

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of the Objection to the
Fair Share Determination Involving

**SUSAN L. BARTLET, LAKSHMI HALL,
TIMOTHY SHOUSHA, CARSON WRIGHT**

and

MILWAUKEE TEACHERS' EDUCATION ASSOCIATION

Case 398
No. 61016
MA-11776

Appearances:

Perry, Shapiro, Quindel, Saks, Charlton & Lerner, S.C., Attorneys at Law, by **Mr. Richard Perry**, on behalf of the Milwaukee Teachers' Education Association.

The Objectors did not appear.

ARBITRATION AWARD

The Milwaukee Teachers' Education Association, hereinafter referred to as "MTEA", has established a written procedure which provides that it will petition the Wisconsin Employment Relations Commission to appoint a Commissioner of staff member to act as arbitrator in determining any disagreement concerning fair-share expenditures for non-member employees covered by a fair-share agreement who file objections to MTEA's determination of the appropriate fair-share amounts pursuant to Ch. 111.70, Stats. Pursuant to that written procedure, on March 19, 2002, MTEA requested that the Commission appoint David E. Shaw, a member of the Commission's staff, to act as the arbitrator to resolve objections to fair-share expenditures that had been filed by four employees of Milwaukee Public Schools covered by fair-share agreements and represented by MTEA. The Commission designated the undersigned to act as the arbitrator to resolve said disputes and hearing was scheduled for May 13, 2002, in Milwaukee, Wisconsin. On May 2, 2002, MTEA filed a motion to postpone the hearing and to dismiss the objections for failing to comply with the requirement of MTEA's procedure that objectors identify the areas in MTEA's proposed budget that they

allege are not authorized by Ch. 111.70, Stats., within thirty-five (35) days from the date of the fair-share notice packet they received. By letter of May 3, 2002, the undersigned granted MTEA's motion to postpone the hearing and gave the objectors twenty-one (21) days from the date of the letter to respond to MTEA's motion to dismiss their objections. The letter was sent to MTEA's legal counsel with the stated expectation that MTEA would forward the letter to the individual objectors. No objector has filed a response to MTEA's motion at any time.

BACKGROUND FACTS

In support of its motion to dismiss, MTEA has submitted as evidence the fair-share agreements contained in its collective bargaining agreements covering the Milwaukee Public Schools teachers and substitute teachers represented by MTEA, the MTEA fair-share procedure along with the fair-share notice packet it sent to non-member employees it represents in those bargaining units, the objections filed by the four objectors in this proceeding, and Commission legal precedent and arbitral precedent. Also in the record, as set forth below, are the notices MTEA sent to the objectors on April 4, April 11 and April 15, 2002.

The MTEA's fair-share procedure is as follows:

MTEA Fair Share Procedure

1. General

The Milwaukee Teachers' Education Association shall provide all MTEA non-member employees covered by the fair-share provision in their collective bargaining contract with notice and explanation of the purposes for which the fair share fees collected under the fair share provision are used. The MTEA will also furnish such employees with an opportunity to disagree with any portion of such use and have a prompt, impartial resolution of any disagreement which may arise concerning use of such fair share fees in accordance with Section 111.70, Wisconsin Statutes, and the Constitutions of the United States and the State of Wisconsin.

2. MTEA Determination of Budgetary Expenditures Used for Purposes Authorized by Section 111.70, Wisconsin Statutes

Prior to the beginning of each MTEA fiscal year, September 1 through August 31, the MTEA shall analyze which areas of its budget relate to Section 111.70 expenditures. In determining which budget expenditures are permitted under Section 111.70, the MTEA shall rely upon court adjudications, administrative decisions, and arbitration awards which are relevant to this subject.

3. Notice to Non-Member Employees

- a. The MTEA shall notify all non-member employees in the MTEA bargaining units who, as of the end of the prior school year, had fair share fees deducted from their salaries, of its determination as to the portion of MTEA Budget expenditures allowable under the fair share provision of Section 111.70. The MTEA will provide such employees with the MTEA's fiscal year budget, a copy of the most recently completed audit, the MTEA's determination as to allowable and non-allowable expenditures, and a copy of this procedure.
- b. MPS will furnish the MTEA with the following information as to all individuals newly hired within an MTEA bargaining unit:
 1. The name and address of all new teachers as soon as MPS has received their individual contracts, and the name and address of all other new employees in the other MTEA bargaining units as soon as MPS hires these individuals.
 2. The expected first date of employment of each new employee in the MTEA bargaining units.
 3. The pay date on which fair share deductions would commence for new employees who do not become members.
- c. The MTEA will furnish the information referred to in Part 3(a) to all newly-hired employees in the MTEA bargaining units who do not become members of the MTEA within fifteen (15) days of when the MTEA learns of their being hired.

4. Employee Response

Any employee who received the foregoing notification and information from the MTEA shall respond within thirty-five days from the date of this notification. For purposes of this provision, the notification and materials shall be deemed received three (3) days after the date of notification.

- a. Employees who do not respond within thirty-five (35) days from the date of the notice shall be deemed to have accepted that 100% of the MTEA member dues will be deducted from their earnings, and it will be assumed that the employees do not object to the MTEA's use of deductions from their earnings for the expenditures identified in the MTEA budget.
- b. Employees who wish to disagree with the use of such portion of the budget which the MTEA has identified as not authorized by Section 111.70, shall make their disagreement known to the MTEA within thirty-five (35) days from the date of the notice and that amount shall not be deducted from their wages.
- c. Those employees who wish to disagree with the uses identified by the MTEA as not authorized by Section 111.70 and wish to object to additional MTEA expenditures, shall identify such areas in the proposed budget which they allege are not authorized by Section 111.70 within thirty-five (35) days from the date of the notice.

5. Arbitration

- a. Employees who wish to disagree with the uses identified by the MTEA as not authorized by Section 111.70 and wish to object to additional MTEA expenditures have the right to proceed to arbitration.
- b. No fair share deductions will be made pending WERC arbitration of employee objections to the MTEA's determination of those funds that are related to collective bargaining and contract administration. Employee objections will be promptly resolved through WERC arbitration. After the arbitrator's award is issued in determining the appropriate amount that can be charged fair share employees, that yearly amount will be deducted from their remaining checks during the school year.

- c. The MTEA shall petition the Wisconsin Employment Relations Commission to appoint a Commissioner or a WERC staff arbitrator to act as arbitrator in determining any disagreement which may exist concerning the subjects identified as permitted expenditures pursuant to Section 111.70, Wisconsin Statutes. The arbitrator so appointed shall schedule a hearing which consolidates all of the individual disagreements raised by non-members. The hearing shall be held as soon as may be practicable. The arbitrator shall issue his or her decision in accordance with the mandate of the United States Supreme Court in Chicago Federation of Teachers vs. Hudson, 103 S.Ct. 1066 (1986). The arbitrator's award shall be final and binding.
- d. If there are objections from a new employe which cannot be included in the consolidated hearing, the arbitrator shall schedule a hearing as soon as practicable.
- e. Commissioners or WERC staff arbitrators serve as arbitrators in Wisconsin without a fee. The MTEA shall bear the cost of transcripts and other necessary costs of the arbitrator acting in his or her role in this procedure. Witness fees, salaries for witnesses, subpoena fees, attorney fees or transcripts requested by any party shall be borne by the party requesting or authorizing such costs.

6. Court

Employes who wish to disagree with the uses identified by the MTEA as not authorized by Section 111.70 and wish to object to additional MTEA expenditures have the right to proceed in court. Proceeding in court shall constitute a waiver of the arbitration procedure outlined above.

7. Savings Clause

The MTEA reserves the right to modify this procedure at any time if in its opinion such modification is required by state or federal law.

Along with the MTEA's fair-share procedure, the non-member employees represented by MTEA and covered by the fair-share labor agreements were sent a "Summary of Legislative and Legal Background" consisting of a brief summary of Sec. 111.70(1)(h), Stats.,

and applicable legal precedents relating to fair-share deductions, a “Teacher Option Form”, the proposed 2001-2002 MTEA budget, the “2001-2002 MTEA Budget – Narrative Description”, the MTEA’s “Financial Report For the Fiscal Year Ended August 31, 2000”, along with the independent auditor’s opinion letter and financial statements for 1999 and 2000, and MTEA’s computations as to allowable and non-allowable expenses for 1999-2000.

The “Teacher Option Form” sets forth the options from which the non-member employee is to select. The options include the following:

4. I choose to proceed to arbitration in accordance with the MTEA Fair Share Procedure because I believe that more MTEA expenditures than those identified by the MTEA do not relate to the cost of collective bargaining and contract administration. I do not want deductions from my earnings under the fair share agreement used for the MTEA Budget expenditures which I have listed below. I understand that deductions from my paychecks for 2001-02 will reflect the amount of expenditures determined by the arbitrator to be allowable.

The form also includes the notice that it must be completed and returned to MTEA within 35 days from the notification date or the individual the full MTEA dues (not including political action contributions) will be deducted from their pay and they will have been deemed to have waived any objections to the use of the deductions for any MTEA budget expenditure for fiscal year 2001-02.

The four objectors in this timely returned their “Teacher Option Form” to MTEA in January or February of 2002, and selected option 4, set forth above. None of the objectors listed the budget expenditures to which they were objecting on the form.

On March 19, 2002, MTEA’s counsel filed a request with the Commission that the undersigned be appointed as arbitrator to resolve the objections. The undersigned was so designated and hearing was set for May 13, 2002 in Milwaukee, Wisconsin. MTEA sent each of the four objectors the following “Notice of Hearing” along with the undersigned’s scheduling letter:

Re: Milwaukee Public Schools
Case 398 No. 61016 MA-11776
(MTEA Fair Share Fee Arbitration)

Notice of Hearing

April 4, 2002

Mr. Carson Wright

Dear Mr. Wright:

On February 10, 2002, you objected to MTEA expenditures and exercised your right to proceed to arbitration for a ruling to decide your fair share obligation pursuant to Section 111.70, Statutes. (Copy of the objection is enclosed for your convenience.)

Arbitrator David S. (sic) Shaw has been appointed by the Wisconsin Employment Relations Commission to act as impartial arbitrator to determine the amount of the MTEA expenditures to be allowable from fair share funds.

Arbitrator Shaw has scheduled the hearing as follows (copy of Arbitrator's letter of April 3, 2002 is enclosed for your convenience):

When: Monday, April 13, 2002 (sic) 1/

Place: Astor Hotel, George Walker Room
924 E Juneau Avenue
Milwaukee, Wisconsin 53202

Time: 10:00 a.m. until 5:00 p.m. or until the case is fully presented, whichever comes first.

Present at this hearing will be the Arbitrator, a court reporter to transcribe the testimony, counsel and witnesses on behalf of the MTEA and the four objecting MTEA represented employees of MPS and their witnesses who wish to present evidence in support of their objections. You may be represented by counsel of your choosing at your own expense.

1/ The Arbitrator's scheduling letter sets forth the correct date of May 13, 2002.

The MTEA will bear the full cost of the conference room, the WERC Arbitration fee and the Court Reporter's fees. As noted, if you retain individual counsel, it will be at your own expense. With respect to release from work or any other questions, please contact me at 414-259-1990.

Thank you for your attention to this matter.

Sincerely,

Mark Rosenbaum /s/
Mark Rosenbaum
Assistant Executive Director

By letter of April 11, 2002, MTEA again attempted to obtain a response from the individual objectors as to whether they planned to attend the arbitration hearing:

Re: Fair Share Arbitration Hearing – May 13, 2002

Dear Mr. Wright:

In a letter dated April 4, 2002 (copy attached for your own convenience), I informed you of the scheduling of the above arbitration hearing. A week has passed and I have not heard from you. I have attempted, without success, to reach you by telephone.

If you plan to attend the hearing, it is important that you contact me as soon as possible so that I can have you released by the MPS Department of Labor Relations. It will also be necessary for you to arrange for a substitute as you normally do for any absence.

Thank you for your prompt attention to this matter. If you have any questions, please contact me.

Sincerely,

Mark K. Rosenbaum /s/
Mark Rosenbaum
Assistant Executive Director

On April 15, 2002, MTEA's counsel sent each of the objectors the following notice:

**State of Wisconsin
In Arbitration**

Notice of Motion

And

Motion to Dismiss

TO: Carson Wright – Teacher
Objector

David E. Shaw, Arbitrator

FROM: Richard Perry
MTEA Attorney

Please take notice of the following:

1. On February 2, 2002 you indicated your (sic) objected to more expenditures than the MTEA procedure had disallowed from your fair share contributions under the Hudson line of cases.
2. Although requested to do so, you did not list or specify any expenditure to which you objected.
3. Previous administrators have ruled that failure to specify the particular categories objected to is jurisdictional and requires dismissal of the objections. (If you wish to review these decisions, copies are available for your inspection, studying and copying at the MTEA office. Please call Mark Rosenbaum (414-259-1990) to arrange a time and place for your review.

4. The MTEA has written to you on April 4 and 11, 2002 and attempted to reach you by telephone – all without any response from you.
5. Please file by May 1, 2002, a written statement listing the specific categories of MTEA expenditures to which you object.

Wherefore Please Take Notice

If you fail to file a timely written specification of your objection(s) to MTEA expenditures by May 1, 2002, the MTEA will so notify the arbitrator and move for an Order:

1. Postponing the currently scheduled hearing.
2. Dismissing your objection for non-compliance with the MTEA Procedure in accordance with the decisions of prior Arbitrators delineating the jurisdiction of the Arbitrator under this arbitration procedure.

Dated at Milwaukee, Wisconsin this 15th day of April 2002.

Richard Perry /s/
Richard Perry
MTEA Attorney

The Arbitrator also received a copy of an April 22, 2002 letter to objector Timothy Shousha from Mark Rosenbaum, Assistant Executive Director of MTEA, confirming that Mr. Shousha was withdrawing his objection from the arbitration process.

On May 3, 2002, MTEA filed its Notice of Motion and Motion to Postpone the Hearing and Dismiss the Objections, along with the following cover letter and indicated materials:

May 2, 2002

David E. Shaw, Arbitrator
Wisconsin Employment Relations Commission
18 South Thornton Avenue
P.O. Box 7870
Madison, WI 53707-6780

Re: Milwaukee Public Schools
Case 398 No. 61016 MA-11776
(MTEA Fair Share Fee Arbitration)

Dear Arbitrator Shaw:

Enclosed please find the Notice of Motion to Postpone the Hearing and Dismiss the Objections in the above captioned matter. Accompanying the Notice and Motion are:

- The entire packet which was originally sent to Objectors pursuant to the MTEA Hudson procedure.
- The Objections which were filed by the Objectors.
- The relevant Teacher and Substitute Teacher contract Provisions
- All of the cases decided under the MTEA Objection procedure with the relevant sections highlighted.

Copies of the foregoing material are being sent this date to each of the Objectors with identical highlighting. By a copy of this letter I am inviting the Objectors to reply to the Motion within fourteen days of the date of this letter. I request that they respond directly to the Arbitrator with a copy of their response sent to me.

If you wish copies of the entire collective bargaining agreements or any other material, please contact me.

Thank you for your attention to this matter.

Sincerely,

Richard Perry /s/
Richard Perry

The cover letter indicated that the four objectors were sent the same documents and materials that the Arbitrator received.

In its Motion, the MTEA asserted the following facts in support of its motion:

1. This matter arises pursuant to the Teacher Contract Part II, Section F(2) – Fair Share (attached) and Part II, Section F(2) of the Substitute Teacher Contract (attached).
2. Each of the four Objectors filed general objections to paying their fair share contributions but failed to comply with the MTEA Objection Procedure by listing the expenditures to which they objected. Copies of the four objections are attached.
3. The MTEA gave each Objector explicit written notice that prior arbitration awards held that the listing of specific objections was required by the objection procedure and that failure to do so would necessitate dismissal of their objections. Copies of the MTEA letters of April 4 and 11, 2002, to all of the objectors were sent to the Arbitrator at the same time they were mailed to the Objectors.
4. Attached hereto are the awards of Lionel L. Crowley, dated December 17, 1986, Richard B. McLaughlin, dated July 20, 1987, Lionel L. Crowley, dated March 11, 1988, Raleigh Jones, dated January 24, 1989. These awards established that failure to list specific expenditures to which an employee objected under the MTEA procedure requires dismissal of the objection. Copies of these decisions were earlier made available to all objectors to inspect, study and copy at the MTEA office at their convenience if they cared to do so. A set of these awards with identical highlighting is being sent to each Objector with this motion. These awards constitute all of the awards that have issued relating to Fair Share Provisions of the Teacher and Substitute Teacher Collective Bargaining Agreements.

5. When none of the objectors responded to the MTEA requests to specify their objections as required by the Objection Procedure, the MTEA gave them further notice, dated April 15, 2002, that they had until May 1, 2002, to comply with the objection procedure by listing the expenditures to which they had objection or the MTEA would move the Arbitrator for an order postponing the arbitration hearing and dismissing their objections. A copy of this Notice was furnished to the Arbitrator at the same time it was sent to the Objectors.
6. None of the objectors responded to the May 1, 2002, deadline for listing objections to specific expenditures.
7. One employee, Timothy Shousha, telephoned MTEA Assistant Executive Director, Mark Rosenbaum on April 22, 2002, and informed him that he wished to withdraw his objection. Mr. Rosenbaum confirmed this conversation in a letter of the same date and a copy of his letter was sent to the Arbitrator on that date.

On May 3, 2002, the Arbitrator issued the following letter ruling, sending it directly to MTEA's counsel:

May 3, 2002

Mr. Richard Perry
Perry, Shapiro, Quindel, Saks, Charlton & Lerner, S.C.
Attorneys at Law
823 North Cass Street
P.O. Box 514005
Milwaukee, WI 53203-3405

Re: Milwaukee Public Schools
Case 398 No. 61016 MA-11776
(MTEA Fair Share Fee Arbitration)

Dear Mr. Perry:

I am in receipt of the Association's May 2, 2002 Motion to Postpone Hearing and Dismiss the Objections and accompanying materials. Your cover letter of the same date indicates that the same documents sent to myself have also been sent to each Objector.

I am granting the Association's motion to postpone the hearing set for May 13, 2002. (I do note that the notices of the hearing that the Association sent to the Objectors erroneously indicated the hearing was scheduled for April 13, 2002.) If the Objectors wish to respond to the Association's Motions before I rule on them, such responses should be postmarked no later than twenty-one (21) days from the date of this letter and should be sent to myself at the above address, with a copy sent to yourself.

I assume that, as has been the case, you will see that the Objectors receive a copy of my letter.

Very truly yours,

David E. Shaw
Arbitrator

The Arbitrator has not received any responses from the objectors to date.

DECISION

The facts, presented to the Arbitrator as set forth above, establish that MTEA's fair-share procedure requires that:

- c. Those employees who wish to disagree with the uses identified by the MTEA as not authorized by Section 111.70 and wish to object to additional MTEA expenditures, shall identify such areas in the proposed budget which they allege are not authorized by Section 111.70 within thirty-five (35) days from the date of the notice.

Despite being given notice of this requirement in the fair-share notice packet they initially received, and again in MTEA's April 15, 2002 notification of its intent to file the motion to dismiss, which also gave them additional time to file such a list of the specific categories of expenditures to which they objected, the objectors have not complied with the above requirement.

MTEA cites the previous decisions of arbitrators who have resolved fair-share objections under MTEA's fair-share procedure in support of its motion to dismiss the objections for lack of specificity. Relying on the above-stated requirement, along with the wording on the response (options) form which indicates they are to list the expenditures to which they object on that form,

those arbitrators held that the procedure requires objectors to identify specific areas of expenditures to which they object and that failure to do so precludes the arbitrator from determining the objection. As those arbitrators have noted, it is the MTEA's fair-share procedure which provides the arbitrator the authority to determine these fair-share disputes. That procedure does not contemplate the wholesale objection to all expenditures, but only authorizes the arbitrator to make a determination as to those specific areas of expenditures where a disagreement exists. Where, as here, such specificity is lacking, the Arbitrator is without authority to resolve the dispute.

Given the objectors' failure to identify specific areas of expenditures to which they object as non-allowable, as required by the MTEA fair-share procedure, their objections must be dismissed.

Based upon the foregoing, the undersigned makes the following

AWARD

The objections of Bartlet, Hall and Wright are dismissed. 2/

Dated at Madison, Wisconsin, this 11th day of June, 2002.

David E. Shaw /s/

David E. Shaw, Arbitrator

2/ *Shousha's objection having previously been withdrawn.*
