



15-102-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 #15-102-D Traffic-Pedestrian Railing Elliot Bay Seawall Project

Dear Mr. Korth:

Thank you for your letter dated December 30, 2014 requesting a determination, under RCW 39.12.015, of the prevailing wage rate for the installation of the Traffic-Pedestrian Railing for the Elliot Bay Seawall Project. From your letter I understand you are asking which scope or scopes of work cover the installation of the Traffic-Pedestrian Railing depicted in the documents and drawing included in 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(2). See the enclosed document, "*Prevailing Wage Determination Request and Review Process*." References to the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC) are available on our website: <http://www.lni.wa.gov/TradesLicensing/PrevWage/Policies/default.asp>.

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

- Your December 30, 2014 request and attachments
- RCW 39.12.020 Prevailing rate to be paid on public works
- Scope of work descriptions
 - WAC 296-127-01310 Carpenters
 - WAC 296-127-01328 Fence Erectors
 - WAC 296-127-01339 Iron Workers
- July 5, 2005 Determination by Industrial Statistician Cindy Hanson regarding Royal Brougham Way aerial structure guard rail
- November 30, 2011 Determination by Industrial Statistician Ann Selover regarding the Bridge 99/560 Pedestrian Barrier
- July 26, 2012 Determination Industrial Statistician Ann Selover regarding the SR 99 Alaskan Way Viaduct Replacement Tunnel Project
- March 15, 2015 Plan for settlement of Jurisdictional Disputes in the Construction Industry Opinion and Award by Arbitrator J. J. Pierson
- *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 work described in the materials is the installation of 4" by 4" steel railings weighing 54 to 210 lbs. depending on length, bolted to steel posts. The drawings describe the railing as a "Traffic-Pedestrian Railing."

Analysis

Chapter 39.12 RCW provides that "[t]he hourly wages to be paid to laborers, workers, or mechanics, upon all public works ... of the state or any ... political subdivision ... 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." See RCW 39.12.020.

The prevailing wage law was designed to protect employees on public works projects and preserve local wage standards. See *Heller v. McClure & Sons, Inc.* (1998) (citing *Everett Concrete*). Thus, "it is the worker, not the contractor, who is the intended beneficiary of the [law]." Prevailing wage law is remedial legislation, and as such, it should be liberally construed in favor of the beneficiaries of the act, the workers. See *Everett Concrete* (1988).

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.'"

If there are union jurisdictional disputes those should be resolved through the appropriate venues.

WAC 296-127-01310 includes in the scope of work for carpenters:

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 296-127-01328 includes in the scope of work for fence erectors and fence laborers:

For the purpose of the Washington state public works law, chapter 39.12 RCW, fence erectors and fence laborers erect and repair metal and wooden fences and fence gates around industrial establishments (schools, playgrounds, etc.), residences, farms and along highways using power tools and hand tools.

The work of the fence erectors includes, but is not limited to...

- Aligns posts, using line or by sighting along edges of posts.
- Verifies vertical alignment of posts with plumb bob or spirit level.
- Attaches fence-rail support to post, using hammer and pliers.
- Cuts metal tubing, using pipe cutter, and inserts tubing through rail support.
- Completes top fence rail of metal fence by connecting tube sections, using metal sleeves.
- Attaches rails or tension wire along bottoms of posts to form fencing frame.
- May weld metal parts together, using portable gas welding equipment...
- Sets metal or wooden posts in upright position in holes...
- All the cleanup required in connection with the erection of fences.

WAC 296-127-01339 includes in the scope of work for ironworkers:

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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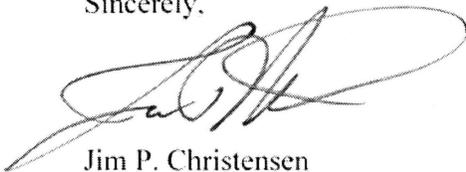
The scope of work description for Carpenters includes the installation of "handrails," in the context of ladders, walkways, platforms and gangways. The railings in the plans submitted are entitled "Traffic-Pedestrian Railings" according to those plans and appear to be constructed to withhold vehicular traffic. They are more substantial than typical handrails. Therefore, the scope of work for Carpenters does not apply.

The scope of work for Fence Erectors includes relevant to the installation of metal and wood fences. However, the railings at issue here are not a fence as contemplated by WAC 296-127-01328. This installation is a substantial addition to the public area above the seawall, augmenting the structure so as to create a barrier preventing vehicles and pedestrians from falling into the bay. Therefore, the scope of work of Fence Erectors does not apply.

The scope of work for Ironworkers includes detailed activities related to the installation of structural, architectural and reinforcing iron and steel. This language is directly applicable to the work described. This scope also mentioned "railings" without a delimiting prefix, suffix or phrase (this term is not limited to *hand* railings or any other single subcategory of railings). Therefore, the correct prevailing rate of wage for the installation of this Traffic-Pedestrian Railing is that of Ironworker.

I appreciate the opportunity to respond to your request. Please do not hesitate to contact me by phone or email if you have any further questions, or for any other reason.

Sincerely,



Jim P. Christensen
Industrial Statistician and Prevailing Wage Program Manager
Washington State Department of Labor and Industries
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Enc.



Iron Workers Local Union 86

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



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December 30, 2014

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 pedestrian railing at the Elliot Bay Seawall Project located in Seattle, WA. For your reference, I have enclosed fabrication/field drawings and photos of the mockup railing.

In assisting you in your determination, I would like would 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 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

PLA
Dispute Filed

RK:pah
Opeiu #8

CC: Steve Pendergrass, President, Iron Workers District Council of the Pacific Northwest
Ken Ervin, Regional Manager, Pacific Northwest Carpenters
Jeff Pittma, Mortenson Manson JV
Monty Anderson, Seattle Building Trades
Yemaya Hall-Ruiz, City of Seattle

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