

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
LOCAL 2477, INTERNATIONAL ASSOCIATION	:	
OF FIRE FIGHTERS, AFL-CIO & CLC	:	Case VIII
	:	No. 20502 MIA-246
For Final and Binding Arbitration	:	Decision No. 15022-B
Involving Fire Fighter Personnel	:	
in the Employ of	:	
	:	
TOWN OF ALLOUEZ (FIRE DEPARTMENT)	:	
	:	

ORDER DENYING MOTION FOR RECONSIDERATION

On January 12, 1977, the Town of Allouez, through its attorneys, having filed a motion with the commission asking the commission to dismiss the petition, which petition the commission effectively granted on November 2, 1976; and the commission having determined to treat said motion as a motion to reconsider its decision of November 2, 1976, wherein the commission: (a) concluded that an impasse existed between the petitioner and the Town of Allouez in respect to negotiations leading to a collective bargaining agreement covering the wages, hours and conditions of employment of the fire fighter personnel represented by petitioner and employed by the Town of Allouez, (b) certified that all conditions precedent to final and binding arbitration under sec. 111.77, Stats., had been met, and (c) ordered, inter alia, that final and binding arbitration be initiated; and on the basis of the record herein,

IT IS ORDERED that the motion of the Town of Allouez shall be, and hereby is, denied.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Herman Torosian*
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

designated amount, as measured by the amount of dues uniformly required of all members of the labor organization, shall be deducted "from the earnings of the employes." Section 111.70(1)(h), Stats. Thus, such provision directly affects the employes' wages within the meaning of sec. 111.70(1)(d), Stats., about which a municipal employer is required to bargain. Further, the failure of an employe to pay fair-share as required by a valid fair-share provision may result in sanctions against the employe, including loss of employment. In that situation, employment is conditioned on paying fair-share, and such a condition is a condition of employment within the meaning of sec. 111.70(1)(d), Stats., about which a municipal employer is required to bargain.

While it is true that employes have a right to refrain from assisting a labor organization, the legislature expressly qualified said right by authorizing the execution of a collective bargaining agreement requiring employes to pay fair-share. See secs. 111.70(2) and (3)(a)3, Stats.

The town's argument that arbitrating the fair-share question defeats the right of the parties to petition the commission to conduct a referendum on the continuation of the fair-share agreement during the term of the agreement is totally without merit. The legislature, having expressly authorized such agreements, also expressly stated that they are "subject to the right of the municipal employer or a labor organization to petition the commission to conduct a referendum" on the question of its continuation. See sec. 111.70(2), Stats.


The town's final ground is that a fair-share agreement violates the constitutional rights of employes. This argument asks the commission to declare a state statute unconstitutional. The commission has no such power. See State ex rel. LaCrosse v. Rothwell, 25 Wis. 2d 228, 233, 130 N.W. 2d 806, 131 N.W. 2d 699, and City of Eau Claire v. Department of Natural Resources, 60 Wis. 2d 751, 210 N.W. 2d 771 (1973).

In addition to the absence of merit in the town's motion, the motion is so untimely on the facts of this case as to constitute a waiver of a right to object to the commission's decision of November 2, 1976. In addition to not objecting promptly on receipt of that decision, the town actively participated in the selection of an arbitrator. It is only on the eve of the briefing schedule before the arbitrator that the town raises its arguments for the first time. Although the statutes and the rules of the commission do not provide any specific time limitations for such motions, analogous provisions indicate a legislative intent for promptness in making them. ^{3/} Furthermore, the legislative intent to provide final and binding arbitration in police and fire disputes has as one of its goals the prompt resolution of disputes.

Dated at Madison, Wisconsin this 17th day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner

^{3/} The town would have had 30 days from the November 2, 1976, decision to seek judicial review before a court. See sec. 227.16, Stats. Further, if this were a contested case, which it is not inasmuch as there is no required hearing, see sec. 227.01(2), Stats., a petition for rehearing would have had to be filed within 20 days of November 2, 1976. See sec. 227.12(1), Stats.