

1. Cease and desist from refusing to make dues/fair share deductions in accordance with the letter of December 16, 1982, which certified the change in Union dues to the County Clerk.

2. Take the following affirmative action with the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

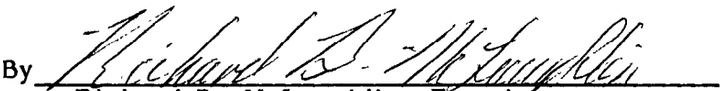
(a) Comply with the provisions of Article XX of the collective bargaining agreement covering County Courthouse employes, and with Article XXV of the collective bargaining agreement covering County Highway Department employes, and make dues/fair share deductions in accordance with the dues change certified by Local 79 in its letter of December 16, 1982.

(b) Calculate, in consultation with Local 79, the precise principal amount due Local 79 which represents the monthly difference between the amount the County would have collected in dues/fair share exactions had those exactions been collected in accordance with Local 79's letter of December 16, 1982, and paid in accordance with Articles XX and XXV set forth in Finding of Fact 3 above, and the exactions actually collected and paid by the County to Local 79, between February, 1983 and the date on which the County takes the affirmative action specified in paragraph (a) above. The County shall pay interest at a rate of 12% per year on the principal amounts determined above, calculated from the date such principal amounts would have been paid by the County to Local 79 had the County not refused to effect the dues change certified in the letter of December 16, 1982, until the date such principal amounts are actually paid to Local 79. The County's liability for such principal amounts shall be paid from deductions taken from the paychecks of individual employes subject to this order in an amount and at intervals to be set by the County and Local 79. The County shall not have any right to deduct any interest required by this Order from the earnings of County employes.

(c) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order as to what steps have been taken to comply with this Order.

Dated at Madison, Wisconsin this 25th day of April, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Richard B. McLaughlin, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER

The Parties' Positions:

Local 79 argues that it has committed no prohibited practice, while the County has, since the relevant collective bargaining agreements clearly provide that Local 79 can set its dues in whatever form Local 79 deems appropriate. Local 79 contends that the clear meaning of the disputed contractual language is supported by arbitral precedent and by the practice of municipal employers and unions in the surrounding area who are parties to labor agreements containing similar contract provisions. According to Local 79, the County's use of bargaining history, and the "past practice" of Local 79 regarding Union dues is unpersuasive as a guide to interpreting the contractual provisions at issue in this case. Local 79 contends that a grievance was timely filed in this matter, and because this grievance has not been processed by the County, the Commission must determine the appropriate interpretation of the contractual provisions at issue. According to Local 79, the remedy appropriate to this case would be to require the County to pay the dues/fair share exactions it has failed to collect since January, 1983, together with interest "without further deduction from employes."

The County contends that it has not committed any prohibited practice, while Local 79 has, since the dues change sought by Local 79 in its letter of December 16, 1982, 2/ constituted a violation of the relevant labor agreements. That Local 79 can properly set dues only as an equal dollar amount per employe is demonstrated, in the County's opinion, by bargaining history, by past practice, by the practice of municipal employers and unions in the surrounding areas who are parties to collective bargaining agreements containing contractual provisions similar to those at issue here, and by a "fair, simple and reasonable reading of the contract language" at issue, as well as of relevant state statutes and judicial opinions. The County rejects Local 79's use of arbitral precedent, and concludes that the issues involved in this case "should be a subject of negotiation at the bargaining table."

Discussion:

Because the cross-complaints at issue here arose from the same facts, they have, with the agreement of the parties, been consolidated for the purposes of hearing and argument. For similar reasons of convenience, a single decision has been employed to resolve the issues raised by each complaint.

Although seven separate provisions of Sec. 111.70(3), Wis. Stats., have been pleaded, an examination of the parties' arguments demonstrates that each complaint centers on the dues change reflected in the December 16 letter and on whether this change constitutes a violation of either Sec. 111.70(3)(a)5 or of Sec. 111.70 (3)(b)4, Wis. Stats. The County's Sec. 111.70(3)(b)2 and (3)(c) allegations derive from the alleged violation of Sec. 111.70(3)(b)4, since the County alleges that Local 79 induced the County Clerk to effect dues/fair share deductions proscribed by the relevant labor agreements. Similar conclusions apply to the alleged violation of Sec. 111.70(3)(b)3. Because the duty to bargain to agreement or to impasse during the term of an existing agreement does not extend to subjects addressed in the existing agreement 3/ the alleged failure to bargain flows from the County's assertion that the December 16 letter sought a change not addressed

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2/ This letter is referred to below as the December 16 letter. With this exception, all further references to dates are to 1983, unless otherwise specified.

3/ Brown County (Dept. of Social Services), (20623) 5/83 at 4.

in the relevant labor agreements. Similar considerations apply to the Union's arguments regarding alleged County violations of Sec. 111.70(3)(a)1 and 2. Each allegation assumes that the County refused to effect a dues change which was contractually proper. In short, whatever persuasive force exists in the alleged violations of Sec. 111.70(3)(a)1, 2 and of (3)(b)2, 3 and (c), derives from the persuasive force of the parties' conflicting claims regarding the contractual propriety of the dues change sought by Local 79 in the December 16 letter.

The Commission defers disputes "to the arbitration process in all cases involving alleged violations of the terms of a collective bargaining agreement where the agreement provides for final and binding arbitration . . . unless the parties, by their conduct, waive or forfeit their right to insist that alleged violations be submitted to arbitration." 4/ In this case, the County denied that the February 17 grievance could be resolved by the grievance procedure, and refused to process the grievance to arbitration. Neither party has requested an Order requiring arbitration of the February 17 dispute, 5/ and both parties litigated the merits of their conflicting contractual claims. Against this background, deferral to the arbitration process would not be proper.

Examination of the contractual issues presented in this case must begin with the County's assertion that the February 17 grievance was not timely filed, since that assertion, if meritorious, would preclude the Commission from asserting jurisdiction over the present matter. 6/ Article IV, Section 2, provides: "The grievance shall be submitted . . . no later than ten . . . working days after the employee knew or should have known of the cause giving rise to the grievance." 7/ The County's assertion that the February 17 grievance cannot be considered timely because it was not filed within ten days of Mr. Heath's letter of January 28 must be rejected because the "cause giving rise to the grievance" was the payroll deduction of February 17, not Mr. Heath's letter of January 28. To conclude otherwise would strain the meaning of the operative terms of Article IV, Section 2.

Article IV, Section 2, starts the ten day time limit from the date "the employe knew or should have known of the cause giving rise to the grievance." Mr. Barrington is not a County employe and the January 28 letter was not distributed to any individual County employe or to County employes generally. For the January 28 letter to be notice to County employes of an event giving rise to a grievance, Mr. Barrington's knowledge of the letter would have to be imputed to County employes under the "should have known" reference in Article IV, Section 2. Such a conclusion is impossible on the present record. The record does not establish what, if any, role Mr. Barrington is, or has been, expected to play in the grievance procedure. In addition, the record only establishes that Mr. Barrington, or someone on behalf of Mr. Barrington, placed a "received" stamp on the January 28 letter on January 31. Even if it is assumed Mr. Barrington had a duty to notify Local 79 of the letter, the record does not establish a specific date on which Mr. Barrington could have, or should have, made this letter known to members of Local 79. Without such a date it is impossible to determine when the running of the ten day time limit should have started.

4/ Joint School District No. 8, et. al., (14866, 14867) 8/76 at 13.

5/ See Levi Mews d/b/a Mews Readymix Corp., (6683) 3/64 at 10.

6/ Winter Joint School District No. 1, (17867-C) 5/81 at 4. That the County did not place this objection before a grievance arbitrator cannot be considered a basis to conclude that the County waived its right to raise the objection. Waunakee Public Schools Joint District No. 4, et. al.,

Focusing on the January 28 letter as the cause of the grievance would also strain the meaning of the term "cause." Unless it is assumed that Mr. Heath's willingness to discuss the matter with Mr. Barrington, as stated in the January 28 letter, was a meaningless gesture, the January 28 letter had only a potential effect on County employes. This potential effect became a reality in the payroll deduction of February 17. The "cause" giving rise to the grievance was, then, the February 17 payroll deduction. Any other conclusion would strain the meaning of "cause", and would serve to discourage informal discussions regarding grievances. The grievance was, therefore, filed within ten working days of the cause giving rise to the grievance when filed on February 17.

Determining the contractual issues posed for decision in this case demands an overview of the parties' arguments, and of the contract provisions at issue. Both parties focused their arguments on Article XX of the labor agreement covering Courthouse employes, and on Article XXV, its counterpart in the labor agreement covering Highway Department employes. 8/ Section 2 of each Article grants Local 79 the right to change the amount of dues if Local 79 certifies the change "thirty days before the effective date of the change." The Union's arguments are rooted in this provision, and urge that the County does not have any right in the labor agreements to restrict the method by which Local 79 sets dues. The County's arguments are more difficult to define. The County does not challenge the procedure by which Local 79 certified the dues change reflected in the December 16 letter, and does not challenge the total amount of dues/fair share deductions sought by that letter. The County correspondence of January 28 and of February 23 appears to question whether or not Local 79 should have certified finished calculations rather than a means of calculating dues in its December 16 letter. This line of argument, however, has not been advanced by the County before the Examiner, and is irreconcilable with the County's refusal to arbitrate the matter, since it assumes that the December 16 dues change is governed by Articles XX and XXV, and questions only the interpretation of those Articles regarding who should calculate the individual deductions. 9/ The County does not assert that any specific provision of the labor agreements bars the arbitration of the February 17 grievance, and thus the core of the County's arguments lies in its assertion that an interpretation of Articles XX and XXV which permitted the December 16 dues change would constitute a violation of those Articles.

Against this background, the contractual issue posed by the cross-complaints is whether or not Articles XX and XXV preclude Local 79 from setting its dues at two hours of regular pay per employe per month. Resolution of this issue resolves the contractual issues in each complaint since Articles XX and XXV grant Local 79 the right to change dues on proper notice, and since the County has not established any basis other than the language of Articles XX and XXV to ground its asserted interest in the method by which Local 79 sets its dues.

Neither Section 1 10/ nor Section 2 of Articles XX and XXV preclude Local 79 from setting its dues at two hours of regular pay per employe per month. Section 1 of these Articles provides: "The County agrees to deduct . . . a sum certified . . . which are (sic) the Union dues . . ." "Sum" is a broad term which can be applied to indefinite or to specified amounts. 11/ In Section 1, "sum" is not modified by any express restriction. The unmodified use of the term "sum" is, on its face, broad enough to permit setting the dues as an equal dollar amount per employe or as two hours of regular pay per employe. Nothing on the face of

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8/ These provisions are referred to below as Articles XX and XXV.

9/ Specific resolution of the question of which party is obligated to make these calculations is unnecessary in light of the discussion below regarding the appropriate remedy.

10/ Section 1 is addressed solely because the County has questioned its impact in the present matter. The final paragraph of Section 2 of Articles XX and XXV makes Section 1 operative if "the fair share agreement shall become null and void."

11/ See, for example, Webster's New Collegiate Dictionary (8th edition, 1977); Black's Law Dictionary (4th edition, 1960).

Section 1 warrants giving the broad term "sum" the restrictive interpretation the County seeks. The County's assertion that the Examiner should imply that "sum" should actually be read as "an equal sum of money per employe" must, then, be rejected.

Similarly, there is no support in Section 2 of Articles XX and XXV to establish any County interest in whether Local 79 sets its dues as an equal dollar amount per employe. The County focuses its asserted interest on the provision in Section 2 that "the employer agrees that it will deduct . . . the monthly dues as certified by the Union as the current dues uniformly required of all members . . ." and argues that the terms "uniformly required" preclude Local 79 from setting dues pegged at an employe's "ability to pay." 12/ This assertion strains the language of Section 2 and cannot be accepted. The term "uniformly" modifies the term "required" and states how the "current dues" must be "required." The record establishes that the December 16 change in dues was intended to be, and was, applied to each unit member in the same manner in January. The December 16 letter did, then, set a rule for the collection of Union dues which was uniformly applied to all members. The County's arguments strain the interpretation of these terms by employing "uniformly" to modify "dues" to somehow require that dues can be uniform only if set at an equal dollar amount per employe. 13/ This grammatical point is not insignificant but reflects the purpose of the cited portion of Section 2 which functions less as a vehicle for an employer's desire to participate in the setting of Union dues than as a protection to bargaining unit members against disparate treatment by their majority representative.

The County, citing the mandate of Section 2 that ". . . all employees in the unit will be required to pay, as provided in this article, their proportionate share of the cost of representation by the Union . . ." argues that the December 16 letter sought a change in dues which cannot represent an employe's "proportionate share" of the cost of Union representation. The County does not challenge the total dues/fair share exactions generated by the December 16 letter in January, but focuses its challenge solely on the means by which these exactions were generated. Each party agrees that assessing dues as an equal dollar amount per employe is an appropriate method of yielding a "proportionate share" of the cost of Union representation, but the County, contrary to Local 79, asserts that this is the only permissible method under Articles XX and XXV. This assertion has no support in the language of Section 2. Section 2 grants Local 79 the right to change the "amount 14/ of dues" if the amount is certifed by Local 79 "thirty (30) days before the effective date of the change." The preceding paragraph establishes that the County will deduct "the monthly dues as certified by the Union." Later paragraphs establish that "as provided in this article . . . all employees in the unit will be required to pay . . . their proportionate share of the costs" of Union representation. As a whole, then, Section 2 requires the County to act as a conduit for dues/fair share payments from unit employes to Local 79. The section grants Local 79 the right to change dues subject to certain notice requirements, and does not place any restriction on Local 79 regarding the method by which it sets its dues.

The County assertion that the term "proportionate" has an independent significance regarding the method by which Local 79 sets its dues must be rejected. According to the County, dues can be considered "proportionate" only so long as

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12/ The "ability to pay" reference is taken from the County's arguments. Measuring Union dues as a number of regular hours of pay does not necessarily establish an individual's ability to pay the dues which may well depend upon expenses or income not measured by an employe's hourly wage rate.

13/ In Rock County, (Lee, 1975), the arbitrator rejected the contention that dues can be uniform only if set at an equal dollar amount per employe. The contract language at issue in that case is dissimilar to that at issue in the present case, and thus Rock County is not a relevant guide to the resolution of the issues raised by the present complaints.

14/ As noted above, the County does not challenge, in this matter, the fact that Local 79 certified a method of calculating dues rather than a finished calculation. The discussion regarding the interpretation of the term "sum" applies to the interpretation of the term "amount."

each employe pays an equal dollar amount. While it is undisputed that such equal dollar amounts per employe can yield a proportionate share, this fact alone does not warrant the conclusion that the term "proportionate" can permit only that interpretation. In fact, the term is broad enough to cover the dues/fair share deductions which occurred in January as well as those which followed. "Proportionate" in Section 2, like "sum" in Section 1, is not in any way expressly restricted by the parties. Like "sum," "proportionate" designates a variety of mathematic calculations which can vary with the assumptions which precede the calculations. Unlike "sum," "proportionate" also has a non-mathematic dimension. "Equal" and "proper" for example, are considered synonyms of "proportionate." 15/ In either context, "proportionate" is broad enough to include a variety of possible interpretations which will vary with the assumptions which support the interpretation. The February dues/fair share exactions demanded from employes the same dollar amounts, but demanded a varying number of regular hours of work by each employe to generate those dollar amounts. The January dues/fair share exactions demanded from employes an equal number of regular hours of labor to generate the dues, but varying dollar amounts. Either interpretation becomes "proportionate" or "disproportionate" depending on the assumptions which underlie the interpretation. Reading, as the County does, "proportionate" to mean "equal" means the February exaction is "proportionate" as to dollar amounts as long as one assumes that dollar amounts are the sole point of reference and that the amount of time necessary to generate those amounts is irrelevant. Similar observations could be made regarding the January exactions. Whether one interpretation is more proportionate than the other is irrelevant here, since the term "proportionate" as it appears in Section 2 is broad enough to support either interpretation, and cannot be read to support only the interpretation advanced by the County. Whether one form of dues is more proportionate than the other is a question which must be left to the majoritarian process by which dues are set.

Thus, both Article XX and XXV employ language broad enough to permit either form of dues/fair share exaction at issue here. In the absence of any County interest granted by Sections 1 or 2 of Articles XX and XXV regarding whether Local 79 sets its dues as two regular hours of pay per employe, and in the presence of the specific provision in Section 2 granting Local 79 the right to change dues subject to a notice requirement not challenged here, the County's assertion that the December 16 letter sought a dues change proscribed by Articles XX and XXV must be rejected. It follows that the County's refusal to make dues/fair share deductions in accordance with the December 16 letter violated those Articles.

Neither Section 1 nor Section 2 of Articles XX and XXV is ambiguous regarding the nature of the County's interest regarding whether or not Union dues are expressed as an equal dollar amount per employe or as two hours of regular pay per employe, and, as noted above, neither section grants the County such an interest. Because the application of the language of Articles XX and XXV to the arguments advanced by the County is not ambiguous, no recourse has been made to the contract interpretation guides advanced by each party. Under the circumstances of this case, however, some comment regarding the appropriateness of these guides is appropriate, because recourse to these guides to interpretation would not change the conclusions reached above.

The County has argued that bargaining history supports its contention that the broad language of Articles XX and XXV must be given a narrow construction. The evidence regarding bargaining history is sketchy, and indicates that the County and Local 79 did not specifically discuss the method by which dues were to be set. One County representative did testify he would not have agreed to the language of Articles XX and XXV if he had known, at the time the language was adopted, that Local 79 would set dues at two hours of regular pay per employe per month. While the witness involved was a credible witness, the answer granted no factual background to the parties' intent at the time the language was negotiated. Although the answer grants some insight into the County's present position, it offers no insight into why the County agreed to the expansive language of Articles XX and XXV when it wished a restrictive interpretation of that language. The

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15/ Webster's New Collegiate Dictionary (8th edition, 1977).

evidence regarding bargaining history establishes at best that the County agreed to act as a conduit for dues/fair share payments from employes to Local 79 and that the County did not negotiate or intend to negotiate any involvement in the process by which Local 79 set its dues.

The County has asserted that the past practice of the parties constitutes a means of narrowing the broad language of Articles XX and XXV. Past practice is treated as a reliable guide to contract interpretation when the evidence regarding the practice is sufficient to establish that the practice manifests an understanding between the parties. The evidence regarding past practice in this case is not sufficient to warrant its use as a guide to interpreting Articles XX and XXV. While the County has correctly noted that Local 79 has consistently set dues as an equal dollar amount per employe since 1974, the record does not establish any reliable basis to conclude that the setting of Union dues is, or has ever been, treated by the parties as anything other than an internal Union matter.

Both parties have contended that the practice of municipal employers and unions in surrounding jurisdictions offer some guidance to resolving the issues presented in the present case. The County, in particular, asserts that proof on this point clearly demonstrates that parties in the surrounding area have "interpreted" language similar to the disputed language in Articles XX and XXV to demand that Union dues be set as an equal dollar amount per employe. Whether the municipal employers and unions in the surrounding jurisdictions have any agreement to interpret their contract language to mandate that dues must be assessed only as an equal dollar amount per employe cannot be determined from the proof submitted, which consists of the County's summation of "its contacts with various counties surrounding Oneida." The County, unlike Local 79, did not submit the relevant collective bargaining agreements. Even had the County done so, its proof on this point is dubious. That surrounding employers are parties to collective bargaining agreements which have similar language to that of Articles XX and XXV, and deduct dues as an equal dollar amount per employe does not establish that the employers and unions involved have interpreted their collective bargaining agreement to permit only that form of dues deduction. Whether such parties would consider dues set at two hours of regular pay per employe to be improper under that language would be entirely speculative on this proof. In addition, as Local 79 has asserted, the City of Rhinelander is a party to two collective bargaining agreements containing fair share agreeements which employ language virtually identical to that of Articles XX and XXV, and deducts dues/fair share payments in the amount of two hours of regular pay per employe per month. Taken together, the County's and the Union's proof on this point establishes that Articles XX and XXV use language which is expansive enough to permit either form of dues/fair share deductions at issue in this case. 16/ In sum, the County's argument regarding the "interpretation" of other parties does not constitute a reliable guide for resolving the issues presented in the present case since it is based on a tenuous form of proof, obscures the distinction between an internal practice of one party and a mutual understanding of the parties regarding the interpretation of a contractual provision, and, in any event, does not establish that the language of Articles XX and XXV can be read to permit dues to be set only as an equal dollar amount per employe per month.

The final guide for interpreting Articles XX and XXV involves the County's use of Secs. 111.70(3)(a)6, 111.70(1)(h) and Berns v. Wisconsin Employment Relations Commission, 99 Wis. 2d 252, 299 N.W. 2d 248 (1980). None of this authority has any demonstrated relevance to the issues presented in this case. The issues argued in this case are contractual, not statutory in nature. A review of the pleadings and of the County's arguments underscores this point. The County has noted the absence of a hold harmless clause in Articles XX and XXV, but has noted this absence to emphasize the significance of the contractual issues pre-

sented, and its desire not to commit a breach of the collective bargaining agreements. That the County argues that the Union's attempted change in dues must be reserved for the bargaining table demonstrates that the County does not view the dues change reflected in the December 16 letter to, in itself, constitute a method proscribed by MERA. Similarly, the County's use of bargaining history, past practice, and the practices of parties in surrounding jurisdictions as guides to resolve the issues posed in this case demonstrates the contractual nature of the issues presented, since such authority would be irrelevant to the interpretation of state statutes.

Even if such authority was relevant, there is no basis on the present record to construe the cited statutes or to apply Berns independently. Local 79 has not pleaded or in any way argued that the County has violated Sec. 111.70(3)(a)6. Although Sec. 111.70(1)(h) does employ certain terms which appear in Articles XX and XXV, those Articles do not use the exact language used in Sec. 111.70(1)(h), and the County has not demonstrated any provision in the collective bargaining agreements containing Articles XX and XXV which expressly incorporate that statute specifically, or the provisions of MERA generally. In addition, the issue addressed by the Berns court has no relevance to the issues presented in this case. The Berns court stated the issue presented for decision in that case thus: "On this review we are presented with the question whether a 'fair-share' provision in a collective bargaining agreement between a municipal employer and a union may, by its terms, be given retroactive effect." 17/ That issue is so dissimilar from the issues presented by the parties' cross-complaints that the decision cannot be considered to offer any but the most speculative guidance to the present case. Ultimately, the County's argument regarding the cited statutes and Berns is that its interpretation of Articles XX and XXV is consistent with them. This argument, if relevant, does not establish that the interpretation of Articles XX and XXV urged by Local 79 is not, and in the absence of a demonstration that the parties' agreement and the cited authority is in conflict, the use of that authority on the present record is inappropriate.

In sum, the County's failure to make dues/fair share deductions in accordance with the December 16 letter is violative of Articles XX and XXV, and the County has thus committed a violation of Sec. 111.70(3)(a)5, and, derivatively, a violation of Sec. 111.70(3)(a)1.

The remaining prohibited practice allegations filed by Local 79 concern Sec. 111.70(3)(a)2. That section makes it a prohibited practice for a municipal employer to ". . . dominate or interfere with the . . . administration of any labor . . . organization . . ." There is no dispute that Local 79 is a labor organization within the meaning of MERA, but the present record will not support a conclusion that the County's conduct in this case constitutes a violation of Sec. 111.70(3)(a)2. The standard relevant to violations of this section has not been expressly addressed by the Commission, but the standard applied by Examiners in the past has been stated thus:

> Since the essence of domination is such employer control that the union is a mere tool of the employer, interference with the administration of the union differs from domination only in the degree of control. In each case, the offensive conduct threatens the independence of the union as an entity devoted to the employes' interests as opposed to the employer's interest. 18/

The offensive conduct in the present case centers on the County's refusal to deduct dues/fair share contributions as certified in the Union's letter of December 16. While an attempt by an employer to dictate the means by which a labor organization assesses dues has the potential of interference with the administration of a labor organization, the present record will not support a

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17/ 99 Wis. 2d at 254.

18/ Unified School District No. 1 of Racine County, Wisconsin, (15915-B) 12/77 at 7; State of Wisconsin, (17901-A) 8/81 at 8.

conclusion that such a potential effect was realized in this case. The County did not disrupt the flow of dues/fair share deductions to Local 79 and did not actively assert any interest in the total amount of such deductions available to Local 79. The County did challenge the method by which Local 79 set its dues, but this challenge was rooted in the County's mistaken interpretation of its obligations under Articles XX and XXV, and in an understandable concern to avoid making payroll deductions from the paychecks of individual employes if such deductions would constitute a violation of the labor agreement. In addition, there is no evidence that the County's actions affected the operation of Local 79. Thus, it cannot be said that the County's actions threatened the independence of Local 79 as an entity devoted to the Courthouse and Highway Department employes' interests as opposed to the County's interests in violation of Sec. 111.70(3)(a)2.

Since the County's assertion that Local 79 violated Articles XX and XXV by certifying Union dues as two regular hours of pay per employe per month has been rejected, and since each of the County's allegations regarding violations of Sec. 111.70(3)(b)2, 3 and (c) derive from this assertion, no violation by Local 79 of MERA has been found on the circumstances of this case.

Remedy:

The nature of the remedy regarding the County's violation of Articles XX and XXV requires some discussion in light of the posture in which this case has been litigated. Unlike the situation in Rock County, the parties in this case have presented the dispute regarding the method by which dues/fair share deductions can be set in a manner which places retroactive relief in issue, since the County's violation of Articles XX and XXV dates from February, 1983.

The precise total amount due Local 79 is to be calculated by the County in consultation with Local 79, with the County being ultimately responsible for the calculations. Placing the onus of calculation on the County turns in part on practical reasons. The County did make such calculations in January of 1983, and does have the easiest access to the payroll records necessary to the calculations. Placing the onus on the County avoids prolonging the already considerable delay in this case, and also addresses the fact that the County, while choosing to litigate only the means by which Local 79 sets dues, also chose in February of 1983 to collect dues/fair share exactions in an amount which denied Local 79 the increase in dues it sought by the December 16 letter. It must be remembered, however, that these conclusions are remedial in nature, and are limited to resolving the narrow issue of whether or not Local 79 can assess dues at two hours of regular pay per employe per month. The parties have not addressed the separate question of whether Articles XX and XXV in the future should be considered to place the burden of calculation on Local 79 or on the County. An examiner's decision on this point would be unnecessary in light of the conclusions reached above, and would be undesirable since it would not have the benefit of the parties' arguments.

The amounts which the County should have deducted under the December 16 letter are subject to the assessment of interest. The assessment of interest, and the rate to be assessed, follows from the Commission's decision in Wilmot Union High School District, 19/ and not, as Local 79 asserts, from arbitral authority. The Wilmot rule applies to violations of collective bargaining agreements under Sec. 111.70(3)(a)5, but is traceable to judicial decisions setting forth a doctrine applied to cases arising in tort or in contract. This doctrine creates an entitlement to interest "from the date of breach of the contract if (the) claim is liquidated at that time . . . For this purpose, the debt is regarded as liquidated if the amount due can be determined by mere mathematical computation." 20/ In this case, the County did challenge the means by which dues/fair share deductions are set, but did not question the total exaction certified by Local 79. By reverting to the previously certified amount of $11.00 per employe, however, the County did more than merely question the means by which Union dues were set, by paying out a total amount which negated the raise in dues sought to be effected by Local 79 in its letter of December 16. As noted in the February 17 grievance, the December 16 letter sought to change both the method and the total amount of

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19/ Wilmot Union High School District, (18820-B) 12/83.

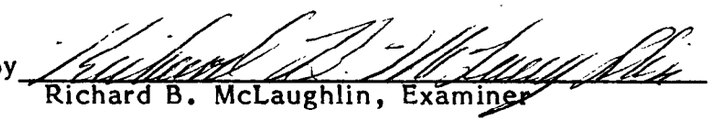
20/ E.D. Wesley Co. v. City of New Berlin, 62 Wis. 2d. 668, 676, 215 N.W. 2d 657 (1974).

dues/fair share deductions to be collected. The assessment of interest flows, then, from the County's action in reducing the total dues/fair share exactions sought by Local 79 when the total was not in dispute, and when mere "mathematical computation" would have determined the total sought by Local 79 which could then have been assessed by the County as an equal dollar amount per employe if necessary. The County's decision to litigate the propriety of the method by which Union dues were set in the letter of December 16 standing alone would not have subjected the County to the payment of interest. 21/

Local 79's assertion that the County should be required to pay the amounts discussed above "without further deduction from employes" because "the County . . . could have held the disputed amounts in trust . . . and has no one but itself to thank for its predicament," is not persuasive. Such a conclusion would violate the nature of the dues/fair share obligation and is unwarranted in the present case. Under the contractual provisions governing dues/fair share, the County agreed to act only as a conduit for individual employe payments to their majority representative. Local 79's argument would make the County less a conduit than a surety for these payments. While Local 79 has asserted arbitral authority to establish that such a remedy would be appropriate, the cases cited deal with instances in which the remedy was tied to egregious behavior. 22/ In this case, no such egregious behavior exists. The Union's assertion that the County could have placed the disputed amount in trust ignores the fact that Local 79 and the County share an on-going bargaining relationship. Local 79 could have requested the disputed dues be held in trust, could have recertified the disputed amount of dues as an equal dollar amount per employe until the dispute regarding the method of setting dues was resolved, or could have requested prospective relief only. Any one or combination of these approaches could have eliminated or at least minimized the remedial predicament presented in this case and narrowed the litigation as closely as possible to the question of whether or not Local 79's means of setting dues was proper. The absence of even a request by Local 79 that such action be taken makes it impossible to conclude that the County alone created this remedial predicament. Given the present record, then, the County must be allowed to deduct the principal amount of the dues/fair share deductions which should have been collected after January, 1983, from the paychecks of individual employes. The amount and the frequency of these exactions has been reserved to the parties who, presumably, will be sensitive to the rights and the needs of individual employes and will take those rights and needs into account in arriving at the appropriate figures. The assessment of interest on the withheld funds will make Local 79 whole for the time value of the wrongfully withheld funds.

Dated at Madison, Wisconsin this 25th day of April, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Richard B. McLaughlin, Examiner

21/ Giffen v. Tigerton Lumber Co., 26 Wis. 2d 327, 132 N.W. 2d 572 (1965).

22/ United States Gypsum Co., 56 LA 363 (Valtin, 1971); Milwaukee Board of School Directors, 71 LA 892 (Winton, 1978). Compare to Remedies in Arbitration, Hill and Sinicropi, (BNA 1981) at 242-243 and cases cited at 345.