

15-101-D



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Prevailing Wage

May 26, 2015

Robert Korth, President
Iron Workers Local Union 86
4550 S 134th Place #102
Tukwila WA 98168

Re: Request for Determination number 15-101-D for installation of the permanent cable safety rail on the I-520 Floating Bridge pontoons.

Dear Mr. Korth:

Thank you for your letter dated January 2, 2015 requesting a Determination of the prevailing wage rate for the installation of the permanent safety rail on the I-520 Floating Bridge. From your letter I understand you are asking which scope of work covers the installation of the Cable Safety Rail depicted in the documents and drawing included with your letter.

Industrial Statistician determinations are made pursuant to RCW 39.12.015 and requests for their modification are provided for in WAC 296-127-060(3). See the enclosed document, "*Prevailing Wage Determination Request and Review Process*." Copies of the RCW and WACs referenced in this letter are available on our website:
<http://lni.wa.gov/TradesLicensing/Rules/ByTrade/PrevWage/default.asp>

This determination is limited to the facts presented and the information you provided. My review included but was not limited to:

- Your January 2, 2015 request (and attachments)
 - Cody Bishop from KGM response dated February 6, 2015
 - Your response dated February 11, 2015
 - KGM response dated February 23, 2015
 - KGM letter dated April 20, 2015 with attached Arbitration Decision dated April 7, 2015
- RCW 39.12.020 Prevailing rate to be paid on public works
- WAC 296-127-013 Scope of work descriptions
 - WAC 296-127-01310 Carpenters
 - WAC 296-127-01339 Ironworkers
- November 30, 2011 Determination by Industrial Statistician Ann Selover, Bridge 99/560 barrier is structural and the rate of wage for Ironworkers applies
- July 26, 2012 Determination by Industrial Statistician Ann Selover, Murray Morgan Bridge Project stay in place forms is structural work within the Ironworkers scope of work

- March 15, 2015 Plan for settlement of Jurisdictional Disputes in the Construction Industry Opinion and Award by Arbitrator J. J. Pierson awarding assignment to the Carpenters/Piledrivers union
- *Lockheed v. Dep't of Labor & Indus.*, 56 Wn. App. 421 (1989)
- *Silverstreak, Inc. v. Washington State Dept. of Labor and Industries*, 159 Wn.2d 868 (2007)
- *Heller v. McClure & Sons*, 92 Wn. App. 333, 340 (1998)
- *Everett Concrete Products v. L&I*, 109 Wn.2d 819 (1988)

Work reviewed

The Cable safety rail at issue here are shipboard ropes for marine applications made of Kevlar Aramid fibers by Phillystran, Inc. This product was selected in place of a "wire" rope product. The company website describes this product as follows:

Phillystran aramid fiber ropes jacketed with abrasion-resistant, moisture-blocking extruded polymers are made to order for most shipboard applications. Phillystran ropes provide the strength and low-stretch characteristics of steel with the light-weight, non-corrosive, and dielectric properties of fiber ropes.

On this project, the workers are installing the Cable Safety Rail on the pontoons for the I-520 floating bridge. To accomplish this work the workers use a power rotohammer, framing hammer, 4 foot level, string line, screwdriver, wrench, vise grips, sledge hammer, laser level and torpedo level. The cable has a minimum breaking strength of 10 tons tensioned to a minimum of 400 lbs.

Analysis

The prevailing wage act provides:

The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. RCW 39.12.020.

The prevailing wage act is remedial legislation designed to protect the employees of government contractors in this state from substandard earnings and to preserve local wage standards. As such, the act and regulations are to be liberally construed in favor of the beneficiary of the act, the worker. Thus, "it is the employees, not the contractor . . . who is the intended beneficiary of the act." *Everett Concrete* at 823

The Department determines the rate of wage payable to a worker, but does not decide union jurisdictional disputes. The Arbitrator J.J. Pierson's decision dated March 15, 2015 was submitted to me, and I reviewed the decision, though for purposes of Washington's prevailing wage law, the decision is not controlling. Plan arbitrators make jurisdictional decisions but do

not decide what wages will be paid. Industrial Statisticians make wage decisions, but do not decide who will perform the work. Criteria used by arbitrators and industrial statisticians are sometimes similar, and dissimilar at other times. Arbitrator Pierson may have based his jurisdictional award on the convenience of the contractor in staging the work together with other work on the project. If so, the arbitrator's criteria differ from mine.

Where multiple scopes of work can apply, the Department uses the analysis adopted by the Court of Appeals in *Lockheed v. Dep't of Labor & Indus.* (1989), which affirmed L&I's position that "the determination of whether work is 'in the same trade or occupation' depends upon the 'type of work rather than where the work was performed or by whom it was done.'

WAC 296-127-01310 Carpenters includes in the scope of work for carpenters (parts omitted):

For the purpose of the Washington state public works law, chapter 39.12 RCW, carpenters construct, erect, install and repair structures, structural members and fixtures made of wood, plywood, wallboard and materials that take the place of wood, such as plastic, metals, composites, and fiberglass, using carpenter hand tools and power tools.

The work includes, but is not limited to:

- Build rough wooden structures, such as concrete forms, scaffolds, wooden bridges, trestles, coffer dams, tunnel and sewer support; welding and burning.
- Install ladders, handrails, walkways, platforms and gangways (emphasis added)

WAC 296-127-01339 Ironworkers includes in the scope of work for ironworkers (parts omitted):

For the purpose of the Washington state public works law, chapter 39.12 RCW, ironworkers perform all work in connection with field fabrication and/or erection, installation, removal, wrecking and dismantling of structural, architectural and reinforcing iron and steel, ornamental lead, bronze, brass, copper and aluminum, and plastics or other materials when used in place thereof.

The work performed by ironworkers includes, but is not limited to:

- Bridges, viaducts, cableways, tramways, monorails.
- Locks, gates, metal forms, railings (including pipe).

Work process: (1) Structural: (a) Erecting:

- Connecting
- Fitting
- Hooking on
- Bolting up
- Torquing
- Cable splicing (emphasis added)

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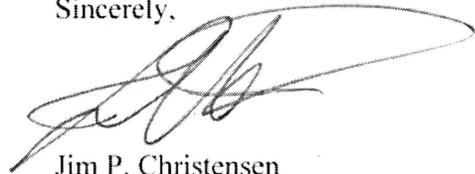
The scope of work description of Carpenters includes the installation of "handrails" but does not include language of the nature of the work involved in installation of the cable safety rails with the breaking strength of 10 tons tensioned to 400 lbs. The cable safety rails are not typical "handrails" located along pedestrian walkways. Therefore the scope of work of carpenters does not apply.

The reference to bridges and railings in the scope of work of the Ironworkers is directly applicable to this project. Additionally the rate of wage for Ironworkers is higher than the rate of wage for Carpenters. Application of that wage therefore serves the remedial purpose discussed above, directed by the courts, of benefiting workers and their wage standards. It appears as though some railing and ladder systems within these pontoons were installed by Ironworkers.

For the reasons outlined above, the Ironworker prevailing rate of wage applies to the installation of the cable safety railing.

Thank you for your request. I appreciate your interest in Prevailing Wage compliance and hope this information will be helpful in the future. If you have any further questions please let me know.

Sincerely,



Jim P. Christensen
Industrial Statistician and Prevailing Wage Program Manager
Washington State Department of Labor and Industries
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Iron Workers Local Union 86

International Association of Bridge, Structural,
Ornamental and Reinforcing Iron Workers



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January 2, 2015

Jim Christensen
Department of Labor and Industries
Industrial Statistician / Prevailing Wage Manager
PO Box 44540
Olympia, WA 98504

Re: Wage Determination

Dear Mr. Christensen:

Iron Workers Local Union 86 would like to request a wage determination for the field installation of the permanent safety railing at the I-520 Floating Bridge Project located between Bellevue, WA and Seattle, WA. For your reference I have enclosed fabrication/field drawings.

In assisting you in your determination I would like to ask you to review the previous determinations and correspondences from the Department of Labor and Industries as I feel this work is of the same nature.

1. July 5, 2005 wage determination by Industrial Statistician Cindy Hanson;
2. July 20, 2006 redetermination by Industrial Statistician David Soma;
3. May 7, 2007 reconsideration by assistant director Patrick Woods; and
4. September 27, 2011 correspondence from Massana Construction followed by November 30, 2011 correspondence from L. Ann Selover Industrial Statistician.

I would like to thank you in advance for your prompt attention to this matter, and if you have any questions or need additional information feel free to contact me.

Sincerely,

Robert Korth
President

CC: Steve Pendergrass, President Iron Workers District Council of the Pacific Northwest

NO PLA

Ken Ervin, Regional Manager Pacific Northwest Carpenters
Cody Bishop, KGM
Monty Anderson, Seattle Building Trades

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Enc.