

MILWAUKEE COUNTY, a governmental
body corporate,

Petitioner,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,
Respondent,

and

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

Intervenor-Respondent.

131-087

Before: Hon. W. L. Jackman, Judge

The parties agreed to submit the case on the briefs.

The County has created a position in its classified service denominated "Case Aid" and assigned in the County Department of Welfare. The Case Aid positions have not been filled. The services to be included in the new position are already performed by other personnel who are subject to the Union contract with the County. The creation of the new positions must of necessity affect the present employment, at least of those employees who perform the functions to be performed by "Case Aids".

The Union seeks negotiation regarding wages, hours and working conditions for the new position of "Case Aid", but the County refuses to negotiate, claiming that negotiations regarding positions that have no employees as yet are premature and it does not have to negotiate regarding such positions. The Commission found that this is a proper situation for fact-finding under Sec. 111.70(4)(e)2. The record is clear that the County refuses to negotiate with respect to the new position. The Commission accepted the stipulation between the parties in another proceeding before it Case Aids should be included in the overall bargaining unit of County employees. Neither party in the briefs in this case rejects or objects to the premise that the new position is included in the bargaining unit. The position of the County is that what the Union demands is to bargain conditions for employment rather than wages, hours or conditions of employment for employees. The Attorney General, on the other hand, contends that the County is not merely creating new positions to furnish a new service, but merely to take the place of those already furnishing the service in County employ. The County seeks to broaden the issue to claim interference by the Commission in its right to create new positions. We do not conceive that it goes that far.

While we might very well prolong this opinion, the Commission has made its findings of fact which the record supports and its conclusions, which logically follow. The Commission's memorandum accompanying its order and explaining its position appear to us to be sound, and, rather than repeat them, we accept them as expressing our view. We see no reason why the Commission's reasoning is not sound and do not therefore repeat what has already been said.

While the County seeks to create an estoppel to or waiver of right to request negotiation because on some other occasions the Union has not requested negotiation of the County in its creation of new positions and the wages, hours and working conditions on previous occasions. We do not consider that failure to request negotiations on every previous occasion creates any bar to the present case, even if the record showed such absence of the demand on previous occasions.

For the reasons above stated, we affirm the Commission and direct the Attorney General to prepare the proper judgment and, after submitting it to opposing counsel for approval as to form, present it to the court for entry.

Dated December 28, 1970.

BY THE COURT:

W. L. JACKMAN
Judge