

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LOCAL 594, MILWAUKEE DISTRICT COUNCIL
48, AFSCME, AFL-CIO

To Initiate Fact Finding Between
Said Petitioner and

MILWAUKEE COUNTY

Case XL
No. 13659 FF-332
Decision No. 9754

FINDINGS OF FACT, CONCLUSION OF LAW,
CERTIFICATION OF RESULTS OF INVESTIGATION AND
ORDER INITIATING FACT FINDING AND APPOINTING FACT FINDER

Local 594 of Milwaukee District Council 48, AFSCME, AFL-CIO having petitioned the Wisconsin Employment Relations Commission to initiate fact finding pursuant to Section 111.70(4) of the Wisconsin Statutes with respect to the wages, hours and working conditions of a new position of Milwaukee County; and the Commission, by Robert B. Moberly, a member of its staff, having conducted a hearing on such petition at Milwaukee, Wisconsin, on May 1, 1970; and the Commission having considered the evidence, arguments and briefs of Counsel, and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law, Certification of Results of Investigation and Order Initiating Fact Finding and Appointing Fact Finder.

FINDINGS OF FACT

1. That Local 594, Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner is a labor organization and has its offices on 3427 West St. Paul Avenue, Milwaukee, Wisconsin.

2. That Milwaukee County, hereinafter referred to as the Municipal Employer, has its office in the Milwaukee County Courthouse, Milwaukee, Wisconsin; and that the Municipal Employer maintains and operates certain social welfare services.

3. That Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as Council 48 (and its affiliated Locals) at all times material herein, is the certified collective bargaining representative of all regular full-time and regular part-time employees of the County of Milwaukee, excluding firefighting classifications, and other craft employees, registered nurses, and other professional employees, confidential employees, supervisors, department heads and exempt positions; and that the Municipal Employer and Milwaukee District Council 48, AFSCME, AFL-CIO, at all material times herein, have been and are parties to a collective bargaining agreement covering, among other persons, employees in the above-described collective bargaining unit.

4. That on April 14, 1970, the Municipal Employer through the Civil Service Commission, announced an original entrance examination for the position of Case Aide, a new position in the County Civil Service; that the announcement further listed the range of compensation, duties and minimum qualifications of the position, providing in pertinent part as follows:

"CASE AIDE

RANGE OF COMPENSATION: \$223.00 to \$257.50 biweekly
\$484.83 to \$559.83 monthly
Subject to semi-annual adjustment for changes in the cost of living and paid biweekly as prescribed by ordinance.

THE EXAMINATION WILL BE HELD at a time and place to be set by the Commission and is open to citizens of the United States who are qualified residents of Milwaukee County and 18 years or age or over.

APPLICATION MAY BE OBTAINED at the office of the Commission and must be on file, COMPLETELY FILLED IN, on or before 4:00 p.m., WEDNESDAY, APRIL 29, 1970, in the office of the Commission.

DUTIES: Under supervision, to process new and recurrent applications for general relief, social security aids, food stamps, or medical assistance; to interview clients and families relative to eligibility and need; to review applications for completeness and to determine eligibility and need; to make continuing eligibility and need studies; to prepare financial assistance budgets from prescribed schedules; to secure and verify collateral data; to make home visits to recipients relative to eligibility and need; to receive and dispose of inquiries and complaints from clients relative to eligibility and need; to refer social service problems to caseworkers; to enter information and factual data on case records; to prepare and expedite agency forms; to maintain a record of activities and observations; and to perform such other duties as may be assigned.

MINIMUM QUALIFICATIONS:

Education: Ability to understand and follow both written and oral directions.

Experience: Paid or voluntary experience in public welfare work desirable.

Skills and Knowledges: Ability to do simple arithmetic; ability to communicate orally and in writing; ability to gather and report facts accurately; ability to understand and react sensitively to clients' needs.

Personal Attributes: Good physical condition; neatness in person and habits; alertness; sound judgment; good memory; willingness to learn; capacity for development; discretion in maintaining confidentiality; ability to work effectively and harmoniously with clients, caseworkers, and others.

Other: Such additional qualifications as may be required by the Milwaukee County Civil Service Commission."

5. That the position of Case Aide is included in the previously certified bargaining unit described in finding number three (3), supra.

6. That the Municipal Employer has failed and refused, and continues to fail and refuse, to engage in collective bargaining with the Petitioner on wages, hours and working conditions of persons to be employed in the new position of Case Aide, claiming that the wages, hours and working conditions of new positions created by the County are not subject to bargaining.

7. That the Municipal Employer has not established any fact finding procedures pursuant to Section 111.70(4)(m) of the Wisconsin Statutes.

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

CONCLUSION OF LAW

That the Municipal Employer, Milwaukee County, by failing and refusing to bargain collectively with the Petitioner, Local 594, Milwaukee District Council 48, AFSCME, AFL-CIO, has failed and refused to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement with respect to wages, hours and conditions of employment for the position of Case Aide, pursuant to Section 111.70(4)(e) of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes the following

CERTIFICATION AND ORDER

IT IS HEREBY CERTIFIED that the conditions precedent to the initiation of fact finding, as required in Section 111.70(4)(e) of the Wisconsin Statutes, with respect to the failure and refusal of Milwaukee County to meet and negotiate in good faith with Milwaukee District Council 48, AFSCME, AFL-CIO, in a bona fide effort to arrive at a settlement with respect to the wages, hours and conditions of employment for the position of Case Aide, have been met.

NOW, THEREFORE, it is

ORDERED

1. That fact finding be initiated for the purpose of recommending a solution with respect to the wages, hours and conditions of employment for the position of Case Aide.

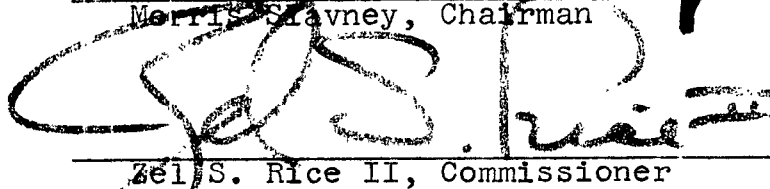
2. That the appointment of the Fact Finder is herewith being delayed in order to permit the parties an opportunity to commence their negotiations on the matters in issue; that, however, the Commission will designate the Fact Finder at such time as the Petitioner herein requests.

Given under our hands and seal at the City of Madison, Wisconsin, this 24th day of June, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner

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MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW,
CERTIFICATION OF RESULTS OF INVESTIGATION AND
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The Municipal Employer and the Petitioner are parties to a collective bargaining agreement covering employees in a collective bargaining unit consisting of all regular full-time and regular part-time employees of the County of Milwaukee, excluding firefighting classifications, and other craft employees, registered nurses, and other professional employees, confidential employees, supervisors, department heads and exempt positions.

On April 14, 1970, the Municipal Employer, through its Civil Service Commission, announced an original entrance examination for the position of Case Aide in the County Civil Service. The announcement, the pertinent parts of which are set forth in the Findings, further listed the range of compensation, duties and minimum qualifications of the position. At the time of hearing on the instant petition, the examination for the position had not yet been held, and no Case Aides had yet been hired.

During the course of the hearing, held May 1, 1970, a question was raised as to whether Case Aides would be included in the overall bargaining unit of County employees, described above. But in a subsequent hearing held on June 3, 1970, in another proceeding involving the question of whether numerous new positions in the County Service would be included in the above-described unit, the Municipal Employer and the Petitioner stipulated, among other things, that the position of Case Aide should be included in said unit. This stipulation is accepted by the Commission, and we proceed on the basis that Case Aides are included in said unit.

There is no dispute that the Municipal Employer has refused to engage in collective bargaining with the Petitioner with respect to items relating to the position of Case Aide, including wages, hours and working conditions. At the hearing, the Municipal Employer took the position that the wages, hours and working conditions of new positions created by the County are not subject to bargaining, and that fact finding, therefore, should not be initiated in the dispute. It also contends that many of the items which the Petitioner desires to bargain are not conditions of employment and, therefore, in any event, are not subject to bargaining or fact finding. The Petitioner, on the other hand, contends otherwise.

In the judgment of the Commission, the issues involved here have been conclusively determined in a previous case involving this same Municipal Employer. (Milwaukee County, Dec. No. 8137-B.) In that case the Commission rejected the Municipal Employer's argument that the wages of the newly-created subprofessional classification of Probation Officer II were not subject to bargaining and therein we stated:

"With respect to this issue, the Commission wishes to note that Section 111.70 contemplates fact finding as a method of resolving all disputes which are subject to collective bargaining pursuant to Section 111.70, Wisconsin Statutes, and that such disputes may arise not only during the negotiation of a collective bargaining agreement but also during the period that an agreement is in effect where there has been a change in the terms and conditions of employment of the employees in the bargaining unit. The Municipal Employer cannot, absent such authority in the agreement, unilaterally establish or alter wages, hours and working conditions of employees in the bargaining unit. The Municipal Employer, by creating a new sub-professional position which is in the bargaining unit, attempts to unilaterally establish the terms and conditions of employment of said employees. Accordingly, it is the Commission's position that the conditions of employment of the employees in the new classification are subject to collective bargaining pursuant to Section 111.70 of the Wisconsin Statutes, and if, after a reasonable period of negotiation, a deadlock results with respect to the terms and conditions of employment of these employees, or if the Municipal Employer refuses to negotiate these issues, fact finding may be initiated to resolve the dispute."

The above reasoning is equally applicable to the instant case. The Municipal Employer is attempting to unilaterally establish wages, hours and working conditions of a new position in the bargaining unit, an action which is expressly proscribed by the above decision. Because of the Municipal Employer's refusal to negotiate the wages, hours and conditions of employment of Case Aides, the Commission finds that the second condition of Section 111.70(4)(e) has been met. We are, therefore, initiating fact finding in the dispute.

The remaining issue concerns the question of which items are subject to collective bargaining and, upon a refusal to bargain, to fact finding. In Milwaukee County, supra, the Commission set forth the following guidelines when a similar question was raised:

"Section 111.70(4)(g) of the Statutes provides that a fact finder is required to make recommendations for the solution of disputes arising during collective bargaining. The statute does not impose any limitations on the fact finder's authority to make recommendations for the solution of the dispute; however, the Commission stated in Madison Teachers Inc. that where any phase of the legislative responsibility of the Municipal Employer has a 'direct and intimate effect upon salaries, hours and working conditions of its employes, then those matters are subject to collective bargaining within the meaning of Section 111.70 of the Wisconsin Statutes, and any refusal to negotiate and bargain on such items, or any deadlock with respect to issues on those items, after a reasonable period of negotiations, are subject to fact finding under the statute.'

The rules and regulations of the Commission provide that the fact finding hearing 'shall concern pertinent matters necessary for the fact finder to determine the facts in the dispute and which, in the opinion of the fact finder, assists him in reaching his recommendation for the solution of the dispute.' The rules also provide that the fact finding report shall contain '(a) a statement of findings of fact and conclusions, upon all material issues presented on the record; (b) recommendations for the solution of the dispute. . . .' Thus, the rules provide that the fact finder may consider in the hearing all pertinent matters which are necessary to determine the facts in dispute, and which will, in the fact finder's opinion, facilitate the resolution of the dispute. In addition, the fact finder may make conclusions and recommendations with respect to all material issues presented on the record.

During the hearing the Municipal Employer agreed that where there is no collective bargaining agreement in existence and where fact finding is utilized to resolve deadlocks in the negotiations leading to a collective bargaining agreement, all working conditions are subject to the fact finder's consideration and recommendation. The Commission is also of the opinion that absent any stipulated limitation by the parties on the fact finder's authority to make recommendations, the fact finder has the discretion to make recommendations with respect to any matters which, in his opinion, have a direct and intimate effect upon salaries, hours and working conditions of the employees in the unit; and the determination of the relevance of collateral issues to the salaries, hours and working conditions of the employees must be left to the fact finder, absent agreement by the parties on the relevance of the particular issue in question. The primary function of fact finding is to provide a means to resolve disputes arising out of collective bargaining, and where the parties are not agreed on the scope of the issues which are subject to the fact finder's recommendations, the fact finder must have the discretion to hear and consider all issues which have been discussed during negotiations, to determine whether the issues

are properly subject to negotiation, and to make recommendations with respect to those matters which in the fact finder's opinion are essential to the resolution of the dispute. Under such circumstances, only where the parties jointly agree to define or limit the issues which are before the fact finder, is the fact finder limited in his consideration of the issues."

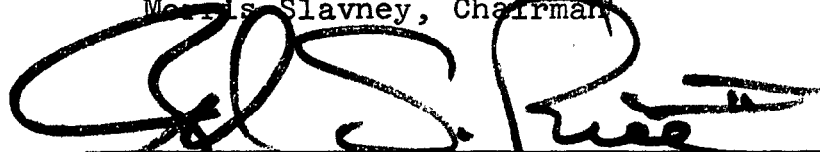
We believe that the same guidelines are applicable in the instant case, and that fact finding should proceed with these guidelines in mind.


Dated at Madison, Wisconsin, this 24th day of June, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner