

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
CITY OF OSHKOSH (PUBLIC LIBRARY)

For a Referendum on the Question of
Continuation of Fair-Share Agreement
between

CITY OF OSHKOSH (PUBLIC LIBRARY)

and

LOCAL 796-A, WISCONSIN COUNCIL OF COUNTY:
AND MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO:

Case XXI
No. 17573 MR(C)-27
Decision No. 12542

Appearances:

Mr. Bob Oberbeck, Representative, appearing on behalf of the
Union.

Mr. Norbert W. Svatos, Personnel Director, appearing on behalf
of the Municipal Employer.

DIRECTION OF REFERENDUM

The City of Oshkosh (Public Library), 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 Oshkosh (Public Library); and a hearing on such petition having been conducted on February 19, 1974, at Appleton, Wisconsin, Kay Hutchison, Hearing Officer, having been present; 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 full-time and regular part-time employees but excluding Librarian I, II, III, IV, supervisory and confidential personnel and all elected and appointed personnel, who were employed by the City of Oshkosh (Public Library) on February 18, 1974, 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 13th day of March, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slawsky
Morris Slawsky, Chairman

Zel S. Pice II
Zel S. Pice II, Commissioner

Howard S. Bellman
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING
DIRECTION OF REFERENDUM

The petition in the instant proceeding was filed by the Municipal Employer and was supported by a petition signed by certain employees which reads as follows:

"We, the undersigned, members of the bargaining unit of Oshkosh Public Library, object to the inclusion of Article XVIII - Fair Share Agreement in the Local 796-A Union Contract for 1974, and demand that all members of the bargaining unit be given an opportunity to vote on the inclusion of the agreement in the contract."

The Municipal Employer has furnished the Commission with a complete list of bargaining unit employees. Based upon an administrative determination, the Commission is satisfied that the 30% showing of interest required by Section 111.70(2) of the Municipal Employment Relations Act has been met. A referendum on the issue of a fair-share agreement between the parties has not previously been held.

The Municipal Employer and Union entered into a one year collective bargaining agreement which became effective on January 1, 1974. The contract contained a new provision which provided:

"Article XVIII - Fair Share Agreement

Section 1. The employer agrees that effective January 1, 1974, it will deduct from the monthly earnings of all employees in the collective bargaining unit the amount of . . . the monthly dues certified by the Union as the current amount uniformly required of all members, and pay said amount to the treasurer of the Union on or before the end of the month following the month in which such deduction was made.

. . . ."

During the course of the hearing, the Union urged that the Commission adopt a policy with regard to the timeliness of petitions for referendum on continuation of a fair-share agreement similar to that which it has adopted with regard to petitions for representation elections. Specifically, the Union states that the Commission has held collective bargaining agreements, which are in effect, constitute a contract bar to all election petitions except those filed within sixty (60) days of the date of contract termination. 1/ The Union proposes that the Commission should find a petition for referendum on the question of continuation of a fair-share agreement to be untimely unless it is filed within the sixty days prior to the expiration of the existing agreement.

1/ The Commission has held those election petitions filed within 60 days of the date reflected in the agreement for the commencement of negotiations to be timely filed (emphasis added). Wauwatosa Board of Education (8300-A 2/68) (Aff. Dane Co. Cir. Ct., 3/68).

The Union asserts that in the process of collective bargaining, the parties agreed to the inclusion of the fair-share agreement in the contract on the basis of various concessions made by the respective sides. The Union argues that it would be neither in good faith nor consistent with the intent of 111.70 to foster stability in labor relations, for the Municipal Employer to attempt to negate part of the agreement, through the proceeding herein, less than two month's subsequent to its effective date.

ERB 15.04(2) of the Wisconsin Administrative Code specifically provides that:

"Time for Filing. A petition for an initial referendum to determine the continuation of a fair-share agreement shall be entertained by the commission, provided such petition is filed at any time following the implementation of the fair-share agreement involved."
(emphasis added)

Furthermore, ERB 15.11 sets forth the effect of the certification of such referendum and designates the requirements for the timely filing of subsequent referendum petitions:

"ERB 15.11 Certification of results of referendum.

(1) WHEN ISSUED. If challenged ballots are insufficient in number to affect the results, and no timely objections are filed as provided below, the commission shall forthwith issue to the parties a certification of the results of the referendum.

(2) EFFECT OF CERTIFICATION. (a) Where the certification of the result of a referendum indicates that the required number of employees have not authorized the implementation of, or the continuation of, the fair-share agreement, said fair-share agreement shall not be implemented, or shall be immediately terminated, as the case may be.

(b) Where the certification of the result of a referendum indicates that the required number of employees have authorized the implementation of, or the continuation of, the fair-share agreement, said fair-share agreement shall become effective, or continue to remain in effect, as the case may be.

(c) Except for good cause shown, over and above the required showing of interest, the commission will not process a petition for a subsequent referendum, unless such petition is filed within the sixty day period immediately preceding the date on which either party to the collective bargaining agreement may notify the other party of its desire to re-open or terminate said collective bargaining agreement, provided that the result of the previous referendum has not been certified within six months preceding the commencement of said sixty day period.

(d) Should the municipal employer and the collective bargaining representative enter into a fair-share agreement at any time following the certification of the result of a referendum, wherein the required number of employees did not support the implementation

of, or the continuation of a previous fair-share agreement, as the case may be, then a petition for a referendum to determine the continuation of such fair-share agreement shall be considered as a petition for an initial referendum."

The Commission has held that rule ERB 15.11(c), pertaining to time requirements for filing a petition to determine whether a fair-share agreement shall be conducted, is not applicable where there has been no referendum conducted prior to the implementation of the fair-share agreement. 2/ Had a referendum been conducted prior to the implementation of the fair-share agreement where a majority of the eligible employees would have authorized same, the Commission, under rule ERB 15.11(c), would have not processed such petition unless it was filed within the 60-day period immediately preceding the date on which either party may notify the other party of its desire to reopen or terminate the existing collective bargaining agreement.

Based on the foregoing, the Commission is satisfied that a referendum on the question of continuation of fair-share agreement should be, and hereby is, directed herein.

Dated at Madison, Wisconsin, this 10th day of March, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney

Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Howard S. Bellman

Howard S. Bellman, Commissioner

2/ Milwaukee Technical Institute (12121-A) 10/73.