

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Involving Employees in the Employ of the
STATE OF WISCONSIN

Case XXXV
No. 16491 DR(S)-5
Decision No. 11596-A

Representatives of the Union and the State waived the filing of a written request for a declaratory ruling with the understanding that the Commission would issue a notice of hearing with respect to the matter and afford interested parties an opportunity to file written statements of their position prior to the hearing conducted with respect to the matter. Thereafter and on February 7, 1973, the Commission issued an Order requesting response to the Motion for Declaratory Ruling wherein it afforded any party having an interest in the matter to file statements of position with the Commission on or before February 19, 1973, and in addition, the Commission on the same date set hearing on the matter for Friday, March 2, 1973.

Statements of position were filed by the State, American Federation of State, County and Municipal Employees, Council 24, AFL-CIO and its Affiliated Locals, Wisconsin Nurses Association, Inc., the Wisconsin Education Association, the Wisconsin State Building Trades Negotiating Committee, and the State Highway Engineers Association; and hearing in the matter having been held on Friday, March 2, 1973, Chairman Morris Slavney being present; and the Commission having considered the position of the parties and being fully advised in the premises, makes and files the following

DECLARATORY RULING

Where, in a referendum, conducted by the Wisconsin Employment Relations Commission pursuant to Section 111.81 of the State Employment Labor Relations Act, at least two-thirds of the eligible employees voting vote in favor of a fair-share agreement, the collective bargaining representative involved and the State Employer are obligated to enter into a fair-share agreement, and thus, the implementation of a fair-share agreement in state employment is not subject to collective bargaining, except as to the effective date thereof, should either party thereto desire to implement the fair-share agreement on a date prior to the sixtieth day from the date of the Certification of the results of the referendum.

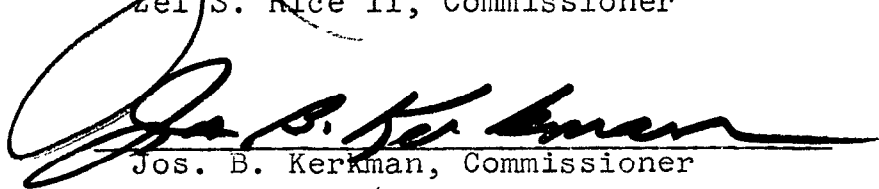
Given under our hands and seal at the
City of Madison, Wisconsin, this 21st
day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING DECLARATORY RULING

This Declaratory Ruling is made at the request of Wisconsin State Employees Union, Council 24, American Federation of State, County and Municipal Employees, AFL-CIO, and its Affiliated Locals, hereinafter referred to as AFSCME. On February 7, 1973, the Commission issued an Order Requesting Response to Motion for Declaratory Ruling and Setting Hearing. Copies were sent to all organizations known to the Commission to have an interest in the representation of state employees, and any party having an interest in the matter was given until February 19, 1973, to file a statement of its position. The issue presented for decision is whether or not fair-share agreements are bargainable under the State Employment Labor Relations Act, Chapter 270, Laws of 1971, Section 111.80, et. seq., Wisconsin Statutes.

The State of Wisconsin filed a position paper wherein it recognizes that the State Employment Labor Relations Act, hereinafter referred to as SELRA, contains language which is subject to varied interpretations. The State took no position as to the interpretation which should be made, and has indicated its willingness to follow the interpretation made by the Commission in this regard. AFSCME, the Wisconsin Education Association, the Wisconsin State Building Trades Negotiating Committee, the Wisconsin Nurses Association, Inc. and the State Highway Engineers Association also filed statements of position. These labor organizations unanimously urged that fair-share agreements are not bargainable once the required number of employees have voted in favor of the fair-share agreement in a referendum proceeding conducted pursuant to the pertinent provisions of SELRA. The pertinent provisions of SELRA are set forth in Sections 111.31(6) and (13) and 111.85. 1/

The Municipal Employment Relations Act provides for fair-share agreements but does not require the conduct of a referendum prior to the implementation of such an agreement. The pertinent provisions in MERA are contained in Sections 111.70(1)(h) and (n) and 111.70(2). 2/

The Wisconsin Employment Peace Act provides for the conduct of a referendum with respect to the inclusion of an all-union agreement in a collective bargaining agreement between a labor organization and an employer engaged in private employment. The pertinent provisions of WEPA are contained in Sections 111.02(9) and 111.06(1)(c). 3/

It is obvious from the pertinent provisions of the Wisconsin Employment Peace Act that the inclusion of an all-union agreement in a collective bargaining agreement covering employees in private employment is a subject of bargaining between the majority representative and the employer. This interpretation is clearly reflected in Section 111.06(1)(c)2, pertaining to petitions for referenda filed by employers. Pursuant to that provision the Commission cannot entertain a petition filed by an employer unless he has entered into a collective bargaining agreement, or is negotiating for an agreement which does contain, or will contain, an all-union agreement, provided the required

1/ Said provisions are set forth in detail in Appendix "A".

2/ Said provisions are set forth in detail in Appendix "B".

3/ Said provisions are set forth in detail in Appendix "C".

number of employees authorize same in a referendum conducted by the Commission. It should be noted that SELRA contains no such restriction upon the State Employer to file a petition for an initial referendum, or a new referendum to determine whether the employees desire to discontinue the fair-share agreement.

It is patently clear that under the provisions of the Municipal Employment Relations Act no referendum is required to implement a fair-share agreement. However, there is no language in MERA which implies that fair-share agreements are not subject to the collective bargaining process. This conclusion is buttressed by the language contained in Section 111.70(1)(n) wherein the term "referendum" is defined as a proceeding wherein employees "may cast a secret ballot on the question of authorizing a labor organization and the employer to continue a fair-share agreement."

The provisions of SELRA, on the other hand, are distinctively different from the provisions of both WEPA and MERA, as they pertain to the issue involved herein. Section 111.81(6) in defining the term "fair-share agreement", states in part, "Unless the parties agree to an earlier date, the fair-share agreement shall take effect 60 days after certification by the commission that the referendum vote favored the fair-share agreement." Further, the portion of the section saving the State "harmless" from the effects of the fair-share agreement and its consequences, supports the conclusion that a fair-share agreement in state employment is not subject to collective bargaining, but only subject to the results of the referendum, since the implementation of fair-share agreement must become effective at least 60 days after the certification of the results thereof, regardless of the status of the negotiations between the bargaining representative and the State Employer.

The language in Section 111.85 relating to the results of a new referendum to determine whether the employees involved desire to continue the fair-share agreement, provides in material part, "If the continuance of the agreement is approved by the referendum . . . it shall be continued in effect . . ." It is to be noted that in Section 111.06(1)(c) of WEPA, relating to the results of a new referendum to determine whether in private employment the employees involved desire to continue an all-union agreement, provides that if the required number of employees vote in favor of same, that the all-union agreement "may be continued in force thereafter." The use of the term "may" implies that although the required number of employees favor the continuation of the all-union agreement, the inclusion of such a provision in the collective bargaining agreement in private employment is subject to the collective bargaining process. Under SELRA, if the required number of employees favor the continuation of the fair-share agreement, the parties are required to continue it in effect.

We, therefore, conclude that should the required number of employees in a collective bargaining unit vote in favor of directing the bargaining representative and the State Employer to enter into a fair-share agreement, said representative and the State Employer are obligated to enter into a fair-share agreement, and thus, the implementation of a fair-share agreement in state employment is not

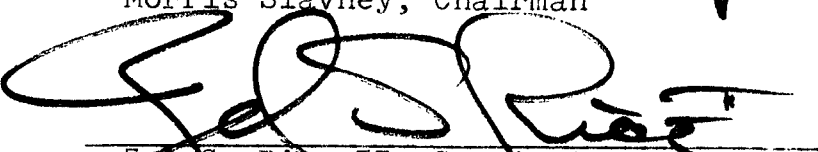
subject to collective bargaining, except as to the effective date thereof on a date prior to the sixtieth day from the date of the certification of the results of the referendum.

Dated at Madison, Wisconsin, this 21st day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slaveny, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

APPENDIX "A"

STATE EMPLOYMENT LABOR RELATIONS ACT

Section 111.81(6)

"(6) 'Fair-share agreement' means an agreement between an employer and a labor organization including supervisory units 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. Unless the parties agree to an earlier date, the fair-share agreement shall take effect 60 days after certification by the commission that the referendum vote favored the fair-share agreement. The employer shall be held harmless against any and all claims, demands, suits or other forms of liability which may arise for actions taken or not taken by the employer in compliance with this subsection. All such claims, demands, suits or other forms of liability made by employees or local labor organizations shall be under the control of the labor organization designated by the contract negotiated under this subchapter."

Section 111.81(13)

"(13) 'Referendum' means a proceeding conducted by the commission in which employees in a collective bargaining unit may cast a secret ballot on the question of directing the labor organization and the employer to enter into a fair-share agreement. For a fair-share agreement to be effective, at least two-thirds of the eligible employees voting in a referendum must vote in favor of the agreement."

Section 111.85

"111.85 Encouragement of voluntary procedures to promote stability, peace and responsibility in state employment.
(1) No fair-share agreement shall become effective unless authorized by referendum. The authorization of such fair-share agreement shall continue thereafter subject to the right of the employer or labor organization concerned to petition the commission to conduct a new referendum on the subject. 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 discontinued. Upon so finding, the commission shall conduct a new referendum. If the continuance of the agreement is approved by the referendum by at least the number of employees required for its initial authorization, it shall be continued in effect, subject to the right of the employer or labor organization to later initiate a further vote following the above procedure."

APPENDIX "A" (Continued)

STATE EMPLOYMENT LABOR RELATIONS ACT

Section 111.85 (Continued)

If the continuation of the agreement is not supported in any referendum, it shall be deemed terminated at the termination of the collective bargaining agreement, or one year from the date of the certification of the result of the referendum, whichever is earlier. The commission shall declare any fair-share agreement suspended upon such conditions and for such time as the commission decides whenever it finds that the labor organization involved has refused on the basis of race, color or creed to receive as a member any employee in the bargaining unit involved, and such agreement shall be made subject to the findings and orders of the commission. Any of the parties to such agreement or any employee covered thereby, may come before the commission, as provided in s. 111.07, and allege a violation of this provision.

(2) A stipulation for a referendum executed by an employer and a labor organization may not be filed until after the representation election has been held and the results certified."

APPENDIX "B"

MUNICIPAL EMPLOYMENT RELATIONS ACT

Section 111.70(1)(h)

"'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."

Section 111.70(1)(n)

"'Referendum' means a proceeding conducted by the commission in which employees in a collective bargaining unit may cast a secret ballot on the question of authorizing a labor organization and the employer to continue a fair-share agreement. Unless a majority of the eligible employees vote in favor of the fair-share agreement, it shall be deemed terminated and that portion of the collective bargaining agreement deemed null and void."

Section 111.70(2)

"RIGHTS OF MUNICIPAL EMPLOYEES. Municipal employees shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employees shall have the right to refrain from any and all such activities except 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. The commission shall declare any fair-share agreement suspended upon such conditions and for such time as the commission decides whenever it finds that the labor organization involved has refused on the basis of race, color, creed or sex to receive as a member any employee of the municipal employer in the bargaining unit involved, and such agreement shall be made subject to this duty of the commission. Any of the parties to such agreement or any municipal employee covered thereby may come before the commission, as provided in s. 111.07, and ask the performance of this duty."

APPENDIX "C"

WISCONSIN EMPLOYMENT PEACE ACT

Section 111.02(9)

"The term 'all-union agreement' shall mean an agreement between an employer and the representative of his employees in a collective bargaining unit whereby all or any of the employees in such unit are required to be members of a single labor organization."

Section 111.06(1)(c)

" . . . An employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees in a collective bargaining unit, where at least a majority of such employees voting (provided such majority of the employees also constitute at least a majority of the employees in such collective bargaining unit) have voted affirmatively, by secret ballot, in favor of such all-union agreement in a referendum conducted by the commission. Such authorization of an all-union agreement shall be deemed to continue thereafter, subject to the right of either party to the all-union agreement to request the commission in writing to conduct a new referendum on the subject. Upon receipt of such request by either party to the agreement, the commission shall determine whether there is reasonable ground to believe that there exists a change in the attitude of the employees concerned toward the all-union agreement since the prior referendum and upon so finding the commission shall conduct a new referendum. If the continuance of the all-union agreement is supported on any such referendum by a vote at least equal to that hereinabove provided for its initial authorization, it may be continued in force thereafter, subject to the right to request a further vote by the procedure hereinabove set forth. If the continuance of the all-union agreement is not thus supported on any such referendum, it shall be deemed terminated at the termination of the contract of which it is then a part or at the end of one year from the date of the announcement by the commission of the result of the referendum, whichever proves to be the earlier date. The commission shall declare any such all-union agreement terminated whenever it finds that the labor organization involved has unreasonably refused to receive as a member any employee of such employer, and each such all-union agreement shall be made subject to this duty of the commission. Any person interested may come before the commission as provided in s. 111.07 and ask the performance of this duty. Any all-union agreement in existence on May 5, 1939, and renewed or amended continuously since that time shall be deemed valid and enforceable in all respects. It is not a violation of this subchapter for an employer engaged primarily in the building and construction industry where the employees of such employer in a collective bargaining unit usually perform their duties on building and construction sites, to negotiate, execute and enforce an all-union agreement

APPENDIX "C" (Continued)

WISCONSIN EMPLOYMENT PEACE ACT

Section 111.06(1)(c) (Continued)

with a labor organization which has not been subjected to a referendum vote as provided in this subchapter. It is not a violation of this subchapter for an employer engaged in the truck transportation of freight in the motor freight industry as a common or contract carrier of property as defined in s. 194.01 (5) and (11) to negotiate, execute and enforce an all-union agreement with a labor organization representing employees in a multi-state bargaining unit which has not been subjected to a referendum vote as provided in this subchapter; except that an election shall be held if a petition requesting such election is signed by 30% of the employees affected.

2. No petition by an employer for a referendum to determine whether an all-union agreement is desired by his employees shall be entertained by the commission where such employer has a contract or is negotiating for a contract with a labor organization which has been duly constituted as the bargaining representative of his employees unless such employer has made an agreement with such labor organization that he will make a contract for an all-union shop if it is determined as a result of the referendum held by the commission that his employees duly approve such all-union shop."