

BEFORE THE ARBITRATOR

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

SUSAN BARTELT, TASHA HENDERSON and JOAN SUBICHIN

and

MILWAUKEE TEACHERS' EDUCATION ASSOCIATION

Case 404
No. 61580
MA-11994

Appearances:

Perry, Shapiro, Quindel, Saks, Charlton & Lerner, S.C., by **Attorney Richard Perry**, 823 North Cass Street, P.O. Box 514005, Milwaukee, WI 53203-3405, on behalf of Milwaukee Teachers' Education Association.

The Objector's did not appear.

ARBITRATION AWARD

The Milwaukee Teachers' Education Association (hereafter MTEA) has established a written procedure which provides that it will petition the Wisconsin Employment Relations Commission to appoint a commissioner or 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 Chapter 111.70, Stats. In accord with that written procedure, on September 12, 2002, MTEA requested that the Commission appoint a member of its staff to act as the arbitrator to resolve objections to fair-share expenditures that had been filed by three employees of Milwaukee Public Schools covered by the fair-share agreement and represented by MTEA.

On September 30, 2002, MTEA filed a motion to dismiss the objections of Susan Bartelt and Tasha Henderson in the above matter for failing to comply with the requirements of MTEA's procedure that Objectors identify the areas in MTEA's proposed budget that they allege are not authorized by Chapter 111.70, Stats., within thirty-five (35) days from the date of the fair share notice packet they received from MTEA. By letter dated September 30, 2002,

the undersigned issued her Notice of Hearing in the above case along with her request that the Objectors, Henderson and Bartelt, file their responses to MTEA's Motion to Dismiss their objections twenty-one (21) days to from the date of the letter. The letter was sent to MTEA's legal counsel and to both Henderson and Bartelt by First-Class mail. The Bartelt letter was returned to the WERC as having an expired forwarding notice and WERC then re-sent the letter to the current address for Ms. Bartelt on October 4, 2002. To date, neither Bartelt nor Henderson has filed a response to MTEA's Motion. On September 25, 2002, Henderson verbally withdrew her objections in a telephone call to MTEA Counsel Perry, which withdrawal Perry confirmed by his letter dated October 1, 2002.

The Commission designated the undersigned to act as the Arbitrator to resolve these disputes and hearing was scheduled for October 31, 2002, at Milwaukee, Wisconsin. The MTEA chose not to file a brief herein. Neither Bartelt nor Subichin attended the October 31st hearing herein despite hearing notices sent to them by MTEA and the Arbitrator. On November 20, 2002, the Arbitrator wrote to Ms. Subichin at her 7400 Edgehill Road address requesting that she submit a brief within 21 days of her receipt of the Arbitrator's letter urging her to flesh out the objections she had listed on her "Substitute Teacher Option Form." Ms. Subichin failed to respond on or before December 16, 2002, whereupon the record was closed.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

BACKGROUND FACTS

In support of its Motion to Dismiss, MTEA submitted to the Arbitrator the fair-share agreements contained in its collective bargaining agreement concerning the Milwaukee Public Schools teachers and substitute teachers represented by MTEA, the MTEA's fair-share procedure, along with the fair-share notice packet it sent to non-member substitute teachers and teachers it represents in those bargaining units, the specific objection filed by Substitute Teacher Subichin in this proceeding and the non-specific objections filed by Substitute Teacher Bartelt and Teacher Henderson. In its Motion to Dismiss, MTEA also submitted Commission arbitral precedent it believed relevant to the Motion/case.

On August 16, 2002, MTEA sent all Objectors a fair-share packet which set forth MTEA's fair share procedure, as follows:

...

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 the 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 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 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 agree with the use of such portion of the budget which the MTEA has identified as not authorized by Section 111.70, shall make their agreement 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 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 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, 103S. Ct. 1066 (1986). The arbitrator's award shall be final and binding.
- d. If there are objections from a new employee 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

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 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 above-quoted MTEA fair-share procedure, the Objectors received a "summary of legislative and legal background" consisting of a brief summary of Sec. 111.70(1)(h), Stats., and applicable legal precedent relating to fair-share deductions, a "Substitute Teacher/Teacher Option Form," the proposed 2002-03 MTEA budget and the MTEA's financial report for fiscal year ended August 31, 2001.

The MTEA Financial Report for 2000-2001 included an independent auditor's report and MTEA's computations as to allowable/non-allowable expenses against Fair Share as follows:

...

	<u>Non - Allowable</u>
Bargaining Unit Program, Promotion & Activities	
Legislative & Lobbying	\$10,342
P.R. External	27,633
Community Involvement	3,728
Community Outreach	<u>30,441</u>
	72,144
MTEA Staff - Salary & Benefit Costs	
Professional Staff	56,158
Graphic Arts Position	41
Community/Program Assistant	<u>10,437</u>
(20% Non-Allowable)	66,636
Communications	
Print Material - Newsletters	8,071
Postage	<u>1,811</u>
	9,882
Facilities - Apartment at 5112 W. Vliet St.	<u>16,437</u>
Total Non-Allowable MTEA Expenditures	\$165,099

List of Non-Allowable Expenditures

<u>Source Document</u>		<u>Expenses</u>	<u>Non- Allowable</u>
Audit, p. 9	Legislative & Lobbying Expenses - Total	\$18,170	
	Wis Taxpayers Alliance (92% A. 8% N	350	28
Ledger, p. 2-3	Wis Assn. of Lobbyists	400	400
	Assoc. of Wis. Lobbyists	20	20
	Assoc. of Wis. Lobbyists	40	40
	Vicki-Peck	52	52
	Wisconsin Citizens Action	60	60

	Arthur Sieman Adv.	1,267	1,267
	Joy Farm	915	915
	Kitchen Health	2,184	2,184
	Milwaukee Times Newspaper	200	200
	Milwaukee Journal	350	350
	Hollingsworth	2,112	2,112
	Milwaukee Times	200	200
	Non-Allowable Legislative & Lobbying Expenses		<hr/> \$10,342
Ledger, p. 24	Public Relations - External	145,139	
	Mueller Comm. Inc. 80%-A 20%-NA	15,257	3,048
	Mueller Comm. Inc. 80%-A 20%-NA	6,231	1,246
	Mueller Comm. Inc. 80%-A 20%-NA	2,410	482
	ACLU	1,000	1,000
Ledger, p. 24	WHNA Membership	100	100
	Mueller Comm. Inc. 80%-A 20%-NA	7,261	1,452
Ledger, p. 25	Rudig - Chet & Leona - for MTEA		
	Art Show	1,429	1,429
Ledger, p. 25	UPAF	1,000	1,000
Ledger, p. 25	WISN - TV (50%/50%)		
	(Parent Conf./MTEA)	14,505	7,253
	Mueller Comm. Inc. 80%-A 20%-NA	217	109
	WISN - TV 50/50	7,640	3,820
	Mueller Comm. Inc. 80%-A 20%-NA	7,947	1,589
	Mueller Comm. Inc. 80%-A 20%-NA	1,796	359
	Mueller Comm. Inc. 80%-A 20%-NA	1,805	361
	Bob Lanier Enterp., Inc.	4,273	4,273
	Rudig	112	112
	Non-Allowable Public Relations-External Expenses		<hr/> \$27,633
	Community Involvement		
	Public Engagement Project	18,640	3,728
	(80%-A, 20%-NA)		
	Non-Allowable Community Involvement Expenses		<hr/> \$3,728
Ledger, p. 15-16	Community Outreach		
	Martin Luther King	1,000	1,000
	Milw. J/S	2,500	2,500
	Wis. Comm. Fund	300	300
	Wis. Comm. Fund	120	120
	Hollingsworth	997	997
	Milw J/S	2,857	2,857
	Wis. Cit Action	6,500	6,500
	Nat'l Soror. Phi Delta Kappa	1,200	1,200
	Benedict Center	350	350
	1290 Scholarship Fund	300	300
	Wis. Citizens Action	100	100
Ledger, p. 16	Thurgood Marshall Scholarship	500	500

	Wis. Citizens Action	6,000	6,000
	UPAF	500	500
	Safeline Bus – Madison Rally Supp. Ed.	200	200
	Milw. Area Labor Electoral	3,617	3,617
	NAACP	2,500	2,500
	CADE 2001	500	<u>500</u>
	Non-Allowable Community Outreach Expenses		<u>\$30,441</u>
	Non-Allowable Bargaining Unit Program & Activities		\$72,144
	Communications		
Audit, p. 10	Printed Materials – Newsletters (94% A, 6% NA)	134,518	8,071
Audit, p. 10	Postage (98% A, 2% NA)	90,552	<u>1,811</u>
	Non-Allowable Communications Costs		\$9,882
Audit, p. 9	Association Employees – Non-Allowable Costs		
	Professional Staff*		
	Salary 935,974 @ 4.0% =	\$37,439	
	Fringe 50% of Salary =	<u>18,719</u>	
			56,158
	Graphic Arts Employee		41
	Community/Program Assistant (20% - NA)		
	Salary	6,958	
	Fringe @ (50% of Salary)	<u>3,479</u>	
			<u>10,437</u>
	Non-Allowable Staff Salary & Benefit Costs		\$66,636

Two Professional Staff Members:

- * L. Gaston-Mounger – 40% Non-Allowable
 - R. Anderson – 3.5% Non-Allowable
- The rest of the professional staff allowable at 100%. This equals 3.95% of 4% Total Professional Staff Salary and fringe benefits Costs.

...

The “Substitute Teacher/Teacher Option Form” set forth the options from which the non-member employee may choose dues paying membership or to be a non-member. The option form also states as follows:

...

- _____ 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 2002-03 will reflect the amount of expenditures determined by the arbitrator to be allowable.

- _____ 5. I choose to proceed to court 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 I have listed below. I understand that deductions from my paychecks for 2002-03 will reflect the amount of expenditures determined by the court to be allowable.

...

The form also includes language which states that objectors must complete the form within 35 days from the notification date, as follows:

...

Please return this completed form to the MTEA Building within 35 days from the notification date (see enclosed cover letter). If you do not return the form within the time limit, the full MTEA dues amount (not including an MTEA political action contribution) will be deducted from your earnings. You will be deemed to have waived any objection to the use of the deductions for any MTEA Budget expenditures for the 2002-03 fiscal year.

If you have any questions, please contact Bob Anderson at the MTEA building at 259-1990.

...

All three Objectors in this case returned their "Substitute Teacher/Teacher Option Forms" to MTEA in late August or early September, 2002, and selected option 4, set forth above. Objectors Henderson and Bartelt failed to list any specific budget expenditures on their forms to which they were objecting. Objector Subichin listed the following specific categories

of expenditures (without any amounts listed therewith) to which she objected:

Leadership Training/Workshops, Membership Special Services, Mentor Teachers Program, Subscriptions, Insurance, Web Page, Public Policy Forum, Other, Legislative & Lobbying, P.R., Community Involvement, all known non-allowables.

On August 27, 2002, MTEA sent Tasha Henderson the following letter regarding her non-specific objection dated August 21, 2002:

. . .

The Milwaukee Teachers' Education Association is in receipt of your "Teacher Option Form" regarding dues deduction.

You have checked Option #4, which indicates that you choose to proceed to arbitration because you believe that more MTEA expenditures than those identified by the MTEA do not relate to the cost of collective bargaining and contract administration.

I want to point out that included in Option #4 it states: "I do not want deductions from my earnings under the fair share agreement used for the MTEA Budget expenditures, which I have listed below."

The form you returned to the MTEA does not have any expenditures listed as required. Therefore, if you want additional expenditures excluded from fair share considered by an arbitrator, you must identify specific items. Where teachers do not list the expenditures they object to, arbitrators have uniformly dismissed their objections. I am enclosing for your information a copy of the most recent arbitration award so holding [sic]

I am returning a copy of your teacher Option Form so you can add the items you want considered by the arbitrator. I want to point out that you have thirty-five (35) days from when you originally received the dues and fair share packet from the MTEA. The deadline to re-submit your listed objection is September 25, 2002.

. . .

On August 29, 2002, MTEA sent Objector Bartelt an essentially identical letter to the one sent to Henderson, quoted above. Objector Bartelt responded by letter dated September 11, 2002, as follows:

...

I object to:

1. the MTEA Budget for 2002-03
2. the MTEA Caculations [sic] for 2002-03
Based upon 200-01 [sic] Expenses.

MTEA has done absolutely nothing for me. I don't want you "stealing" my hard earned money and taking food out of my children's mouths!

...

On September 26, 2002, the MTEA sent all Objectors the following notice of hearing and urged them to participate in the hearing and arrange for paid time off to do so, as follows:

...

The Wisconsin Employment Relations Commissions has appointed Sharon Gallagher to arbitrate the above referenced case. Arbitrator Gallagher has scheduled the hearing as follows:

Date: October 31, 2002

Place: MTEA Office Building
5130 West Vliet Street
Milwaukee, WI 53208

Time: 10:00 a.m. and continuing until the hearing is completed.

The MTEA will schedule and pay for the court reporter for the hearing.

As an Objector, you have a right to appear and participate in the arbitration hearing. If you intend to participate in the hearing it is important that you contact Robert Anderson, MTEA Assistant Executive Director (tel. 414-259-1990) as soon as you possible so that he can arrange with the MPS Department of Labor Relations to have you released for the day in accordance with its normal arbitration procedure. If Mr. Anderson does not hear from you, he will conclude that you do not intend to participate in the hearing and will not arrange for your release for the day of the hearing.

...

On September 27, 2002, MTEA sent the Arbitrator, as well as Objectors Bartelt and

Henderson, a Motion to Dismiss Henderson and Bartelt's objections along with the following cover letter:

Page 12
MA-11994

. . .

Enclosed please find the Notice of Motion and Motion to Dismiss the Objections of Susan Bartelt and Tasha Henderson in the above captioned matter. A third Objector, Joan Subichin, listed the expenditures to which she objected in accordance with the MTEA Fair Share Procedure. Her objections are scheduled to be heard October 31, 2002 and are not addressed in this motion.

Accompanying the Notice and Motion are:

- MPS Teacher and Substitute Teacher Contracts.
- The entire packet which was originally sent to non-member employees pursuant to the MTEA Hudson procedure.
- The Objections which were filed by Objectors Bartelt and Henderson.
- Correspondence with Objectors Bartelt and Henderson.
- 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 Objectors Bartelt and Henderson 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.

. . .

In its Motion to Dismiss, MTEA made the following substantive arguments:

. . .

3. Objectors Bartelt and Henderson filed general objections to paying their fair share contributions and requested arbitration but failed to comply with the MTEA Fair Share Procedure by listing any expenditures to which they objected. Copies of their objections are attached. (Exhs. 3 and 4)
4. A third Objector requesting arbitration, Joan Subichin a Substitute Teacher, requested arbitration and listed the categories of expenditures to which she objected. A copy of her response is attached hereto. (Exh. 5) Ms. Subichin's objections are scheduled to be heard October 31, 2002 and are not included in this Motion to Dismiss.

5. In response, the MTEA sent letters to Objectors Bartelt and Henderson giving them 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 by the deadline of September 25, 2002 would necessitate dismissal of their objections. The MTEA also enclosed a copy of the most recent such award in each letter. Copies of the MTEA letters dated August 27, and 29, 2002, to these objectors are attached hereto, without the enclosure. (Exhs. 6 and 7)
6. Tasha Henderson did not respond to the MTEA request that she comply with the MTEA Fair Share Objection Procedure by listing the expenditures to which she objected.
 7. Susan Bartelt in a letter dated September 11, 2002, responded to the MTEA request, but did not list any expenditures to which she objected. Instead she objected to the entire MTEA Budget for the 2002-03 School Year and to all MTEA calculations based on the 2000-01 audit, the most recent audit available. A copy of Ms. Barteit's letter is attached hereto. (Exh. 8)

8. Attached hereto are the following arbitration awards:

Lionel L. Crowley	December 17, 1986	Exhs.	9-15
Richard B. McLaughlin	July 20, 1987	Exhs.	16-44
Lionel L. Crowley	March 11, 1988	Exhs.	45-52
Raleigh Jones	January 24, 1989	Exhs.	53 -61
David E. Shaw	June 11. 2002	Exhs.	62-76

These awards established that failure to list specific expenditures to which an employee objected under the MTEA procedure is jurisdictional and requires dismissal of the objection. 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 MPS/MTEA Teacher and Substitute Teacher Collective Bargaining Agreements.

9. It is the position of the MTEA that neither of these objections nor the subsequent responses to the MTEA request that Ms. Bartelt and Ms. Henderson comply with the MTEA Fair Share Procedure since they fail to list the expenditures to which they objected. As can be seen from a review of the attached Awards, a series of arbitrators have consistently held over a period of more than fifteen years that where objectors fail or refuse to specify the expenditures to which they object, the arbitrator lacks jurisdiction over the objection and it must be dismissed.

WHEREFORE, in view of the foregoing,

Page 14
MA-11994

The MTEA moves the Arbitrator as part of her decision in this matter to issue an order dismissing the objections of Ms. Bartelt and Ms. Henderson. It is requested that this order issue after due consideration of this motion; the responses of these two objectors, if any; the entire record herein including, the Teacher and Substitute Teacher Contracts, the prior arbitration awards, the correspondence with the objectors which is attached hereto; and the hearing in this matter which is currently scheduled to be held October 31, 2002.

. . .

On October 1, 2002, the undersigned received the following letter from MTEA Counsel Richard Perry concerning the withdrawal of Henderson's fair share objection:

. . .

This Letter will confirm that on Friday, September 25, 2002, you called my office and indicated that you wished to withdraw your fair share objection and your request to proceed to arbitration.

In accordance with your request, I have informed the Arbitrator of your decision and by a copy of this letter. I am requesting the MTEA to promptly notify the MPS Administration.

. . .

On November 20, 2002, the Arbitrator wrote to Ms. Subichin at her 7400 Edgehill Road Address in Greendale, Wisconsin, asking her to submit a brief within 21 days of her receipt of the letter regarding the specific categories of expenditures she had objected to on her "Substitute Teacher Option Form," including what she meant by "other" listed thereon. Ms. Subichin failed to respond to this request or to contact the Arbitrator on or before December 16, 2002.

DISCUSSION

Henderson Objection

The record in this case showed that MTEA timely sent Ms. Tasha Henderson (at her known address listed with MPS) the MTEA Fair Share notice packet and that Henderson

returned her "Teacher Option Form" on August 21, 2002, having checked option number four but without listing any objections to specific expenditures from MTEA's 2002-03 budget.

Page 15
MA-11994

On August 27, 2002, MTEA Assistant Executive Director Anderson wrote to Henderson indicating she must specify expenditures to which she objected by September 25, 2002 (35 days from MTEA's original notice to Henderson per the MTEA Fair Share procedure). Anderson also indicated that if Henderson did not specifically object to expenditures, that under a recent WERC arbitration award (enclosed in Anderson's letter to Henderson), Henderson would face dismissal of her non-specific objection.

On September 25, 2002, Ms. Henderson advised MTEA Counsel Perry that she wished to withdraw her Fair Share objection. Mr. Perry then confirmed this withdrawal in an October 1, 2002 letter to Ms. Henderson (copy to the Arbitrator). The Arbitrator also sent Ms. Henderson a copy of her September 30, 2002 Notice of Hearing and letter herein, in which the Arbitrator indicated that she understood Ms. Henderson had withdrawn her objection. Ms. Henderson never contacted the Arbitrator to contradict these statements in her September 30th letter.

Therefore, the Arbitrator finds that based upon the record facts it is reasonable to conclude that Ms. Henderson's objection has been withdrawn and it is no longer before the Arbitrator. In addition, the Arbitrator notes that Ms. Henderson neither contacted the Arbitrator to contradict the Arbitrator's assertions in her September 30, 2002 letter nor did Ms. Henderson appear at the arbitration hearing in this case. In any event, WERC arbitral precedent shows that where, as here, the objector has failed to specifically list the expenditures to which he/she objects either on the "Teacher Options Form" within 35 days of MTEA notification, the Arbitrator lacks the authority under the MTEA Fair Share procedure to determine the objector's non-specific objections. See e.g., MILWAUKEE TEACHERS EDUCATION ASSOCIATION, CASE 3, NO. 37598, A-4012 (MCLAUGHLIN, 7/87) AT PAGES 14 AND 28; MILWAUKEE TEACHERS EDUCATION ASSOCIATION, CASE 4, NO. 39792, MA-4902 (CROWLEY, 3/88) AT PAGE 5; MILWAUKEE TEACHERS EDUCATION ASSOCIATION, CASE 5, NO. 41099, MA-5284 (JONES, 1/89) AT PAGES 5 AND 8; MILWAUKEE TEACHERS EDUCATION ASSOCIATION, CASE 398, NO. 61016, MA-11776 (SHAW, 6/02) AT PAGES 14 AND 15. In these circumstances, the Arbitrator finds that Ms. Henderson withdrew her objections and that those objections need not be determined herein.

Motion to Dismiss Bartelt's Objection

MTEA filed a Motion to Dismiss Substitute Teacher Bartelt's non-specific objection to the use of Fair Share Budget Expenditures on her Substitute Teacher Option Form dated August 27, 2002. Ms. Bartelt did not specifically object to any MTEA expenditures being included in the calculation of her fair share payment. She checked option number four on the Substitute Teacher Option Form without elaboration.

On August 29, 2002, Assistant Executive Director Anderson sent Bartelt the same letter

to 931 East Russell Avenue in Milwaukee 1/ he had sent to Henderson (with the same WERC enclosure), urging Bartelt to specify her objection or risk having her fair share objection

Page 16
MA-11994

dismissed. Anderson sent his August 29th letter to Bartelt at her North 76th Street address, although apparently, Ms. Bartelt moved on or about September 17th from the address at 5506 North 76th Street in Milwaukee, to a Russell Avenue address. Nonetheless, on September 11, 2002, Bartelt responded to Anderson's letter by generally objecting to the entire MTEA budget for 2002-03 and to MTEA's calculations of the Fair Share amount for 2002-03 based upon the 2000-01 MTEA expenditures listed. Bartelt added the following commentary to her September 11th letter:

. . .

MTEA has done absolutely nothing for me. I don't want you "stealing" my hard earned money and taking food out of my children's mouths!

. . .

On September 26, 2002, MTEA sent Bartelt a Notice of Fair Share Arbitration Hearing to the 76th Street address. Also, on September 30, 2002, the Arbitrator sent Ms. Bartelt a copy of the Notice of Hearing, to be held on October 31, 2002, and stated as follows:

. . . In regard to Ms. Bartelt, I note that on September 30, 2002, MTEA filed a Motion to Dismiss Ms. Bartelt's objection for failure to state specifically what MTEA budgetary items she objects being included in fair share.

I hereby request that Ms. Bartelt postmark her written response to MTEA's Motion (original to me, copy to Mr. Perry) no later than 21 days from the date of this letter.

. . .

1/ Ms. Bartelt did not notify MTEA of her move to Russell Avenue until sometime after September 17th.

On October 4, 2002, the Arbitrator's September 30, 2002 letter (requesting that Ms. Bartelt respond to MTEA's Motion to Dismiss by a date certain) which was sent to Ms. Bartelt at her 76th Street address was returned to WERC with a notation that the postal forwarding time had expired. WERC Legal Secretary Amy Schwartzlow then re-sent the Arbitrator's September 30, 2002 letter to Ms. Bartelt at her Russell Avenue address on October 4, 2002. On October 15, 2002, Counsel for MTEA, Richard Perry, sent Ms. Bartelt another copy of the

Motion to Dismiss by both regular mail and certified mail at the 76th Street address. The Motion sent by regular mail was not returned but the certified copy of the Motion was returned

Page 17
MA-11994

unclaimed to MTEA. The Arbitrator's September 30, 2002 letter re-sent on October 4, 2002, was not returned to WERC. 2/ Bartelt never made any response to MTEA's Motion or to the Arbitrator's letters.

2/ MTEA's Motion to Dismiss requested that Bartelt respond to the Motion within 14 days of receipt of the Motion packet. The Arbitrator's September 30 Notice of Hearing regarding the case gave Ms. Bartelt 21 days from the date of that September 30 letter (resent to Bartelt on October 4th) to respond to MTEA's Motion.

Based on all the circumstances before me, I conclude that Ms. Bartelt was aware of MTEA's request that she make her objections more specific and that she was aware of MTEA's Motion to Dismiss her non-specific objections. Indeed, I note that Bartelt was one of the objectors whose case was considered by Arbitrator Shaw in June, 2002, when Shaw dismissed Bartelt's and other objections for being non-specific based on prior arbitration awards. Thus, Bartelt must have known her rights/obligations under WERC case law. In addition, I note that Arbitrator Shaw specifically noted, 3/

. . . It is 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.

. . .

3/ MILWAUKEE TEACHERS EDUCATION ASSOCIATION, Case 398, No. 61016, MA-11776 (Shaw, 6/02), at page 15.

Based upon the Shaw Award as well as facts of this case, the Arbitrator concludes that she is without jurisdiction or authority to determine the fair-share dispute of Ms. Bartelt in this case, due to Bartelt's failure to make specific objections herein. MILWAUKEE TEACHERS EDUCATION ASSOCIATION, CASE 3, No. 37598, A-4012 (McLAUGHLIN, 7/87); MILWAUKEE TEACHERS EDUCATION ASSOCIATION, CASE 4, No. 39792, MA-4902 (CROWLEY, 3/88); MILWAUKEE TEACHERS EDUCATION ASSOCIATION, CASE 5, No. 41099, MA-5284 (JONES, 1/89).

Subichin Specific Objections

In order to determine whether expenditures are chargeable against fair-share participants, the Commission has based a decision of chargeability of a given expenditure on “whether the particular category or activity involved is related to the representational interest in the collective bargaining process and contract administration.” 4/ The Commission defined the “representational interest” as follows:

We deem that a union . . . is pursuing its representative interest by expending sums of money . . . for activities . . . relating to improving the wages, hours and working conditions of the employee in the bargaining unit involved, as well as the wages, hours and working conditions of other employees represented by said union and its affiliates5/

Thus, a direct link between an expenditure and collective bargaining to improve the wages, hours and working conditions of unit employees represented by the union (which may also include contract administration and negotiations) is implicit in this definition of representational interests. Also, in this decision, the Commission concluded that the following types of expenditures are properly charged to fair-share challengers:

. . .

- (i) Organizing employees within the bargaining unit in which complainants are employed, and in units in which complaints are not employed . . .

. . .

- (q) Expenditures for social and recreational activities . . . when such activities and payments constitute compensation to persons for services rendered in the representational interests of labor organizations, and as such, constitute costs incurred in the collective bargaining process and contract administration6/

4/ MILWAUKEE BOARD OF SCHOOL DIRECTORS, ET. AL., DEC. NO. 16635-A (WERC, 5/82) AT PAGE 22.

5/ IBID AT PAGE 21.

6/ DEC. NO. 16635-A AT CONCLUSION OF LAW 1, PAGES 8-9.

MTEA submitted the following analysis of Subichin's objections in this case including references to MTEA documents Subichin received and may have used, and the amounts connected therewith:

<u>Source Document</u>	<u>Objection</u>	<u>Amount of Expenditure</u>
Audit, p. 10	Leadership Training/Workshops	14,734
Audit, p. 10	Membership Special Services	46,680
Ledger p. 58	New Members Special Services (\$28,738 included in Membership Special Services)	
Audit, p. 10	Mentor Teachers Program (\$1,500 budget included in Membership Special Services above)	0
Audit, p. 10	Subscriptions	3,771
Audit, p. 10	Insurance	9,217
Audit, p. 10	Web Page	5,936
Statement of Director Ledger	Public Policy Forum [No expenditures in 2000-01] [Budget: \$900 for 2002-03]	0
Audit, p. 10 Notice, p. 2 Ledger, pp. 2-3	Legislative and Lobbying [Expenditures \$18,170] - NA \$10,342 = \$7,828	7,828
Ledger p. 25 Notice, p. 2 & 3	Public Relations [External \$145,139 - NA \$27,633 = \$117,506]	117,506
Ledger p. 24	Public Relations [Internal - \$5,312 - NA - \$0.0]	5,312
Ledger p. 15 Notice, p. 3	Community Involvement [Total Expenditures \$18,640 - \$3,728 = \$14,912]	<u>14,912</u>
Total		\$225,896
Subichin Objections: \$225,896/\$3,772,927 =		5.99%
MTEA NA Calculation:		<u>4.37%</u>
Total Percent Objected to		10.36%

As Ms. Subichin failed to attend the October 31, 2002, hearing in this case and failed to file a brief herein to explain/support her specific objections, the Arbitrator must analyze the list of objections on Subichin's "Substitute Teacher Option Form" to determine what amounts

Subichin intended to object to and on what basis. Significantly, Ms. Subichin did not list any dollar amounts in her objections nor did she reference any documents that she had received from MTEA (such as MTEA Proposed Budget for 2002-03 or MTEA's 2000-01 Financial Report/Audit) to facilitate the Arbitrator's analysis of her position. Indeed, Subichin did not even use the categories used/listed in the 2000-01 Financial Report/Audit or in MTEA's Summary of Non-Allowable Expenses in her objections. However, it appears that Subichin did follow and use the terminology employed in the MTEA Proposed Budget for 2002-03, in part, when she listed her objections to certain expenditures. 7/

7/ Subichin received the 2001-02 MTEA Financial Report, the Non-Allowable Expenses Summary and the MTEA Proposed 2002-03 Budget documents from MTEA along with her Substitute Teacher Option Form in August, 2002, as part of her fair-share packet.

The first category of expenditures that Subichin objected to can be found on page 16 of the Proposed 2002-03 MTEA Budget (emphasis added), as follows:

	YEAR-TO-DATE 2/28/02 Expenditures	2001-2002 Annual Budgeted	2002-2003 Annual Proposed
MTEA PROGRAM, PROMOTION AND ACTIVITIES EXPENDITURES (SECTION 1)			
A. JOINT GOVERNANCE AND COMMITTEES			
1. GOVERNANCE		41,200	51,500
a. EXECUTIVE BOARD	7,791		
b. BUILDING REPRESENTATIVES	11,869		
c. LEADERSHIP TRAINING/WORKSHOPS	11,244		
d. RELEASE TIME			
e. ELECTIONS			
2. TEACHER BARGAINING TEAM	23,115	43,260	47,250
3. PRESIDENT'S ACCOUNT	2,000	1,030	1,061
4. WEAC GOVERNANCE	3,957	11,330	11,500
5. NEA GOVERNANCE		2,060	2,060
6. COMMITTEES (TEACHERS & JOINT)	2,861	15,450	15,450
7. MEMBERSHIPS	2,348	10,815	11,000
8. PRESIDENT RELEASE PROGRAM	2,512	56,650	60,000
TOTAL	67,697	181,795	199,821

1. GOVERNANCE		3,399	3,500	
a. EXECUTIVE COUNCIL	383			
b. ANNUAL GENERAL MEMBERSHIP MEETING	3,252			
c. LEADERSHIP TRAINING/WORKSHOPS 8/				
2. SUBSTITUTE TEACHER BARGAINING TEAM		95	1,030	1,061
3. SUBSTITUTE TEACHER COMMITTEES	99	1,030	1,061	
TOTAL	3,829	5,459	5,622	

...

8/ Although "Leadership Training/Workshop" is also listed under Section C, I note that no dollar figures are listed so that Section C is not before me.

I note that under the above-listed Year-to-Date expenditures, MTEA listed an amount of \$11,244 which was spent as of February 28, 2002, and that for the overall categories listed under Section A of this portion of the proposed budget, MTEA listed an amount of \$41,200 for all the items listed under Section A above. It is significant that the \$41,200 amount is a total for all of the governance items listed under Section A and that there is no separate annual budgeted items for 2001-02 for Leadership Training/Workshop. The MTEA continued this non-segregated approach when it listed an annual proposed amount for all of the governance items listed in Section A in the amount of \$51,500.

In MILWAUKEE TEACHERS EDUCATION ASSOCIATION, CASE 3, No. 37598, A-4012 (MCLAUGHLIN, 7/87), the arbitrator found that the MTEA's fair-share procedure "... contemplates the use of the prior year's expenditures to gain specificity not provided" in the budget for the school year in question. (SLIP OP AT 15, FOOTNOTE 13) The difficulty in this instance of attempting to use the amount of \$11,244 which was expended as of February 28, 2002, is that the remainder of the year through August 31, 2002, is not recorded. In addition, the \$41,200 amount covers all of the governance items listed under Section A, without segregating any portion for Leadership Training/Workshop. This is also true of the MTEA's proposed budgetary amount for 2002-03 of \$51,500 which covers all governance items listed under Section A.

MTEA has argued that the correct amount for consideration should be \$14,734 contained in MTEA's 2000-01 Financial Report/Audit under the category of "Conferences, Clinics and Conventions." Although I believe Subichin's objection to "Leadership Training/Workshop" expenditures was intended to refer to the MTEA proposed budget for 2002-03 as she appears to have used the terminology of the 2002-03 proposed MTEA budget document for 9 of her 12 objections, Subichin failed to make clear the expenditure amount she

was objecting to. To pinpoint the actual, fair amount to be considered in the category of

Page 22

MA-11994

Leadership Training/Workshops, one must look at the MTEA Financial Report/Audit amount of \$14,734 for “Conferences, Clinics and Conventions” spent by MTEA for fiscal year 2000-01. This amount is more reasonable and certain and absent any explanation by Subichin, this \$14,734 amount will be addressed herein. Although Arbitrator McLaughlin in MILWAUKEE TEACHERS EDUCATION ASSOCIATION, CASE 3, No. 37598, A-4012 (MCLAUGHLIN, 7/87) SLIP OP AT 19, added a built-in cushion amount where there was a lack of specificity in an amount expended by MTEA in a prior year, there is simply no way in this case to determine whether any amount should be added as a built-in cushion for Leadership Training/Workshop.

MTEA has argued that because of the close connection/interrelationship of these Leadership Training/Workshop expenditures to collective bargaining and contract administration, the entire amount of \$14,734 should be allowed against Subichin. In this regard, MTEA pointed to its 2002-03 MTEA Budget-Narrative Description in support of its assertions. That document described the budget for “Conferences and Training” as follows:

This item reflects the cost of sending members and staff representatives to conferences, workshops, clinics, etc., conducted by universities, governmental agencies, and other organizations outside the MTEA.

This item also reflects the cost for conducting workshops and holding meetings for the MTEA’s elected leaders members and staff. Specialized workshops to develop expertise in dealing with Association issues are included in this item. Some of the areas of leadership/membership training are union education, contract enforcement, political education, legislative lobbying training, and parent/community outreach.

The cost of the annual fall dinner/workshops for MTEA Building Representatives, MEAA Educational Assistant Chairpersons, substitute teachers, and school accountants/bookkeepers are reflected in the governance section for each unit.

In addition, the Narrative Description also described a category of expenditure “Summer Leadership Training” as follows:

This item reflects the costs to support an intensive summer training program for MTEA leaders focusing on issued related to improving working conditions of our members and facilitating the goals of the MTEA.

These are the only items MTEA believed were properly covered by Subichin’s Leadership Training/Workshop objection.

MTEA has also relied upon prior Arbitrator's decisions in support of its assertions in this case. In this regard, I note that Arbitrator Crowley found that the category "Conferences, Clinics, Conventions and Lobbying" were permissible expenditures because they were related to the cost of collective bargaining and contract administration. MILWAUKEE PUBLIC SCHOOLS, CASE 187, NO. 37396, MA-4286 (CROWLEY, 12/86), SLIP OP AT 6. 9/ In addition, the Narrative Description of expenditures contained in the 2002-03 MTEA Proposed Budget generally supports a conclusion that "Leadership Training/Workshop" objected to by Subichin, is related to the costs of collective bargaining and/or contract administration. As Subichin failed to explain what she meant by her objection to this category and as MTEA presented a reasonable explanation of this category and the amount in question, I find that the \$14,734 amount is related to collective bargaining and is properly chargeable against Subichin.

9/ Arbitrator McLaughlin also found that "Leadership Dinner Workshop" was properly chargeable activity in MILWAUKEE TEACHERS EDUCATION ASSOCIATION, CASE 3, NO. 37598, A-4012 (7/87), SLIP OP AT 17-18.

Subichin's second objection was to "Membership Special Services," without reference to any dollar amount in dispute or any document she had received from MTEA in her fair-share packet. I note that the phrase Subichin used in her objection came directly from the 2002-03 Proposed MTEA Budget. On page 9 of the Proposed 2002-03 MTEA Budget, the Narrative Description of this category of expenditures is as follows:

This item reflects the cost of providing various services to members such as free notary public service, hospitality, use of MTEA facilities for subgroup, community and labor group meetings, and other items.

Some of the subgroups which use the MTEA Building for their meetings include: Milwaukee Kindergarten Association, the Milwaukee School Social Workers' Association, MTEC, and college and university partners, as well as other community and education groups.

The Proposed 2002-03 MTEA Budget at page 17 lists the specific category of "Membership Special Services" with a year-to-date expenditure (as of 2/28/02) of \$12,726, a 2001-02 Annual Budgeted amount of \$18,000 and a 2002-03 Annual Proposed budgeted amount of \$16,000. The relevant portions of page 17 of the Proposed 2002-03 MTEA Budget as follows:

YEAR-TO-DATE 2/28/02 Expenditures	2001-2002 Annual Budgeted	2002-2003 Annual Proposed
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	. . .			
G. LEGISLATIVE LOBBYING		6,263	20,600	21,200
	. . .			
I. PUBLIC RELATIONS				
1. INTERNAL		5,727		
2. EXTERNAL		39,542		
TOTAL		45,269	77,250	90,000
J. MEMBERSHIP SPECIAL SERVICES		12,726	18,000	16,000
K. SUBSCRIPTIONS		1,937	2,575	2,575
L. MENTOR TEACHER PROGRAM		590	1,500	1,500
	. . .			

MTEA noted that “Membership Promotion and Maintenance” is listed in the 2000-01 Financial Report/Audit having cost MTEA \$46,680 for the fiscal year ended August 31, 2001. This is the amount (\$48,680) that MTEA agreed Subichin objected to regarding this item. MTEA also submitted its ledger showing expenditures under the category of “Membership Special Services” for 2000-01 in the amount of \$28,738.25, specifically used for “new member activities.” Other specific categories of expenditure shown in the ledger under “Membership Special Services” were “Hospitality,” \$12,477.72; “Promo. Maintenance,” \$754.81; “Identity Campaign,” \$3,800, for a total of \$42,008.78. The only explanation MTEA offered regarding why there was a \$4,674.22 difference between the audited figure for “Membership Promotion and Maintenance” and the ledger totals for the category of “Membership Special Services,” was that it was possible that the amount for book ordering might have been erroneously included in the ledger category under “Membership Special Services.”

MTEA has argued that the entire amount shown on the audit of \$46,680 is chargeable against fair-share contributors; apparently because the amount covers hospitality at MTEA including catered-in meals and meals at restaurants (Tr. 61-63). The problem with MTEA’s approach on this point is that it failed to give the Arbitrator any reasons why MTEA felt these expenditures should be chargeable against fair-share participants either on the record or in any written document before the Arbitrator. 10/ Given MTEA’s failure to give any reasons for its assertions that all “Membership Special Services” expenditures should be allowable and based upon the Arbitrator’s detailed analysis of the ledger entries under “Membership Special Services” as well as her analysis of the Commission’s case law standards and her awareness of the conclusions of Arbitrators McLaughlin and Crowley disallowing expenditures in this area against prior fair-share challengers 11/, the Arbitrator concludes that MTEA failed to meet its burden of proof that these expenditures for “Membership Special Services” listed as \$46,680 on the 2000-01 Financial Report/Audit. Therefore, I conclude that the amount of \$46,680 for

10/ Such a valid reason would have been that the amounts constituted compensation for services rendered in the representational interest of MTEA.

11/ MTEA, SUPRA (MCLAUGHLIN, 7/87) SLIP OP AT PAGE 17 AND 22-23.

Subichin’s third objection is to the “Mentor Teacher Program.” MTEA noted that the “Mentor Teacher Program” is part and parcel of its collective bargaining agreement with MPS and as such, that program is a required expenditure. Therefore, MTEA argued that the entire amount budgeted for 2001-02 and the proposed amount budgeted for 2002-03 (\$1,500 in both cases) should be allowed against the fair-share challenger Subichin. In this regard, MTEA also noted that its audit document for 2000-01 describes the “Mentor Teacher Program” as follows:

This reflects costs to support the Joint MPS/MTEA Mentor Teacher Program, including hosting meetings of the Joint Board at the MTEA Building. Activities such as the graduation event for the mentees at the end of each school year are also included in this item.

Given MTEA’s reasoning on this point, the Arbitrator is satisfied that the “Mentor Teacher Program” is an expenditure required by the labor agreement and necessary for MTEA as a part of contract administration and that it also impacts teacher working conditions. However, in fairness only the \$590 amount will be allowed against challenger Subichin. 12/

12/ The amount listed in the audit for this item was zero. However, the Arbitrator feels it would be fair to charge \$590 for the item against Subichin based on year-to-date expenditures up to February 28, 2002, as the two \$1,500 proposed amounts are for 2001-02 and 2002-03.

Subichin’s fourth objection is to “Subscriptions.” The amount for “Subscriptions” contained in MTEA’s 2000-01 audit is \$3,771. This is essentially the same amount as listed in the MTEA ledgers for the same period. However, in the 2002-03 proposed MTEA budget, the amount for “Subscriptions” is listed as \$2,575. The narrative attached to the proposed 2002-03 budget also describes the “Subscriptions” expenditure category as follows:

This reflects the cost of purchasing publications needed to monitor current developments in labor, legislation, and education which impact the membership. The MTEA subscribes to several publications including: the Government Employee Relations Reporter, Education Week, School Law News, and the Wisconsin Taxpayers Alliance Legislative Service. The MTEA also receives the transcripts and other documents from Milwaukee School Board meetings,

Based upon the narrative quoted above, it appears that these subscriptions are for periodicals and publications which concern themselves with topics which may arise in contract administration or collective bargaining. This is particularly so regarding the Wisconsin Employment Relations Commission reporting service, the Legislative document service of the State’s legislature as well as other referenced publications and periodicals. The reference in the narrative to transcripts and other documents from MPS, likely refers to items necessary for contract administration between the Association and the Board of School Directors.

MTEA argued at the instant hearing that 100% of the “Subscriptions” expenditure should be allowable against fair-share participants because

. . . every one of these publications is used in connection with the collective bargaining, with licensing, Superintendent’s, public instruction, DPI, Superintendent of Schools, even the Wallstreet Journal is to keep track of developments in either voucher law which again is directly related to our employment picture here in Milwaukee. In any event, all of the those are related to collective bargaining, contract administration or the representing of our members. (Tr. 70-71)

Based upon the above, the Arbitrator concludes that all the “Subscriptions” expenditure of \$3,771 is necessary for MTEA’s collective bargaining and contract administration duties and is allowable against Subichin.

Subichin’s fifth objection is to “Insurance.” Notably, in the Proposed 2002-03 MTEA Budget Narrative, “Insurances” are described as follows:

This includes a fidelity bond and a multi-peril policy which provides liability insurance and coverage on the buildings and contents for fire, theft, and vandalism.

Also, in the Proposed 2002-03 MTEA Budget, I note that “Insurances” are split into two categories, fidelity bond and special multi-peril. The relevant portions of the 2002-03 Proposed MTEA Budget at page 19 read as follows:

YEAR-TO-DATE 2/28/02 Expenditures	2001-2002 Annual Budgeted	2002-2003 Annual Proposed
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COMMUNICATIONS EXPENDITURES (SECTION III)

A. OUT-PLANT PRINTING	27,887	105,000	108,150
B. INTERNET WEB PAGE DESIGN AND MAINTENANCE	5,265	10,000	10,300
C. OVERTIME		1,000	1,030

OFFICE OPERATION EXPENDITURES (SECTION IV)

A. EQUIPMENT AND MAINTENANCE

...

G. INSURANCES

1. FIDELITY BOND	741	1,442	1,485
2. SPECIAL MULTI-PERIL	4,188	10,000	12,000

TOTAL **4,929** **11,442** **13,485**

H. BUSINESS MEMBERSHIP FEES

...

2. PUBLIC POLICY FORUM	900		
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...

5. OTHER	465		
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...

The former category is listed as a proposed cost in 2002-03 of \$1,485, while the latter of category of special multi-peril is listed as proposed to cost in 2002-03 is \$12,000. This is a total of \$13,485. Also, the fiscal year ending August 31, 2001 audit showed that insurance cost \$9,217 for fiscal year 2000-01.

MTEA argued herein that in regard to the fidelity bond insurance, this type of insurance is a bond for staff activity “that is 100% allowable. It’s a cost of doing business as representing people.” (Tr. 72) In regard to the multi-peril insurance, MTEA noted that that insurance covers the MTEA office building, “its contents, its equipment, its computers all of that would be allowable.” (Tr. 72) However, with regard to the apartment building that MTEA owns immediately adjacent to its office building which it must also insure, MTEA noted that that portion should not be chargeable against fair-share participants but that the MTEA had not previously deducted this from its calculations, in error. MTEA conceded that based on information from its insurance agent, \$679 of the premium it pays regarding insurances can be attributed to insurance for the apartment building and that this amount is not related to any union business. Thus, MTEA agreed that \$679 of the \$9,217 amount should not be chargeable against Subichin but that the remaining \$8,538 is allowable. In the absence of any evidence to the contrary from Subichin, I agree with MTEA’s approach on this item. Therefore, \$679 is not allowable against Subichin.

Subichin's sixth objection was to expenditures for "Web Page." The MTEA 2000-01 Financial Report/Audit lists a \$5,936 amount for that fiscal year for "internet web page." The Proposed 2002-03 MTEA Budget lists \$5,265 for year-to-date web page expenses, through February 28, 2002, with a 2002-03 proposed budget amount of \$10,300. The Narrative Description for "Internet/Web page" in the 2002-03 MTEA Proposed Budget states:

This reflects the cost of design and maintenance of the MTEA Website.

MTEA argued that this item is 100% allowable against Subichin. MTEA stated that approximately five years ago, it hired an outside contractor to design and set-up its website; that it has since employed this contractor to store all its labor agreements on the website so that its members can access them quickly (Tr. 73-75). Union Official Sam Carmen testified herein that the \$5,936 amount listed in the MTEA 2000-01 fiscal report has been paid for these consulting services only and that that amount includes a quarterly fee of \$150 to the contractor for additional work placing the four MTEA contracts and updating these on the website, as well as for hosting the website and creating and maintaining a linkable database so there is an index by titles for members to search their contracts. Although a community/program assistant is employed at MTEA part-time to update the web page, MTEA has already disallowed 20% of her salary, \$10,437, the portion of her salary for performing the web page work which MTEA stated was not related to collective bargaining or contract administration. I note that Subichin did not object to any portion of the community/program assistant pay; and that no portion of the community/program assistant's pay is included in the \$5,936 amount for the web page (Tr. 92-94). In the absence of any evidence to contradict MTEA and Carmen's statements herein, I conclude that MTEA's evidence on this point is reasonable and that the \$5,936 amount shown in the 2000-01 Financial Report/Audit should be allowable against Subichin.

Subichin's seventh objection was to "Public Policy Forum" (PPF). I note that there is no dollar amount listed in the 2000-01 MTEA Financial Report/Audit for this item. Executive Director Carmen also confirmed that his investigation of the item showed that no expenditures were made for the PPF in 2000-01. The Proposed 2002-03 MTEA Budget shows a \$900 amount for "Public Policy Forum." MTEA submitted ledger documents which showed that in January and May of 2002, MTEA paid its 2002 dues of \$275 to the PPF and that it commissioned the PPF to perform a survey for MTEA in the amount of \$4,000 (Tr. 76-77).

Executive Director Carmen stated that the PPF is a highly respected non-partisan organization, an independent political think tank, which generates and publishes regular policy research for its members. Carmen stated herein that MTEA has used PPF's regularly issued research and it has occasionally contracted with the PPF to perform special research for MTEA. The issues addressed by PPF in its publications primarily relate to collective bargaining, according to Carmen, but they also have concerned legislative issues. The issues addressed by the PPF have included the school voucher program, public school choice, sewage issues and the neighborhood schools program, all of which impact bargaining unit wages,

MTEA argued that as no expenditure appears in 2000-01 for the PPF, this item need not be considered by the Arbitrator in this case, based upon Arbitrator McLaughlin's analysis, using the prior year's expenditures to flesh out the year applicable to the objection. In the alternative, if the Arbitrator finds that the 2002-03 proposed budget amount of \$900 should be considered, MTEA urged that 100% of the cost of the PPF in 2002-03 should be allowed against Subichin as the PPF performs services related collective bargaining and contract administration. Based on Commission precedent, I find that as the amount listed in the 2000-01 audit for the PPF is zero, Subichin should not be charged any amount for the Public Policy Forum item in this case.

Subichin listed "other" as a category of expenditure she objected to. As with all her objections, she neither listed an amount for "other" nor did she reference any documents she had received from MTEA in her dues/fair-share packet. However, the "other" category appears on the Proposed 2002-03 MTEA Budget quoted above. At the instant hearing, Executive Director Carmen stated that a \$465 figure for "other" is solely for annual fees on American Express credit cards used by MTEA staff members for business-related expenditures. Carmen stated that the expenses on these credit cards are not included in the "other" category (Tr. 83-84). In MTEA, CASE 4, NO. 39792, MA-4902 (CROWLEY, 3/88), Arbitrator Crowley addressed this area of MTEA expenditures as follows:

...

Annual Membership amounted to \$315.00 and the evidence establishing that this amount was for American Express cards for the Association's staff. 15/ The cards are used for travel and meal expenses incurred by the staff members in the performance of their duties. 16/ This expense is similar to automobile expenses and is chargeable as compensation for services rendered in the representational interest of the labor organization and thus it is concluded that the annual membership is an allowable expense. (Citations omitted.)

...

Based on the lack of any response to the Arbitrator's specific written request to Subichin dated September 30, 2002, to clarify her objections regarding this category of expenditures and the explanations on the record given by MTEA on this point, there is no reason to depart from Arbitrator Crowley's approach in the prior case, quoted above. Therefore, the amount of \$435 is chargeable against Subichin regarding the category of "other."

Subichin also listed "all known non-allowables" as an apparent objection. MTEA stated herein it believed Subichin was merely referring to all of the items she had already listed as non-allowables, "like an editorial comment" (Tr. 87). However, even if Subichin meant by this item all previously found non-allowables, MTEA argued that such an objection would be so general as to be appropriately disallowed by the Arbitrator based on non-specificity, as in

The Arbitrator finds that this objection is too general to be granted and that because Subichin submitted no explanation thereof, this objection must be denied in accord with the decisions of prior arbitrators. MTEA, CASE 398, NO. 61016, MA-11776 (SHAW, 6/02); MTEA, CASE 5, NO. 41099, MA-5284 (JONES, 1/89), SLIP OP AT 5 AND 8; MTEA, CASE 4, NO. 39792, MA-4902 (CROWLEY, 3/88) SLIP OP AT 4 AND 5; MTEA, CASE 3, NO. 37598, A-4012 (MCLAUGHLIN, 7/87) SLIP OP AT 14 AND 27-28.

Subichin's remaining objections are to "Legislative & Lobbying," "P.R." and "Community Involvement." In regard to "Legislative & Lobbying," the MTEA 2000-01 Financial Report/Audit and the MTEA ledger show \$18,170 for these expenditures during the 2000-01 period. Based on its assessment regarding how much of this amount was spent on contract administration and collective bargaining, MTEA deducted 53.9% or \$10,342 as non-chargeable expenses. Specifically, MTEA deducted the following:

List of Non-Allowable Expenditures

<u>Source Document</u>		<u>Expenses</u>	<u>Non- Allowable</u>
Audit, p. 9	Legislative & Lobbying Expenses – Total	\$18,170	
	Wis Taxpayers Alliance (92% A. 8% N	350	28
Ledger, p. 2-3	Wis Assn. of Lobbyists	400	400
	Assoc. of Wis. Lobbyists	20	20
	Assoc. of Wis. Lobbyists	40	40
	Vicki-Peck	52	52
	Wisconsin Citizens Action	60	60
	Arthur Sieman Adv.	1,267	1,267
	Joy Farm	915	915
	Kitchen Health	2,184	2,184
	Milwaukee Times Newspaper	200	200
	Milwaukee Journal	350	350
	Hollingsworth	2,112	2,112
	Milwaukee Times	200	200
	Non-Allowable Legislative & Lobbying Expenses		\$10,342

I note that for the Proposed 2002-03 MTEA Budget, MTEA would spend \$21,200 on "Legislative Lobbying" and that it had budgeted \$20,600 for fiscal year 2001-02. The Proposed 2002-03 MTEA Budget Narrative Description for this item reads as follows:

Legislative Lobbying – This reflects the cost of sending members and staff representatives to lobby on behalf of the Association, including reimbursement for the salary of members released for lobbying.

MTEA argued that it has already disallowed all amounts within the "Legislative &

Lobbying” category which are unrelated to collective bargaining and contract administration. MTEA explained through Executive Director Carmen that the expenditures listed in its ledgers

Page 31

MA-11994

for Madison newspapers, Milwaukee Times and Milwaukee Journal were for ads directly related to collective bargaining and contract administration, based on their connection to such issues as the “Neighborhood Schools Initiative.” (Tr. 102-103, 111). Carmen stated that MTEA estimated that the expenditures for Wisconsin Taxpayers Alliance were substantially related to collective bargaining and contract administration but that fees paid thereto should be deemed 92% allowable against fair-share challengers and 8% non-chargeable because MTEA uses the Wisconsin Taxpayer Alliance’s newsletters and monthly publications to track legislation (Tr. 104-105). Other expenditures MTEA totally disallowed were paid for lobbying registration and licensing fees, paid to the Wisconsin State Ethics Board. MTEA paid funds to Wisconsin Association of Lobbyists, Vicki-Peck, Wisconsin Citizens Action, and Sieman Advertising for lobbying services; MTEA payments to newspapers were for ads; its payment to Hollingworth was for media consulting, all of which it disallowed; the payment to the Joy Farm Bus Company was for transportation to lobbying efforts and Kitchen Health provided food at lobbying events.

Again, given Subichin’s non-participation in writing and at the hearing, MTEA’s judgments regarding allowable and non-allowable expenditures for the category “Legislative & Lobbying” appear to be reasonable. Therefore, Subichin’s objections to the additional \$7,828 listed in the audit for this item are overruled and Subichin shall be charged for the \$7,828 previously found chargeable by MTEA.

Subichin’s next objection was to “P.R.” or Public Relations. This item is divided into two categories, “Internal Public Relations” and “External Public Relations” by MTEA. According to Executive Director Carmen, MTEA’s Internal P.R. covers such items as graphics for the MTEA letterhead, business cards, website and publications, flowers sent to employees/members for illnesses and deaths, member recognition activities, videos for members, reimbursement for costs of field staff meetings. This item is listed and totaled in the MTEA ledgers as “Public Relations EXP-Internal” with an amount of \$5,311.62 for 2000-01. The 2002-03 Proposed Budget shows that year-to-date expenditures for this item (as of February 28, 2002) were \$5,727. There is no separate Proposed 2002-03 Budget amount for this item, although a total of \$90,000 is listed for both Internal and External P.R. for 2002-03.

MTEA argued that the amount listed for Internal P.R. (\$5,312) should be allowed against Subichin (Tr. 112-115). The 2002-03 MTEA Proposed Budget Narrative Descriptions for Internal P.R. and External P.R. are as follows:

Internal Public Relations – Internal public relations cost items include: educator recognition such as the annual dinner recognizing retiring members, sunshine fund expenditures, and scholarship fund contributions.

External Public Relations – This item includes costs for promoting public education and educators, under the central theme of “Putting Children at the

Center of Education.” Ongoing activities to communicate MTEA messages to the community on public education and school reform are also funded under this item. Making the Grade, Art Show.

The Arbitrator finds, absent of any evidence or argument to the contrary from Subichin, that MTEA properly charged a total of \$5,312 for Internal Public Relations amount against Subichin.

In regard to External Public Relations, the 2002-03 Proposed MTEA Budget lists a year-to-date (as of 2-28-02) External P.R. amount of \$39,542 with zero listed for 2001-02 and 2002-03. The total amount for this item shown in the MTEA ledgers for 2000-01 was \$145,139 and MTEA disallowed \$27,633 of this total in its Notice of non-allowables as follows:

Ledger, p. 24	Public Relations - External	145,139	
	Mueller Comm. Inc. 80%-A 20%-NA	15,257	3,048
	Mueller Comm. Inc. 80%-A 20%-NA	6,231	1,246
	Mueller Comm. Inc. 80%-A 20%-NA	2,410	482
	ACLU	1,000	1,000
Ledger, p. 24	WHNA Membership	100	100
	Mueller Comm. Inc. 80%-A 20%-NA	7,261	1,452
Ledger, p. 25	Rudig – Chet & Leona – for MTEA		
	Art Show	1,429	1,429
Ledger, p. 25	UPAF	1,000	1,000
Ledger, p. 25	WISN – TV (50%/50%)		
	(Parent Conf./MTEA)	14,505	7,253
	Mueller Comm. Inc. 80%-A 20%-NA	217	109
	WISN – TV 50/50	7,640	3,820
	Mueller Comm. Inc. 80%-A 20%-NA	7,947	1,589
	Mueller Comm. Inc. 80%-A 20%-NA	1,796	359
	Mueller Comm. Inc. 80%-A 20%-NA	1,805	361
	Bob Lanier Enterp., Inc.	4,273	4,273
	Rudig	112	112
	Non-Allowable Public Relations-External Expenses		<u>\$27,633</u>

Executive Director Carmen stated that the expenses for External P.R. are part of the outward expression of MTEA. Carmen stated that MTEA disallowed 20% of the expenses to Mueller Communications, a company hired in the year 2000 to help MTEA get its contracts ratified. The payment to WISN-TV for Parent/MTEA conference was 50% disallowed as this conference is only partially related to collective bargaining/contract administration. The following were not allowed as being related to community public relations and not collective bargaining/contract administration:

The United Way cost paid for MTEA’s participation in the United Way kick-off celebration; a table at a fund raiser purchased from the ACLU; Student Art Show; WHNA Membership for dues in a neighborhood association; United Performing Arts membership; Rudig trophies for the Student Art Show (Tr.

Also not listed in the Notice but listed in MTEA on the ledgers as non-allowables were the following: Black Womens Network, Inc. — a table was purchased for a fund raiser at a cost of \$325; and Milwaukee Black Excellence, an amount of \$1,000. Executive Director Carmen stated that these amounts were not allowable because it was not related to collective bargaining or contract administration and was omitted from non-allowables in error. Based upon the ledgers for 2000-01, as well as Carmen's testimony, the Arbitrator finds that an additional amount of \$1,325 for the Black Women Network, Inc. and Milwaukee Black Excellence should be added to the \$27,633 which was not allowed against fair-share challengers by MTEA, for a total of \$28,958. Based on the record herein and MTEA's extensive discussion and explanations, I find that this \$28,958 total amount is non-allowable against Subichin for this item.

The last category of expenditures objected to by Subichin is "Community Involvement." There is no narrative description of this item in the 2002-03 Proposed MTEA Budget and there is no separate listing in the 2000-01 MTEA Financial Report/Audit for this category. Rather, Community Involvement is a subcategory contained within the category of "Membership/Community Involvement and Communications" listed for a non-segregated total of \$221,070 in the 2000-01 audit. MTEA listed the category of "Community Involvement, Public Engagement Project" in its Notice to employees of allowable/non-allowable items at page 3 with a total expenditure of \$18,640, 20% of which MTEA has already disallowed.

Executive Director Carmen stated herein that the Public Engagement Project (PEP) is part of a national campaign focused on public schools, education and the problem of teacher turnover. One of PEP's goals is to ensure that there is a qualified, competent teacher in every classroom. MTEA sought partners to join it in paying for a PEP study regarding how to keep teachers in the classroom and how to analyze student achievement (Tr. 121-122). Carmen stated that PEP was a "prelude to collective bargaining." Carmen stated MTEA partnered with the Chamber of Commerce, Milwaukee Public Schools, the University system and the Technical College to learn about collaborative bargaining with PEP and that this process ended in a tentative agreement after brief mediation of the teachers' contract (Tr. 122-124). Therefore, Carmen stated MTEA had estimated that 20% of the cost of the PEP was related directly to collective bargaining and should be chargeable against fair-share objectors (\$3,728).

Based on this record, it is reasonable to believe that Subichin's reference to "Community Involvement" was intended to raise a specific objection to the Public Engagement Project listed in MTEA's Notice of Allowable and Non-Allowable Expenditures which she received with her fair-share packet. As the only reference to Community Involvement appears in this Notice and it was solely linked to the PEP, I conclude that Subichin (who failed to explain her objections in any way) intended only to object to the \$18,640 amount shown for Community Involvement/Public Engagement Project. Given that fact that Subichin did not appear herein nor did she explain her objection on this or any other point, I conclude that

MTEA's calculation disallowing 20% or \$3,728 of the \$18,640 was reasonable. I note in this regard, that Subichin made no objection to the category "Community Outreach" nor did she object to "Membership Community Involvement and Communications" in her objections. Therefore, any objection to a larger amount is not before this Arbitrator.

Page 34
MA-11994

AWARD

Based upon the above analysis and all of the evidence and arguments submitted herein, the following amounts may be charged against Objector Subichin:

\$14,734	Leadership Training/Workshops
\$590	Mentor Teachers Program
\$3,771	Subscriptions
\$5,936	Web Page
\$465	Other
\$7,828	Legislative & Lobbying
\$5,312	Internal P.R.
\$116,181	External P.R. (deduction of \$1,325 made from previous allowable amount)
\$3,728	Community Involvement

The following amounts either required that no charge could be made to Subichin or the amount was found non-chargeable against Subichin based on the record evidence and argument:

\$46,869	Membership Special Services, not allowable
\$679	Insurance, not allowable
\$0	Public Policy Forum
\$0	All known non-allowables

The remaining amounts MTEA previously found allowable and non-allowable are not disturbed by this Award.

Dated in Oshkosh, Wisconsin, this 24th day of February, 2003.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

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