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STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
BRANCH 34

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48,
AFSCME, AFL-CIO,

Plaintiffs,

vs.

Case No. 583-249

Decision No. 16713-D

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

Defendant.

FILED

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GARY J. BARCZAK
DECISION AND ORDER CLERK OF COURTS

At oral argument held on May 16, 1983, the parties agreed that the sole issue presented for decision is whether sec. 59.07(136) created by c. 245, LL 1977, effective April 22, 1978, may constitutionally negate a provision of the then existing 1977-1978 labor contract between Milwaukee County and Milwaukee District Council 48, AFSCME, AFL-CIO.¹

Sec. 59.07(136) Stats. provides:

"No county or agency or subdivision of the county may authorize funds for or pay to a physician or surgeon or a hospital, clinic or other medical facility for the performance of an abortion except those permitted under and which are performed in accordance with s. 20.927."

Sec. 20.927 Stats., in effect, excepts therapeutic abortions from this legislative interdiction.

¹ State impairment of contracts is prohibited by Article I, §10 of the United States Constitution: "No state shall...pass any...law impairing the obligation of contracts..." See also Article I, §12 of the Wisconsin Constitution: "No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed..."


The 1977-1978 labor contract provided for, inter alia, hospital insurance coverage for non-therapeutic abortions. On June 1, 1978, following the effective date of sec. 59.07(136) Stats., Milwaukee County, in effect, withdrew this coverage for the remainder of the contract term.

Although both the United States and Wisconsin constitutional provisions with respect to impairment of contracts use emphatic language which is not there qualified, it is clear that "the obligation of contract is not an absolute right, but is one that may be obliged to yield to the compelling interest of the public -- the exercise of the police power." State ex rel Building Owners v Adamany, 64 Wis.2d 280, 292 (1974). See also Allied Structural Steel Co. v Spannaus, 438 U.S. 234 (1978). Retroactive application of a statute which purports to impair existing contractual relationships is only permitted if such retroactivity is required to fulfill the clear and unambiguous public interest as expressed by the Legislature. See State ex rel Building Owners v Adamany, supra, 64 Wis.2d at 299. Turning to the present dispute, there is nothing in the Record to indicate the degree of impact upon the interest sought to be protected by the legislation (the prevention of public expenditures for non-therapeutic abortions) for the remainder of the particular contractual period

involved here, i.e. June, 1978 through December 31, 1978. Therefore, to paraphrase Wipperfurth v U-Haul Company of Western Wisconsin, 101 Wis.2d 586, 598 (1981), sec. 59.07(136) Stats. "does not demonstrate the legislative necessity," when applied to the facts of this case, "to apply police power retroactively." Accordingly, any application of sec. 59.07(136) to the remaining seven months of the contract would be an unconstitutional impairment of that contract in violation of Article I, §10 of the United States Constitution and Article I, §12 of the Wisconsin Constitution. Wipperfurth v U-Haul Company of Western Wisconsin, *supra*.

Plaintiff's attorney shall submit an appropriate order for judgment in accordance with this decision on five days notice to the defendant.

So ordered.


Ralph Adam Fine
Circuit Judge

Dated at Milwaukee, Wisconsin
this 15th day of June, 1983.

cc: David C. Rice, Esq.
Alvin R. Ugent, Esq.
Patrick J. Foster, Esq.