

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

Appearances:

Godfrey & Kahn, S.C., by **Mr. William G. 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.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorneys John J. Brennan** and **Heather A. Rastorfer**, 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.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

On October 27, 1999, Greater Fox River Valley District Council of Carpenters, Local 1146, filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., as to whether the Commission's clarification of a Maintenance Mechanic employed by the Green Bay School District into the craft bargaining unit [GREEN BAY SCHOOL DISTRICT, DEC. No. 28023-C (WERC, 8/99)] requires that the Mechanic be paid the carpenter wage rate in the parties' existing contract or whether the parties must bargain over the applicable wage rate.

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The parties waived hearing but agreed that the record in this matter would be the record upon which DEC. NO. 28023-C was based, as supplemented by written argument in this declaratory ruling. The last such argument was received January 19, 2000.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Green Bay Area School District, herein the District, is a municipal employer having its principal offices at 200 South Broadway, Green Bay, Wisconsin 54303.

2. Greater Fox River Valley District Council of Carpenters, Local 1146, herein Carpenters, is a labor organization that represents certain craft employees of the District.

3. In DEC. NO. 28023-C (WERC, 8/99), the Commission ordered that a Maintenance Mechanic employed by the District be removed from an existing bargaining unit represented by AFSCME Local 3055 and placed in the craft unit represented by Carpenters. The decision was based on the Finding of Fact that "Deviley is a skilled journeyman carpenter and he performs the work of the carpenter craft" and the Conclusion of Law that "The incumbent Maintenance Mechanic (Floor, Wall and Ceiling Covering) is a craft employee within the meaning of Sec. 111.70(1)(d), Stats."

4. Following receipt of the Commission's decision, the District placed the Maintenance Mechanic in the craft unit and advised Carpenters that it was prepared to bargain over the wages, hours and conditions of employment of the Maintenance Mechanic. Carpenters responded by indicating that the existing craft unit contract established the Maintenance Mechanic's wages, hours and conditions of employment. This disagreement led to the filing of the instant petition for declaratory ruling.

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

CONCLUSION OF LAW

Placement of the Maintenance Mechanic in the craft bargaining unit automatically extends the terms of the parties' craft employee contract to the Maintenance Mechanic.

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

DECLARATORY RULING

The District and Carpenters have no duty to bargain within the meaning of Secs. 111.70(1)(a) and 111.70(3)(a)4, Stats., over the wages, hours and conditions of employment of the Maintenance Mechanic.

Given under our hands and seal at the City of Madison, Wisconsin this 2nd day of February, 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 School District

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND DECLARATORY RULING**

The parties disagree over whether our placement of the Maintenance Mechanic into the craft unit through DEC. NO. 28023-C automatically extends the terms of the existing craft unit contract to the Mechanic or whether the Mechanic's wages, hours and conditions of employment are subject to the results of new collective bargaining between the parties.

Carpenters argue that the Mechanic was placed in the craft unit because he performs carpenter work. Because he performs carpenter work, Carpenters assert he must be paid the carpenter wage rate under the existing contract. Carpenters allege the Commission decisions cited by the District are distinguishable. Carpenters contend that if the Mechanic does not automatically receive the carpenter wage rate, the Commission's decision is a nullity.

The District asserts the Commission has historically held that its unit clarification decisions do not automatically extend the terms of an existing contract to the positions/employees who are thereby included in a bargaining unit. It contends that the Mechanic's duties differ from those of the carpenters included in the unit and that it would be "presumptuous" for the Commission to conclude that the Mechanic is automatically entitled to carpenter wages, hours and conditions of employment.

As the District has noted in its brief, we have often found existing contracts inapplicable to positions/employees that are included in a bargaining unit as a result of Commission unit clarification or election proceedings. SHEBOYGAN COUNTY (UNIFIED BOARD), DEC. NO. 23031-A (WERC, 4/86); TREMPLEAU COUNTY (HOUSING AUTHORITY), DEC. NO. 23469 (WERC, 3/86); JUNEAU COUNTY, DEC. NO. 18728-A (WERC, 1/86); JOINT SCHOOL DISTRICT NO. 2, CITY OF SUN PRAIRIE, ET. AL, DEC. NO. 20459 (WERC, 3/83); MINOCQUA JT. SCHOOL DISTRICT, DEC. NO. 19381 (WERC, 2/82); CHETEK SCHOOL DISTRICT, DEC. NO. 19206 (WERC, 12/81); COCHRANE-FOUNTAIN CITY COMMUNITY JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 13700 (WERC, 6/75); CITY OF FOND DU LAC, DEC. NO. 11830 (WERC, 5/73). As noted in MILWAUKEE COUNTY, DEC. NO. 17224-A (WERC, KNUDSON WITH FINAL AUTHORITY, 4/80), this view is premised on an equitable reluctance to extend the terms of an existing contract to positions newly added to the unit unless the existing contract makes it clear that the parties have already bargained the applicable wages, hours and conditions of employment for the position in question.

However, where the parties have already bargained the applicable wages, hours and conditions of employment for a position, the existing contract automatically applies when an employee holding that position is added to the unit. 1/ For example, if the parties' contract contained the wages, hours and conditions of employment of a Clerk Typist II position and an employee classified as Clerk Typist II is then added to the bargaining unit, the existing contract establishes the newly added employee's wages, hours and conditions of employment. Because the parties have already bargained all the wages, hours and conditions of employment applicable to that position/classification, there is no duty to bargain over these matters for the duration of the collective bargaining agreement.

1/ In the past, we have also held that when a new non-professional position is added to an existing non-professional unit during the term of a contract that has no wage rate for the new position, the existing contract automatically applies in all respects except for the wage rate which the parties must, of necessity, bargain. SUN PRAIRIE SCHOOLS, DEC. NO. 28676 (WERC, 3/96). The Court found that view overly broad, however, concluding that the wages, hours and conditions of employment for new bargaining unit positions created by management during the term of a contract are subject to collective bargaining and interest arbitration. LOCAL 60, AM. FED. OF MUN. EMPLOYEES V. WERC, 217 WIS.2D 602 (CT. APP. 1998).

Carpenters argue here that because the parties have already bargained the wages, hours and conditions of employment for the position of carpenter and because the Mechanic was added to the craft unit because he is actually a journeyman carpenter doing carpenter work, the contract should automatically apply.

Given the foregoing, it is clear that if our unit clarification decision in effect merely added another carpenter to the existing roster of carpenters in the craft/carpenter unit, then the existing contract will automatically apply in all respects. If, on the other hand, our decision adds another separate classification to the bargaining unit, then the existing contract does not automatically apply and collective bargaining and interest arbitration will establish the applicable wages, hours and conditions of employment.

As reflected in our unit clarification decision, we found that a majority of the Mechanic's time was spent performing the work of the carpenter craft (Finding of Fact 11) and that the individual holding the Mechanic position was a journeyman carpenter (Finding of Fact 12). Given these factual findings, we are satisfied that the Mechanic is in reality a carpenter. Because the parties have already bargained a contract covering carpenters' wages, hours and conditions of employment, the existing contract automatically applies to the Mechanic in all respects and Carpenters have no duty to bargain with the District over these matters.

Dated at Madison, Wisconsin this 2nd day of February, 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

