

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF APPLETON

For a Referendum to Determine the
Continuation of a Fair-Share
Agreement Between

CITY OF APPLETON and APPLETON MUNICIPAL
EMPLOYEES UNION (CITY HALL EMPLOYEES)
LOCAL 73, AFSCME, AFL-CIO, AFFILIATED
WITH THE WISCONSIN COUNCIL OF COUNTY
AND MUNICIPAL EMPLOYEES

Case XLII
No. 15612 MR-6
Decision No. 11043

Appearances:

Mr. William Sandoval, Business Representative, Wisconsin Council
of County and Municipal Employees, appearing on behalf of
the Union.

Mr. Gerald E. Lang, Director of Personnel, appearing on behalf
of the Petitioner.

DIRECTION OF REFERENDUM

The City of Appleton, by its Director of Personnel, Gerald E. Lang, having petitioned the Wisconsin Employment Relations Commission to conduct a referendum pursuant to Section 111.70(2) of the Municipal Employment Relations Act among certain employees of the City of Appleton; and a hearing on such petition having been conducted on May 30, 1972, at Appleton, Wisconsin, by Commissioner Jos. B. Kerkman; and the Commission being satisfied that a referendum should be directed;

NOW, THEREFORE, it is

DIRECTED

That a referendum by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission in the collective bargaining unit consisting of all regular city hall employees and employees in conjunction thereto, Chief Building Custodian, Building Custodian and janitress employed by the City of Appleton, excluding craft employees, confidential employees, supervisors and executives, employees in the Parking Commission, Engineering Division-Department of Public Works, and office of the Assessor, who were employed by the Municipal Employer on May 8, 1972, except such employees as may prior to the referendum quit their employment or be discharged for cause, for the purpose of determining whether the required number of such employees favor the continuation of an existing fair-share agreement between the Municipal Employer and the Union named above.

Given under our hands and seal at the
City of Madison, Wisconsin, this 2nd
day of June, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slonevsky
Morris Slonevsky, Chairman

Zell S. Rice II, Commissioner

Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF REFERENDUM

The petition in this matter was filed by the Employer and was supported by a petition signed by certain employees which read as follows:

"We, The undersigned Members of the City Hall Bargaining Unit, hereby request that a referendum be held to ascertain if a majority of the members desire to have the equivalent of union dues deducted monthly in accordance with the so called 'Fair Share Agreement', which is contained in the Union Contract for 1972."

The Employer has furnished the Commission with a complete list of the employees in the bargaining unit and by administrative determination the Commission is satisfied that the 30% showing of interest required by statute has been met.

During the course of the hearing an issue arose with respect to the dues that have already been checked-off pursuant to the fair-share agreement negotiated between the Union and the Employer. The 1972 collective bargaining agreement was executed by the parties on April 10, 1972, and included a newly negotiated provision for fair-share deductions that became effective on May 1, 1972. The first deduction from all members of the unit was made on May 5, 1972. The terms of the collective bargaining agreement require that the Employer pay the dues deducted to the Treasurer of the Union on or before the end of the month following the month in which such deduction was made. The dues that were deducted in May of 1972 are therefore not due the Union until June 30, 1972. The Employer has taken the position that the dues deducted pursuant to the fair-share provision of the parties' collective bargaining agreement be held in escrow pending the outcome of the referendum on the continuance of the fair-share agreement. The Union contends that once a fair-share agreement is negotiated between the Union and the Employer, it is valid until the majority of the eligible employees vote to discontinue said agreement, and therefore any dues deducted pursuant to the fair-share provision of the collective bargaining agreement are payable to the Union until such time as the fair-share agreement might be discontinued by a referendum vote. The Municipal Employment Relations Act defines fair-share agreement as follows:

"'Fair-share agreement' means an agreement between a municipal employer and a labor organization under which all or any of the employees in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members. Such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employees affected by said agreement and to pay the amount so deducted to the labor organization."^{1/}

^{1/} Section 111.70(1)(h), Wisconsin Statutes.

The Act further states under "Rights of Municipal Employees":

"...that employees may be required to pay dues in the manner provided in a fair-share agreement. Such fair-share agreement shall be subject to the right of the municipal employer or a labor organization to petition the commission to conduct a referendum. Such petition must be supported by proof that at least 30% of the employees in the collective bargaining unit desire that the fair-share agreement be terminated. Upon so finding, the commission shall conduct a referendum. If the continuation of the agreement is not supported by at least the majority of the eligible employees, it shall be deemed terminated."2/

It is clear to the Commission that the fair-share agreement contained in the parties' collective bargaining agreement is valid until such time as the employees might vote to discontinue the fair-share agreement by a referendum. In this case all dues deducted pursuant to the parties' fair-share agreement are payable to the Union at the end of the month following the month in which such deductions were made. If the employees vote, by a majority of those eligible, to continue the fair-share agreement, dues will continue to be deducted and forwarded to the Treasurer of the Union pursuant to the terms of the collective bargaining agreement. If the employees vote to terminate the fair-share agreement, all dues deducted pursuant to the fair-share provision prior to the certification of the results of the referendum by the Commission, are payable to the Union and thereafter all fair-share deductions shall cease.

During the course of the hearing the parties stipulated that in the event that the employees vote to discontinue the fair-share agreement, the 1972 collective bargaining agreement would be modified as follows:

1. The management rights clause contained in the 1972 collective bargaining agreement would be deleted and the management rights provision that existed in the parties' 1971 collective bargaining agreement would be substituted for the existing language.

2. That the "fair share" language in the 1972 collective bargaining agreement would be deleted and the check-off provisions of the parties' 1971 collective bargaining agreement would be substituted for it.


The parties further stipulated that the list of eligible employees dated May 30, 1972, as submitted by the Employer, constituted all employees eligible to vote in the referendum, except such employees on the list who may prior to the referendum quit their employment or be discharged for cause.

Dated at Madison, Wisconsin, this 2nd day of June, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

2/ Section 111.70(2), Wisconsin Statutes.