

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**CARPENTERS LOCAL 1146**  
Involving Certain Employes of  
**GREEN BAY AREA SCHOOL DISTRICT**

Case 152  
No. 55689  
ME-914

**Decision No. 28023-C**

and

Case 2  
No. 51939  
ME-742

**Decision No. 8667-B**

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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by **Mr. John Brennan**, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Carpenters Local 1146.

Godfrey & Kahn, S.C., Attorneys at Law, by **Mr. William Bracken**, Coordinator of Collective Bargaining Services, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54902-1278, appearing on behalf of the Green Bay Area School District.

**Mr. Michael Wilson**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of AFSCME Local 3055.

No. 28023-C  
No. 8667-B

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT**

On October 8, 1997, Carpenters Local 1146 filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission clarify an existing bargaining unit consisting of craft employees of the Green Bay Area School District by including the Maintenance Mechanic position currently held by Jim Deviley in that unit. That position is currently represented by AFSCME, Local 3055. The District and AFSCME oppose the petition, contending that the position should continue to be represented by AFSCME.

The unit clarification petition was subsequently held in abeyance pending disposition of an Article XX charge filed by AFSCME with the AFL-CIO.

Hearing on the matter was thereafter scheduled and postponed twice. On October 23, 1998 and March 25, 1999, a hearing in the matter was held in Green Bay, Wisconsin before Examiner Raleigh Jones, a member of the Commission's staff. Afterwards, the parties filed briefs and the District and AFSCME filed reply briefs, whereupon the record was closed on June 15, 1999.

The Commission, having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and issues the following

**FINDINGS OF FACT**

1. The Green Bay Area School District, herein the District, is a municipal employer which has its offices located at 200 South Broadway, Green Bay, Wisconsin. Two of the District's collective bargaining units are pertinent to this proceeding: one is the non-craft unit represented by AFSCME Local 3055 and the other is the craft unit represented jointly by Carpenters Local 1146/Electrical Workers Local 158/Plumbers and Steamfitters Local 400.

2. Green Bay Board of Education Custodial Maintenance Employees, Local 3055, AFSCME, AFL-CIO, herein AFSCME, is a labor organization which has its offices in c/o Robert Baxter, Staff Representative, Wisconsin Council 40, AFSCME, 2065 East Baraboo Circle, DePere, Wisconsin. In 1968, AFSCME became certified as the exclusive collective bargaining representative for what has become known as the non-craft bargaining unit. The 1996-1998 contract between AFSCME and the District describes the unit as follows:

1. All maintenance employees of the Board of Education, Green Bay Area Public School District, excluding professional teachers, supervisors, craft employees, elected or appointed officials, cooks, clerical employees, confidential employees, electricians, sheet metal worker, carpenters, steamfitter, plumber, and master plumber.

2. All painters employed by the Board of Education, Green Bay Area Public School District, excluding all other employees of the municipal employer.

There are about 170 employees in this bargaining unit.

The position of Maintenance Mechanic (Floor, Wall and Ceiling Covering) has been included in this bargaining unit since 1968.

3. In 1994, Carpenters Local 1146/IBEW Local 158/Plumbers and Steamfitters Local 298 were jointly certified as the exclusive collective bargaining representative for all craft employees of the District. The 1998-2000 contract between these unions and the District describes the unit as follows:

All employees and future employees of the Employer employed as follows:  
Building Trades; Employees of Carpenters Local 1146, International Brotherhood Electrical Workers Local 158 and Plumbers, Steamfitters, Refrigeration Fitters and Apprentices Local 400.

There are nine employees in this bargaining unit. All possess a journeyman's card. Four of them are carpenters.

4. Carpenters Local 1146, herein Carpenters, is a labor organization which has its offices in c/o Frank Schmechel, Business Representative, 2599 Manitowoc Court, Green Bay, Wisconsin 54311.

5. The District currently has six Maintenance Mechanic positions: Maintenance Mechanic – Building Systems; Maintenance Mechanic – Steelwork, Masonry & Mechanical; Maintenance Mechanic - General; Maintenance Mechanic - Auto & Truck Technician; and Maintenance Mechanic - Refrigeration/HVAC; and Maintenance Mechanic – Floor, Wall and Ceiling Covering (the position involved herein). All these positions are currently included in the AFSCME non-craft bargaining unit.

6. Gerald Sargent held the position of Maintenance Mechanic (Floor, Wall and Ceiling Covering) from 1989 to February, 1997 when he retired. His primary job responsibility was repairing and installing ceramic tile, ceiling tile, carpet, wall tile and other floor materials. Sargent was not a journeyman carpenter. While he was employed, the job description for the position provided thus:

#### POSITION DESCRIPTION

Job Title/Classification – Maintenance Mechanic (Floor, Wall and Ceiling Covering)

Location (Report to) Maintenance Department, 200 S. Broadway

Position Reports to – Manager of Operations and Service Systems

Pay Level: 6

#### Desirable Skills and Abilities

1. Shall have a thorough knowledge of methods, practices, tools and materials used in the performance of a variety of tasks necessary to install and/or maintain in good repair the various type of floor, wall and ceiling materials used in the school system.
2. Ability to perform the work at a professional craftsman level.
3. Ability to lay-out and plan this type of work and direct and lead unskilled help in the installation and repair of floor, wall and ceiling material.
4. Ability to interpret and work from blueprints, sketches and pencil layouts.
5. Ability to make time and material estimates in this field of work.
6. Ability to relate tactfully and courteously with all building staff, and to establish and maintain satisfactory relationships with all persons encountered in course of assignments.
7. Shall possess a valid Wisconsin Driver's License and be able to operate a manual transmission  $\frac{3}{4}$  ton FWD pickup truck, or conventional van.

8. Physical strength and ability to work off ladders and scaffolds in the performance of work.
9. Experience equivalent to apprenticeship training and sufficient experience to perform work at professional craftsman level.

Instructions to Employees Posting for this Position

Only a qualified applicant will be considered for this position. In order that full consideration be given, all applicants shall submit with the bid posting a list of references of firms for whom he/she has performed work in this classification.

A test will be administered to determine acceptable professional skill level.

General Duties and Responsibilities

This is skilled work with major responsibility in the performance of all types of repairs and installation of floor covering, wall covering and ceilings such as; ceramic tile, suspended ceilings, carpet, VA tile, etc.

This employee shall repair/replace all types of materials in school buildings including marble sills, quarry floor tile, resilient floor materials.

Work is performed under the supervision of the Manager of Operations and Service Systems and work is designated through a written work order system.

At times, as need arises, this employee may be assigned tasks in the Utility II classification, including snow removal assignments.

This job description is intended to indicate the types of leaks and level of responsibility that is required of this position and should not be construed as final specific responsibilities of the position. It is not intended to limit or modify the right of a supervisor to assign other similar work. The use of a specific illustration describing duties shall not be held to exclude other duties not mentioned that are of similar form of task or level of responsibility.

7. After Sargent retired, the District revised the job description for the above-referenced Maintenance Mechanic position. This job description which was dated January 15, 1997, provided thus:

JOB TITLE/CLASSIFICATION: Maintenance Mechanic (Floor, Wall and Ceiling Covering)

LOCATION (REPORT TO): Maintenance Garage, 200 S. Broadway

POSITION REPORTS TO: Facility Manager

PAY LEVEL: 7

HOURS OF WORK: 7:00 a.m. to 3:30 p.m. (40 hours/week)

#### DESIRABLE SKILLS AND ABILITIES

1. Thorough knowledge of the methods, practices, tools and materials used in the performance of a variety of tasks necessary to install and/or maintain in good repair the various type of floor, wall and ceiling materials used in the school system.
2. Ability to perform and document the work at a professional craftsman level.
3. Ability to lay-out and plan this type of work and direct and lead unskilled help in the installation and repair of floor, wall and ceiling material.
4. Ability to interpret and work from blueprints, sketches and pencil layouts.
5. Ability to make time and materials estimates in this type of work.
6. Ability to relate tactfully and courteously with all building staff, and to establish and maintain satisfactory relationships with all persons encountered in course of assignments.
7. Shall possess a valid Wisconsin Driver's License and be able to operate a manual transmission  $\frac{3}{4}$  ton FWD pickup truck, or conventional van.
8. Physical strength and ability to work off ladders and scaffolds in the performance of work.
9. Experience equivalent to apprenticeship training and sufficient experience to perform work at a professional craftsman level.
10. Successful completion of an asbestos worker certification class will be required within 6 months of assignment.

Instructions to Employees Posting for This Position:

Only a qualified applicant will be considered for this position. In order that full consideration be given, all applicants must submit with the bid posting a list of references of firms for whom he/she has performed work in this classification.

A test will be administered to determine acceptable professional skill level.

#### GENERAL DUTIES AND RESPONSIBILITIES

This is skilled work with major responsibility in the performance and documentation of all types of repairs and installation of floor covering, wall covering, and ceilings such as; ceramic tile, suspended ceilings, carpet, VA tile, plastering, drywall, etc.

This employee shall repair/replace all types of materials in school owned buildings including marble sills, quarry floor tile, resilient floor materials.

Under special circumstances, some projects will require shift changes outside of the scheduled shift times.

Tools common to the trade are to be provided by the successful bidder.

Work is performed under the supervision of the Manager of Operations and Service Systems and work is designated through a verbal and written work order system.

This employee may be assigned tasks in the Utility 1 classification including snow removal assignments.

This job description is intended to indicate the types of tasks and level of responsibility that is required of this position and should not be construed as final specific responsibilities of this position. It is not intended to limit or modify the right of the supervisor to assign other similar work. The use of a particular illustration describing duties shall not be held to exclude other duties not mentioned that are of similar form of task or level of skill.

On January 31, 1997, the District posted the following vacancy notice for the above-referenced Maintenance Mechanic position:

## NOTICE OF JOB POSTING TO ALL MAINTENANCE EMPLOYEES

DATE: January 31, 1997

BULLETIN: #1233

POSITION: Maintenance Mechanic – Floor, Wall and Ceiling Covering

LOCATION: General

SALARY: 7  
(New employees on probation 90% of above rate)

HOURS OF WORK: 7:00 a.m. to 3:30 p.m.  
40 hours per week

NOTE: A test will be administered to determine acceptable professional skill level.

Applications for the above position will be accepted at my office until Friday, February 7, 1997.

Skills and abilities include a thorough knowledge of methods, practices, tools and materials necessary to install and/or maintain in good repair the various type of floor, wall and ceiling materials used; ability to perform and document the work at a professional craftsman level; ability to layout and plan as well as direct and lead unskilled help in the installation and repair of floor, wall and ceiling materials; ability to interpret and work from blueprints, sketches, and pencil layouts; ability to make time and materials estimates in this field of work. Successful completion of an asbestos worker certification class will be required within 6 months of assignment.

Major responsibilities include performing and documenting all types of repairs and installation of floor coverings, wall coverings and ceilings such as ceramic tile, suspended ceilings, carpet, VA tile, plaster, drywall, etc.; repairing and replacing all types of materials including marble sills, quarry floor tile and resilient floor materials, as directed. Under special circumstances, some projects will require shift changes. Tools common to the trade are to be provided by the employee. This employee may be assigned tasks in the Utility 1 classification, including snow removal.



This job description is intended to indicate the types of tasks and level of responsibility and should not be construed as final. The use of a particular illustration shall not be held to exclude other duties not mentioned that are a similar form of task or level of responsibility. (Call Nancie at 448-2144 for a detailed job description.)

Work is performed under the direction of the Manager of Operations & Service Systems and is reviewed through inspection and observation of the manner in which it is performed.

Only a qualified applicant will be considered for this position. All applicants must submit with the bid posting a list of references of firms for whom he/she has performed work in this classification. Any qualified employee who wishes to apply for this position shall complete in duplicate the "Application Form for Posted Notice of Job Vacancy" form. One copy shall be mailed to the Green Bay Area Public School District, Human Resources Office, P.O. Box 23387, Green Bay, WI 54305 and postmarked on or before the expiration date of this notice. Send the other copy to the union secretary: Mr. Paul Kox. 5703 Aspen Ct, Denmark, WI 54208

John J. Wilson  
Assistant to the Superintendent for Human Resources

There were no internal applicants from the Local 3055 bargaining unit who posted for the position, so the District posted the position externally. In doing so, it advertised the vacancy with the following newspaper ad which was placed in the "Skilled/Semi Skilled" section of the help wanted advertisements:

#### MAINTENANCE MECHANIC

For floors, walls and ceiling coverings. Major responsibilities include performing repairs and installation of such things as ceramic tile, suspend ceilings, carpet, VA tile, plaster, drywall and repairing and replacing of such things as marble sills, quarry floor tile and resilient floor materials. Tools common to the trade are to be provided by the employee. Successful completion of an asbestos worker certification class will be required within 6 months of assignment. Please send letter of interest and up-to-date resume to John J. Wilson, Asst. Supt., Human Resources, Green Bay Area Public Schools, 200 S. Broadway, Green Bay, WI 54303. Excellent salary and benefit schedule.

### Equal Opportunity Employer

8. At the same time the District was advertising in the newspaper for the above-referenced Maintenance Mechanic position, it was also advertising for a Carpenter/Joiner. That advertisement provided thus:

#### CARPENTER/JOINER

The Green Bay Area Public School District has an opening for a journeyman carpenter with 5 years of experience in commercial construction repair and remodeling. Completion of a formal state-approved carpenter's apprenticeship and recognition as a journeyman by the local trades council is required. Applicant will furnish own tools of the trade; will possess a current valid Wisconsin driver's license and good driving record. Main duties of the position will be installing and repairing all types of locks and door hardware. Other responsibilities will include constructing, repairing and installing all types of building/hardware items. Please send letter of interest and up-to-date resume to John J. Wilson, Asst. Supt., Human Resources, Green Bay Area Public Schools, 200 S. Broadway, Green Bay, WI 54303. Excellent salary and benefit schedule.

### Equal Opportunity Employer

The Carpenter/Joiner position is included in the craft bargaining unit.

The current job description for a Carpenter/Joiner provides as follows:

#### POSITION DESCRIPTION

Job Title/Classification –	Carpenter/Joiner
Location (Report to) -	Maintenance Garage at 200 S. Broadway or East Side Shop at 226 N. Baird – as directed
Position Reports to -	Manager of Operations/Service Systems Managers of Custodial Services
Pay Level -	14

Hours of Work - 7:00 a.m. – 3:30 p.m.  
8 Hours per Day/40 Hours per Week  
(Hours may be adjusted to meet operational needs)

#### General Qualifications and Desirable Skills

Applicant must be a journeyman carpenter with five (5) years of experience in commercial construction, repair and remodeling. (Residential construction experience does not meet this requirement.) Completion of formal Wisconsin approved Carpenter's apprenticeship and recognition as a journeyman by the local building trades council is required.

Proof and verification of apprenticeship and acceptable work experience are required. Experience must include rough and finished carpentry and jointing.

Applicant must possess a current, valid Wisconsin Driver's License and a good driving record. Driver's license number must appear on application. A Commercial Driver's License may be required.

Candidate selected will be from the "best qualified" based on knowledge, experience, employment history, practical and written tests. Final selection process will include a personal interview.

A 120-day probationary period will be part of the qualification process, to be evaluated by the Facilities and Related Services management.

Work is performed under the direct supervision of the Manager of the Facilities and Related Services Department in accordance with the standards as prescribed by the Executive Director of Facilities and Related Services.

Work is evaluated by the Manager of Operations/Service Systems based on ability to function as per job description.

#### General Duties and Responsibilities

Carpenter performs the work necessary to construct and maintain in good repair the structural woodwork and equipment on the buildings and grounds of all the schools, performing such tasks as constructing and repairing counters, cabinets, benches, partitions, floors, doors, building frame work and all types of furniture and equipment. Employee cuts, fits and installs all types of moldings, door

frames, doors, floors, panels, exterior and interior trim, acoustic materials, chalkboard, bulletin boards, etc. They install and maintain in good repair all type of building hardware items including locks.

Carpenter shall furnish and skillfully use small carpentry tools including such items as rules, saws, hammers, brace, bits, chisels, etc. They shall be skilled in the operation of a large variety of woodworking machines used to shape parts from stock.

Carpenter shall perform related work as required.

This job description is intended to indicate the types of tasks and level of responsibilities that are required of this position and should not be construed as final specific responsibilities of the position. It is not intended to limit or modify the right of the supervisor to assign other similar work. The use of a particular illustration describing duties shall not be held to exclude other duties not mentioned that are of similar form of task or level of skill.

9. Twenty-six (26) people applied for the Maintenance Mechanic position. Jim Deviley was one of the people who applied. Deviley is a skilled journeyman carpenter. Deviley did not apply for the Carpenter/Joiner position because that job was advertised as primarily installing and repairing door locks, and he did not want to do that work. Five of the candidates were subsequently interviewed by a panel which consisted of three District supervisors and a carpenter from the craft bargaining unit. All five candidates were asked a common set of questions. Afterwards, Deviley was the candidate recommended by the interview panel for the position. Deviley was ultimately hired for that position and began work with the District in that capacity on March 13, 1997.

10. On September 16, 1998, while this matter was pending, the District revised the job description for the Maintenance Mechanic position again. This job description provides thus:

#### POSITION DESCRIPTION

Job Title/Classification -	Maintenance Mechanic – Floor, Wall and Ceiling Covering
Location (Report to) -	Maintenance Garage at 200 S. Broadway

Position Reports to - Facility Manager  
Pay Level - 7  
Hours of Work: 7:00 a.m. – 3:30 p.m.  
40 hours per week

#### DESIRABLE SKILLS AND ABILITIES

1. Shall have a thorough knowledge of methods, practices, tools and materials used in the performance of a variety of tasks necessary to install and/or maintain in good repair the various type of floor, wall and ceiling materials used in the school system.
2. Ability to perform and document the work at a professional level.
3. Ability to lay-out and plan this type of work and direct and lead unskilled help in the installation and repair of floor, wall and ceiling material.
4. Ability to interpret and work from blueprints, sketches and pencil layouts.
5. Ability to make time and material estimates in this field of work.
6. Ability to relate tactfully and courteously with all building staff, and to establish and maintain satisfactory relationships with all persons encountered in course of assignments.
7. Shall possess a valid Wisconsin Driver's License and be able to operate a manual transmission  $\frac{3}{4}$  ton FWD pickup truck, or conventional van.
8. Physical strength and ability to work off ladders and scaffolds in the performance of work.
9. Ability to work independently or as a lead person with the installation of floor, wall, and ceiling products in commercial and institutional settings.
10. Successful completion of an asbestos worker certification class will be required within 6 months of assignment.
11. Successful applicant will be required to successfully pass the written CDL (Commercial Driver's License) test within seven (7) days and the driving test within thirty (30) days of assignment to the position.

#### Instructions to Employees Posting for This Position

Only a qualified applicant will be considered for this position. In order that full consideration be given, all applicants must submit with the bid posting a list of references of firms for whom he/she has performed work in this classification.

A test will be administered to determine acceptable skill levels.

### GENERAL DUTIES AND RESPONSIBILITIES

This is skilled work with major responsibility in the performance and documentation of all types of repairs and installation of floor covering, wall covering and ceilings such as; ceramic tile, suspended ceilings, carpet, VA tile, plastering drywall, etc.

This employee shall repair/replace all types of materials in school owned buildings including marble sills, quarry floor tile, resilient floor materials.

Under special circumstances, some projects will require shift changes outside of the scheduled shift times.

Appropriate hand tools necessary for completion of listed duties are to be provided by successful candidate.

Work is performed under the supervision of the Manager of Safety Systems and work is designated through a verbal and written work order system.

This employee may be assigned tasks in the Utility 1 classification, including snow removal assignments.

This job description is intended to indicate the types of tasks and level of responsibility that is required for this position and should not be construed as final specific responsibilities of this position. It is not intended to limit or modify the right of the supervisor to assign other similar work. The use of a particular illustration describing duties shall not be held to exclude other duties not mentioned that are of similar form of task or level of skill.

11. The majority of Deviley's work consists of the floor, wall and ceiling work described in the revised job description set forth in Finding of Fact 10. This floor, wall and ceiling work is that of the carpenter craft.

In addition, Deviley is assigned to work on remodeling projects which find him working side by side with District employed carpenters. This remodeling work is also that of the carpenter craft.

12. Deviley is a skilled journeyman carpenter and he performs the work of the carpenter craft.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

### **CONCLUSION OF LAW**

The incumbent Maintenance Mechanic (Floor, Wall and Ceiling Covering) is a craft employe within the meaning of Sec. 111.70(1)(d), Stats.

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

### **ORDER CLARIFYING BARGAINING UNIT**

The incumbent Maintenance Mechanic (Floor, Wall and Ceiling Covering) shall be included in the craft collective bargaining unit noted in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 18th day of August, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

**GREEN BAY AREA SCHOOL DISTRICT**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT**

**BACKGROUND**

At issue here is the unit placement of Maintenance Mechanic Deviley. He is presently included in the non-craft bargaining unit represented by AFSCME. The Carpenters have petitioned us to include him in the craft unit which they (jointly) represent. The District and AFSCME believe the position should remain included in the non-craft bargaining unit represented by AFSCME.

**POSITIONS OF THE PARTIES**

**Carpenters**

The Carpenters contend that the Maintenance Mechanic (Floor, Wall and Ceiling Covering) is a craft employee who should be placed in the craft bargaining unit. It makes the following arguments to support this contention.

The Carpenters submit at the outset that the position in question was not a craft position when it was held by Sargent because he was not a journeyman carpenter and he did not do journeyman carpenter work. According to the Carpenters, both of the foregoing points changed after Deviley was hired. It elaborates on these points as follows.

First, the Carpenters note that Deviley is a journeyman carpenter who has completed an apprenticeship in general carpentry. As the Carpenters see it, the District wanted to hire a journeyman carpenter for the Maintenance Mechanic position, and did. It notes in this regard that a carpenter sat on the panel that interviewed Deviley.

Second, the Carpenters contend that the position of Maintenance Mechanic has significantly changed since Sargent retired and Deviley filled it. According to the Carpenters, Deviley is now regularly asked to perform work that Sargent was not. It notes in this regard that Deviley has done more floor and ceiling replacement work than Sargent ever did, and that Deviley has also done extensive remodeling work. The Carpenters submit that when Deviley does this remodeling work, he interacts quite often with the District's carpenters who call on him for assistance – not as a helper but as a fellow journeyman carpenter. The Carpenters assert this is something that the District's carpenters never did with Sargent. The Carpenters



contend that the work Deviley regularly performs on these remodeling jobs (such as steel stud work, wainscoting, insulating, demolition and drywall hanging) is work that is within the Carpenters' craft jurisdiction.

In sum, the Carpenters aver that now that the District has hired a carpenter for the Maintenance Mechanic position, the District wants Deviley to perform carpentry work in that job, and he is. The Carpenters therefore contend that Deviley should be moved into the craft bargaining unit.

### **District**

The District contends that the Maintenance Mechanic (Floor, Wall and Ceiling Covering) does not meet the statutory definition of a craft employee and therefore should continue to be represented by AFSCME. It makes the following arguments to support this contention.

The District notes at the outset that when the umpire in the Article XX case dismissed the raiding charge against the Carpenters, he based his decision on the premise that there had been significant changes in the job duties of the Maintenance Mechanic (Floor, Wall and Ceiling Covering). The District believes this premise was in error. According to the District, the record evidence establishes that the job duties of the Maintenance Mechanic position have not changed significantly between the former employee (Sargent) and the current employee (Deviley). In the District's view, the Carpenters have not proven that the job duties between Sargent and Deviley have changed significantly. The District avers that that being so, the Commission should dismiss the unit clarification petition on that basis alone.

Next, the District argues that the Maintenance Mechanic (Floor, Wall and Ceiling Covering) is not a craft employee for the following reasons. First, it notes that for over 30 years, the parties have treated the Maintenance Mechanic position as a non-craft position and included it in the non-craft bargaining unit. The only factor which has changed is that Deviley was hired. Second, the District notes that the District's job requirements for a Maintenance Mechanic do not include completion of a formal apprenticeship program or a journeyman's license. Thus, the District emphasizes it does not require completion of a formal apprenticeship program or a journeyman's license to hold the position of Maintenance Mechanic. It notes that Sargent did not have a journeyman's license, nor did the District require it when he retired. The District submits that when it requires an applicant to have a journeyman's license, it explicitly says so. Third, the District avers that the skills needed to perform the job of Maintenance Mechanic can be learned on the job without the need for completion of a formal training program, apprenticeship program, or attainment of

journeyman status. The District believes that while the job in question requires significant skills, even of a professional level, a journeyman's license in the carpenter trade is not required to perform it. According to the District, the Carpenters have not shown otherwise. Fourth, the District asserts that Deviley spends 90 to 95 percent of his time performing job duties within the Maintenance Mechanic job description (i.e. floor, wall and ceiling work). According to the District, these are his core duties, and his core duties do not involve carpentry work. The District acknowledges that Deviley has done some carpentry work (which it characterizes as minimal), but it contends he is doing so of his own volition, not at the District's direction. The District submits that it is simply not true that Deviley is working as a carpenter.

Next, the District urges the Commission to focus on the job requirements established by the District for the job, and not the credentials and qualifications brought to the job by Deviley in determining whether the Maintenance Mechanic position is a craft position. In the District's view, the credentials brought to the job by Deviley are not as relevant as are the needed job qualifications required by the District.

Finally, the District contends that existing WERC case law supports its position that where, as here, an employer does not require completion of an apprenticeship training program or attainment of journeyman status, craft status will not be found.

### **AFSCME**

AFSCME contends that the Maintenance Mechanic (Floor, Wall and Ceiling Covering) does not meet the statutory definition of a craft employee and therefore that position should remain in the non-craft bargaining unit. It makes the following arguments to support this contention.

First, it comments on the umpire's decision in the Article XX case. It notes that the umpire warned in his decision that the six factual "key changes" which the Carpenters presented to him (at that hearing) might not survive a full blown administrative hearing (before the WERC). According to AFSCME, that warning has proven to have been warranted. In its view, the record evidence herein establishes that the six factual "key changes" cited in that decision do not, in fact, exist.

Next, AFSCME avers that Deviley knew when he applied for the Maintenance Mechanic job that it was in the non-craft bargaining unit. AFSCME asserts that if Deviley had wanted to be in the craft bargaining unit, he should have applied for the Carpenter/Joiner

position which was advertised at the same time as the Maintenance Mechanic position and is in the craft bargaining unit. He did not.

Next, AFSCME submits that Deviley's job as a Maintenance Mechanic does not require him to be a journeyman carpenter or perform the work of a journeyman carpenter. That said, AFSCME acknowledges that Deviley has performed work which is outside his Maintenance Mechanic job description and is work characteristic of the work performed by District carpenters. According to AFSCME, what has happened here is that Deviley and the carpenters have pooled the carpentry work on their remodeling projects so Deviley could do carpentry work outside his Maintenance Mechanic job description and thereby create a set of circumstances regarding the bargaining unit in which Deviley should be placed. As AFSCME puts it, "Deviley and the carpenters have themselves manufactured a self-serving scenario" by distributing/sharing carpenter work assignments. AFSCME notes in this regard that from time to time, the custodians also help the carpenters on projects (just as Deviley does). AFSCME asserts that this does not transform the custodians into carpenters, so it should not be sufficient to transform Deviley into a carpenter either.

In sum, AFSCME contends that any journeyman level carpentry work which Deviley has performed is incidental to his Maintenance Mechanic job, and has not been assigned to him by the District.

### **DISCUSSION**

Section 111.70(1)(d), Stats. defines a "craft employe" as:

. . . a skilled journeyman craftsman, including his apprentices and helpers, but shall not include employes not in direct line of progression in the craft.

When applying this statutory definition, we look at both the qualifications possessed by the individual employe and the nature of the work that employe performs. DANE COUNTY, DEC. NO. 26057 (WERC, 6/89); GREEN BAY PUBLIC SCHOOL DISTRICT, DEC. NO. 23263-A (WERC, 8/86). The qualifications required by the employer are relevant but not determinative for our analysis. DANE COUNTY, SUPRA. Because we have the statutory obligation and jurisdiction to interpret Sec. 111.70(1)(d), Stats., the results of any union work jurisdiction dispute resolution process are not relevant to our determination. DANE COUNTY, SUPRA.

Applying the foregoing to the facts in this case, it is undisputed that Deviley is a skilled journeyman craftsman. What is disputed is whether he is performing carpenter craft work.

When we consider the record as a whole, we are persuaded that both his floor, wall and ceiling work and his remodeling work are carpenter craft work. In reaching this conclusion, we rely primarily on Joint Exhibit 9 (which establishes that Deviley's carpenter apprenticeship included extensive training in floor and wall covering) as well as the testimony of Schmechel, Deviley, LaPlante and Keilpikowski.

It is true that the District does not explicitly "require" that the employee performing Deviley's work be a carpenter. However, when this evidence is weighed against the above noted Exhibit and testimony, it falls short of establishing that Deviley is not performing craft work. We also note with interest that the job description in place when Deviley was hired references the "ability to perform and document the work at a professional craftsman level" and "experience equivalent to apprenticeship training and sufficient experience to perform work at a professional craftsman level."

Thus, we conclude Deviley is a craft employee who is appropriately included in the District's craft employee bargaining unit.

Dated at Madison, Wisconsin this 18th day of August, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

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