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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

CIRCUIT COURT
Branch 2

SAUK COUNTY

AFSCME, LOCAL UNION NO.
360 and 3148, AFL-CIO,

MEMORANDUM DECISION

Petitioner,

vs.

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Case No. 87CV230

Respondent.

Decision No. 22552-B

FACTS

The petitioners appeal to the Circuit Court of Sauk County from a decision of the Wisconsin Employment Relations Commission. The Commission decision was adverse to the petitioning Union. This appeal is pursuant to Chapter 227, Wis. Stats. Briefs have been submitted by all parties. Oral argument was waived.

The facts underlying this appeal are virtually undisputed. The pertinent facts are that a collective bargaining agreement between the petitioner (Union) and respondent (Sauk County) expired on December 31, 1984. A successor collective bargaining agreement had not been reached prior to the December 31, 1984, termination date. The Union, prior to December 31, 1984, filed for mediation-arbitration.

The contract which terminated on December 31, 1984, required Sauk County to make voluntary union dues and fair share

deductions from employee pay checks. In negotiating a successor contract, neither side suggested changes in this contract provision. No change was suggested by either party in the final offers submitted prior to the med-arb.

On January 14, 1985, Sauk County notified the Unions it would discontinue voluntary deductions of union dues and fair share deductions for which there was no valid collective bargaining agreement in effect. There was no agreement to extend the collective bargaining agreement which expired on December 31, 1984. The Union asserts that the County's actions in ceasing the deductions violates the Municipal Employment Relations Act (MERA) of Wisconsin. The County argues that no violation occurred and, in fact, that if it had continued the deductions, a statutory violation would occur. Additional facts will be stated below.

DECISION

The decision of the WERC is affirmed.

This matter is before the Court for a judicial review of an administrative decision. Section 227.57, stats., sets forth the conduct for such a review. Absent alleged irregularities, the judicial review is confined to the record before the Commission. A presumption of validity accompanies the agency determination. In general, factual determinations by an agency are given great deference. The Court is not to substitute its conclusions for those of the agency. On issues of law, great

weight is to be given an agency experienced in that area. If the issue is one of first impression for the agency, however, lesser weight is given to that determination.

It is undisputed that the collective bargaining agreement expired on December 31, 1984. There was no agreement to extend. The County claims that a continuation of the deductions would violate Section 111.70(3)(a)6. Section 111.70(3)(a)6 prohibits the deduction of dues or fair share in the absence of an agreement being in effect. The Union argues, that there was a tentative agreement in effect on the deduction issue. The reasoning is that since neither party proposed a change in the practice, it implicitly continued. The record does not support this position. There was no agreement to extend the previous collective bargaining agreement nor was there a specific agreement concerning the deduction issue. The proposals of each party simply made this a "non-issue" in their negotiations and mediation-arbitration requests.

In petitioner's reply brief, the Union cites TWA v. Independent Federal of Flight Attendants, 124 LRRM 2364, 2371 (1987). This case is distinguishable as in TWA, the agreement provided for yearly renewal unless written notice of intended change was served. p. 2365. Secondly, the National Railway Labor Act is not applicable to this case and contains provisions different from MERA.

Similarly, the Union's reliance on Burns v. Wisconsin Employment Relations Commission, 99 Wis. 2d 252, 267 (1980) is misplaced. Burns dealt with the retroactive application of a fair share agreement.

Prior authority consistently supports the conclusion that the dues/fair share deductions are security devices for the Union. The benefit is to the Union, not the Union member. As such, these items fall outside the arena of mandatory subjects of bargaining for which the status quo must be maintained. The Union security devices must be contrasted to those benefits which are directly applicable to the employee such as wages, work hours and fringe benefits.

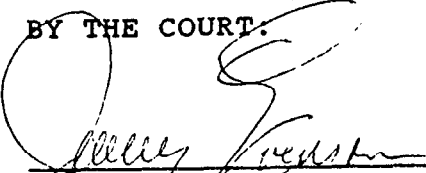
The record satisfactorily supports the conclusions of the Commission. Its conclusions are consistent with prior determinations relating to non-mandatory subjects of bargaining. Similarly, the conclusions are supported by a previous identical issue some two years earlier. Under the standards that this Court must apply, as well as its reading of the law, the Commission decision was correct.

The record does not establish either a tentative agreement which required the deductions nor a required continuation of the status quo. The latter, as indicated above and pointed out by the Commission, would be violative of MERA, Sec-

tion 111.70(3)(a)6. The Commission decision must be and is affirmed. Prevailing counsel shall submit the documents necessary to conclude this matter within 30 days.

Dated this 3 day of May, 1988.

BY THE COURT.


James Evenson.
Circuit Judge

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