STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

THE GREATER FOX RIVER VALLEY DISTRICT COUNCIL OF CARPENTERS, LOCAL 1146, GREEN BAY, WISCONSIN

Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats., Involving a Dispute Between Said Petitioner and

GREEN BAY AREA SCHOOL DISTRICT

Case 206
No. 58150
DR(M)-604

Decision No. 29827-A

Appearances:

Melli, Walker, Pease & Ruhly, S.C., by **Attorney Jack D. Walker**, Ten East Doty, Suite 900, P.O. Box 1664, Madison, Wisconsin 53701-1664, appearing on behalf of the Green Bay Area School District.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney John J. Brennan,** 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of the Greater Fox River Valley District Council of Carpenters, Local 1146, Green Bay, Wisconsin.

ORDER DENYING PETITION FOR REHEARING

On February 2, 2000, the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusion of Law and Declaratory Ruling with Accompanying Memorandum in the above matter. The Commission therein decided that the terms of a craft employe collective bargaining agreement between the Green Bay Area School District and Carpenters Local 1146, et. al. applied to a Maintenance Mechanic who was added to the District's craft employe bargaining unit by an earlier Commission unit clarification decision. (DEC. NO. 28023-C, WERC, 8/99)

On February 22, 2000, the District filed a petition for rehearing pursuant to Sec. 227.49, Stats., alleging that the February 2, 2000 decision contains material errors of law and fact and that there is new evidence sufficiently strong to reverse or modify the decision.

On March 13, 2000, Carpenters filed a written response in opposition to the petition wherein it asserted that the District was simply presenting arguments already made and rejected in the declaratory ruling proceeding and that the evidence the District now wishes to have considered is not "new" within the meaning of Sec. 227.49(3)(c), Stats.

Section 227.49(3), Stats., provides:

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

After considering the petition for rehearing, the response thereto, our February 2, 2000 decision and the evidence and argument upon which it was based, we conclude the petition for rehearing should be denied.

NOW, THEREFORE, it is

ORDERED

The petition for rehearing is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of March, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

Green Bay Area School District

MEMORANDUM ACCOMPANYING
ORDER DENYING PETITION FOR REHEARING

The District appears to misperceive our declaratory ruling. A brief review of the sequence leading to it may be helpful.

Issue was originally jointed in a unit clarification case (DEC. NO. 28023-C) where the question was whether the Maintenance Mechanic is a craft employe. We found he is. In making this finding, we followed the normal criteria defining a craft employe contained in Sec. 111.70(1)(d), Stats. Specifically we found that: (1) floor, wall and ceiling work constitutes a majority of the work the Maintenance Mechanic performs; (2) the floor, wall and ceiling work is the work of the carpenter craft; and (3) the incumbent Maintenance Mechanic is a journeyman carpenter.

Thus, we determined the Maintenance Mechanic belonged in the craft bargaining unit represented by Local 1146, Greater Fox River Valley District Council of Carpenters, et. al. That is the *only* bargaining unit of craft employes of the District.

With this accomplished in the unit clarification case, we were next asked through a separate petition for declaratory ruling whether the Maintenance Mechanic's wages, hours and conditions of employment had to be bargained collectively or whether the existing craft contract automatically applied to him. The parties waived hearing and asked that we only consider the evidence before us in DEC. NO. 28023-C.

Because we had concluded in our unit clarification decision that the Mechanic spent a majority of his time performing the work of the carpenter craft, we conclude that Mechanic is in fact a Carpenter within the meaning of the craft contract and thus is entitled to the Carpenter's wage rate and is otherwise also covered by said contract.

Given the foregoing, our February 2, 2000 decision did not contain any material errors of fact or law. Further, the new evidence which accompanies the petition could ". . . have been previously discovered by due diligence, . . ." within the meaning of Sec. 227.49(3)(c),

Stats., and, thus is not admissible on rehearing. In any event, we do not find said evidence sufficiently strong to reverse or modify our Order.

Thus, we have denied the petition.

Dated at Madison, Wisconsin this 22nd day of March, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

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