

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
CITY OF OSHKOSH (PUBLIC LIBRARY)	:	
For Referendum to Determine the	:	Case XXXVI
Continuation of a Fair-Share	:	No. 24141 MR(C)-92
Agreement Between	:	Decision No. 17059
CITY OF OSHKOSH (PUBLIC LIBRARY)	:	
and OSHKOSH PUBLIC LIBRARY CLERICAL	:	
AND MAINTENANCE EMPLOYEES UNION	:	
LOCAL 796-A, AFSCME, AFL-CIO	:	

Appearances:

- Mr. John Pence, City Attorney, appearing on behalf of the City of Oshkosh.
- Ms. LeNore J. Hamrick, Business Representative, appearing on behalf of the Union.

FINDINGS OF FACT, CONCLUSION OF LAW AND
ORDER DISMISSING PETITION FOR REFERENDUM TO
DETERMINE CONTINUATION OF FAIR-SHARE AGREEMENT

The City of Oshkosh (Public Library), having filed a petition with the Wisconsin Employment Relations Commission, wherein it requested that a referendum be conducted among library employees to determine whether said employees, who are presently represented by the Oshkosh Library Clerical and Maintenance Employees Union Local 796-A, AFSCME, AFL-CIO, wish to continue the fair-share agreement which was part of the collective bargaining agreement between the parties. Said petition was supported by the requisite showing of interest. Hearing on said matter was thereafter held on March 22, 1979, at Oshkosh, Wisconsin, before Hearing Examiner Amedeo Greco. Neither party has filed a brief. Having considered the evidence and arguments of the parties, and being fully advised in the premises, the Commission hereby makes and issues the following

FINDINGS OF FACT

1. That the City of Oshkosh, hereinafter referred to as the Municipal Employer, operates a public library, where it employs certain professional and non-professional employees.
2. That at all times material herein, Oshkosh Public Library Clerical and Maintenance Employees Union Local 796-A, AFSCME, AFL-CIO, hereinafter referred to as the Union, has been and is the exclusive collective bargaining representative of all regular full-time and regular part-time employees employed by the Municipal Employer in its library, excluding Librarians I, II, III and IV, supervisory, confidential employees, and casual hourly employees; that in said relationship the Union and the Municipal Employer were parties to a collective bargaining agreement, covering the wages, hours and working conditions represented by the Union, which agreement was for the term from January 1, 1978 through December 31, 1978; that said agreement contained, among its provisions, a provision to the effect that said agreement would be automatically renewed from year to year unless negotiations were instituted by August 1, of any subsequent effective year; that shortly prior to August 1, 1978 the Union advised the Municipal Employer that

it desired to commence negotiations on a successor collective bargaining agreement; that thereafter, and prior to December 31, 1978, the parties commenced negotiations on a successor agreement; that the parties did not reach an agreement by January 1, 1979, however the Municipal Employer continued to apply the terms and conditions of the 1978 agreement, which contained, among other things, a fair-share agreement; that on January 26, 1979 an unidentified employe submitted to the Municipal Employer a written statement, executed by at least 30% of the employes in the bargaining unit represented by the Union, requesting that the employes in said bargaining unit be given an opportunity to vote to determine whether the fair-share agreement should be included in the agreement then being negotiated; and that on February 5, 1979 the Municipal Employer filed the instant petition with the Commission, together with the supportive showing of interest.

3. That on or about February 7, 1979 the Union and Municipal Employer reached a tentative accord on a new collective bargaining agreement, which agreement was reduced to writing and signed on or about March 12, 1979, retroactive to January 1, 1979.

4. That on May 8, 1974 the Commission had conducted a fair-share referendum among the employes in the instant bargaining unit, wherein the employes involved favored the implementation of a fair-share agreement.

Upon the basis of the above and foregoing Findings of Fact, the Commission issues the following

CONCLUSION OF LAW

That, since the petition filed herein was not filed on a date within 60 days prior to August 1, 1978, as required by Section ERB 15.11(2)(c), Wisconsin Administrative Code, and further, since the Union and Municipal Employer formally extended the terms of the 1978 collective bargaining agreement, at least through the date on which the instant petition was filed, the petition filed herein has been deemed to have been untimely filed.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission issues the following


ORDER


IT IS ORDERED that the petition be, and the same hereby is, dismissed.


Given under our hands and seal at the City of Madison, Wisconsin this 7TH day of June, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Herman Torosian, Commissioner


Gary I. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER DISMISSING PETITION FOR REFERENDUM
TO DETERMINE CONTINUATION OF FAIR-SHARE AGREEMENT


As noted above, the Municipal Employer has filed the instant petition which requests a referendum among the unit employes to determine whether they wish continuation of the contractual fair-share agreement.

In considering said petition, the Commission notes that it was filed on February 5, 1979, well past the contractual reopener date of August 1, 1978. In addition, the record shows that the parties, at the time the instant petition was filed, were applying the provisions of the 1977-1978 contract, including the fair-share agreement. Since the Commission has previously conducted a referendum election in the unit herein on May 8, 1974, Section ERB 15.11(2)(c), Wis. Adm. Code, is applicable to the instant proceeding. Said rule provides that any subsequent petition for referendum must be 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 reopen or terminate the existing collective bargaining agreement. 1/ Here, of course, the petition was not filed within the proscribed designated period, and it was, therefore, untimely. As a result, the Commission has dismissed the instant petition.


Dated at Madison, Wisconsin this 7TH day of June, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION


By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Gary L. Covelli, Commissioner

1/ Milwaukee Technical College, (12121-A) 10/73.