

NEW BERLIN PUBLIC EMPLOYEES UNION
LOCAL 2676, DISTRICT COUNCIL 40,
AFSCME, AFL-CIO,

vs.

CITY OF NEW BERLIN.

Respondent.

Case XLII
No. 25292 MP-1050
Decision No. 17748-B

The Wisconsin Employment Relations Commission having, on May 7, 1981, issued its Findings of Fact, Conclusions of Law and Order in the above-entitled proceeding wherein it found, inter alia, that the City of New Berlin had committed, and was committing, a prohibited practice within the meaning of Section 111.70(3)(a)7. of the Municipal Employment Relations Act (MERA) by failing to incorporate the fair-share provision contained in the decision of Mediator-Arbitrator Frank P. Zeidler in the collective bargaining agreement existing between it and New Berlin Public Employees Union Local 2676, District Council 40, AFSCME, AFL-CIO, and wherein the Commission ordered the City of New Berlin to incorporate said fair-share provision in the collective bargaining agreement "presently existing" between it and the Union, and pursuant to said fair-share provision, execute a stipulation with the Union requesting that the Commission conduct a referendum to determine whether the required number of employees covered thereby favor said fair-share provision; and the City, by its Counsel, having advised the Commission of its intent to comply with said Order, but that the parties have agreed to request the Commission to clarify its Order in light of the fact that there presently exists no collective bargaining agreement between the parties, since the agreement in effect at the time of the hearing herein had expired, and that the parties are presently engaged in negotiations and that an investigation is being conducted following the filing of a petition seeking mediation-arbitration in the matter; and the Commission being satisfied that its Order be modified;

NOW, THEREFORE, it is

That the Order issued by the Commission on May 7, 1981, in the instant matter be, and the same hereby is, modified to read as follows:

IT IS ORDERED that the City of New Berlin, its officers and agents, shall

1. Take the following affirmative action which the Commission finds will effectuate the policies of the Municipal Employment Relations Act:

- a. Upon request of New Berlin Public Employees Union Local 2676, District Council 40, AFSCME, AFL-CIO, immediately execute a Stipulation for Referendum, requesting the Wisconsin Employment Relations Commission to


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conduct a referendum among the employees covered by said collective bargaining agreement, for the purpose of determining whether the required number of such employees favor the implementation of such fair-share provision, and should the required number of employees favor such implementation, implement same on the first day of the month which falls at least fifteen (15) calendar days from the date that the results of a successful referendum have been certified by the Wisconsin Employment Relations Commission.

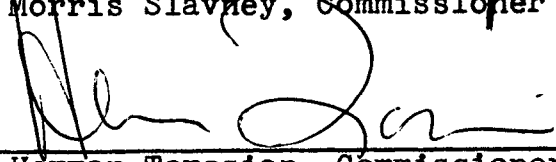
- b. Incorporate the fair-share provision contained in the decision of Mediator-Arbitrator Frank P. Zeidler in the collective bargaining agreement currently being negotiated between it and New Berlin Public Employees Union Local 2676, District Council 40, AFSCME, AFL-CIO, at such time as that agreement is reduced to writing and executed.
- c. Immediately, upon receipt of a detailed statement from New Berlin Public Employees Union Local 2676, District Council 40, AFSCME, AFL-CIO, setting forth reasonable attorney's fees and costs, if any, incurred by said Union, in the proceeding before the Commission, remit payment thereof to said Union.
- d. Notify New Berlin Public Employees Union Local 2676, District Council 40, AFSCME, AFL-CIO, immediately, in writing, that it is ready, willing and able to comply herewith.
- e. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of this Order as to the steps it has taken to comply herewith.

Given under our hands and seal at the City of Madison, Wisconsin, this *2nd* day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER MODIFYING REMEDIAL ORDER

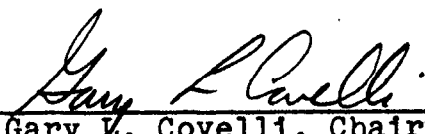
In its Order remedying the prohibited practice found to have been committed by the City, the Commission, among other things, ordered that the fair-share provision involved herein be incorporated in the "agreement presently existing" between the parties. At the time of the issuance of said Order the Commission did not foresee the possibility that at that time no collective bargaining agreement was in existence. In fact, the agreement in effect at the time of the hearing herein has expired, and the parties were in negotiations on a successor agreement and the parties are presently involved in a mediation-arbitration proceeding in the matter. Inasmuch as there presently exists no collective bargaining agreement in which the fair-share provision can be incorporated, the Commission finds it appropriate to revise its Order.

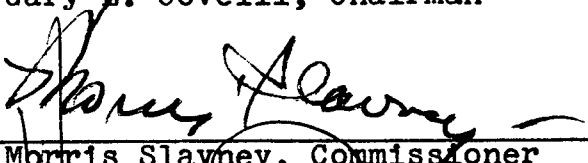
The implementation of fair-share deductions by the City, pursuant to the instant fair-share provision, requires the conduct of a referendum, wherein a majority of the employees voting must favor the implementation of such fair-share deductions, and upon certification of such results (if favorable) by the Commission, the City is obligated to make such deductions within the time frame set forth in the fair-share provision.

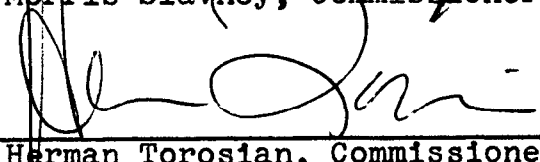
Had the City complied with the decision of the Mediator-Arbitrator the Commission would have conducted the referendum during the life of the 1979-1980 collective bargaining agreement between the parties, and if the certification of the results of that referendum disclosed that a majority of the employees voting favored fair share, such deductions would have commenced during the term of that collective bargaining agreement. To delay the possible implementation of fair-share deductions until after the new agreement is reached and executed would only permit the City to take advantage of the prohibited practice committed by it. Therefore, should the required number of employees favor the implementation of fair-share deductions, we have ordered the City to implement same following the Commission's certification of the results of the referendum, regardless of whether there does, or does not, exist a complete collective bargaining agreement between the parties. In other words, the parties are to consider the fair-share provision as a separate binding agreement between the parties, and that when the new collective bargaining agreement is reached and executed, said agreement shall contain the fair-share provision.

Dated at Madison, Wisconsin, this *2nd* day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner