

**STATE OF ILLINOIS DEPARTMENT OF LABOR  
LAW DIVISION – HEARINGS SECTION  
160 NORTH LASALLE STREET, SUITE C-1300  
CHICAGO, ILLINOIS 60601**

In the Matter of:

AC PAVEMENT STRIPING COMPANY  
MARKING SPECIALISTS CORPORATION  
AND MAINTENANCE COATINGS  
COMPANY

Petitioners,

v.

Michael D. Kleinik, Director of  
The Illinois Department of Labor, and  
The Illinois Department of Labor,

Respondents.

IDOL FILE NO.: 2022-H-RP08-2333  
2022-H-RP08-2335

**ORDER**

IDOL File No.: 2022-H-RP08-2333 and 2022-H-RP08 2335 coming on December 3, 2021 to be heard under the Prevailing Wage Act, 820 ILCS 130/0.01 – 12 ("the Act" or "PWA"), and in accordance with the procedures stated in the Department of Labor's Rules at 56 Ill Admin Code 120.100, *et seq.*, and International Union of Operating Engineers, Local 150, AFL-CIO's Petition to Intervene, all parties having been duly advised on the premises, issues this order *sua sponte*:

**PETITION TO INTERVENE**

a) Permission to Intervene

- 1) Upon timely written application, the ALJ may, in his or her discretion, permit any party to intervene in a hearing proceeding, subject to the necessity for conducting an orderly and expeditious hearing, when:
  - A) The party is so situated that he or she may be adversely affected by a final order arising from the hearing;
  - B) The party requesting intervention is a necessary party to the hearing proceeding; or
  - C) A party's claim or defense and the main action have a question of law or fact in common.

- 2) In exercising discretion under this subsection (a), the ALJ shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
- b) Two copies of a petition for intervention shall be filed with the ALJ, and one copy shall be served on each party.
- c) An intervenor shall have all the rights of an original party subject to the order of the ALJ, except that the ALJ may, in his or her order allowing intervention, provide that the party shall not raise issues that might more properly have been raised at an earlier stage of the proceeding, that the party shall not raise new issues or add new parties, or that in other respects the party shall not interfere with the conduct of the hearing, as justice and the avoidance of undue delay may require.

## **ARGUMENTS**

Local 150 seeks status as an intervenor in 2022 H-RP08 2333 and 2022 H-RP08 2335 because should the changes proposed by the objector go into effect, some Local 150's members will be adversely affected. Petitioners argue that some members of Local 150 may be encompassed by the proposed changes classifying them to a lower rate of pay.

The Department does not take a position on the petition to intervene.

## **FINDINGS**

It is found that Local 150 has successfully demonstrated that its members may be adversely affected by the establishment of differing rates and classifications. Any change in the rates and or classifications may adversely affect its membership.

Additionally, it is found that the Local 150 is a necessary party with the necessary information to enable the undersigned the ability to properly hold a full and fair hearing. Thus, Local 150 has successfully proven under the regulation that they may be both adversely affected and are necessary parties to this dispute. **Local 150 is allowed to intervene in this matter.**

## **AC PAVEMENT & STRIPING, ET AL MOTION FOR DISCOVERY**

AC Paving & Striping et al. seeks to conduct written discovery in the form of requests for production. AC Paving argues that in order to have a fair hearing the Department must produce documents relied upon "to ignore the TSW I and II distinction". The Department argued that discovery is not allowed in Section 9 hearings.

56 Ill. Admin. Code 120.410 a states:

General discovery (e.g., deposition, interrogatories or request to produce or admit) shall not be permitted.

The undersigned interprets the word "shall" as mandatory, not discretionary. Therefore, **the motion for discovery is denied.**

**IT IS HEREBY ORDERED:**

1. **Local 150's Petition to Intervene is granted.** Intervenors take the case as it is found and are not allowed to introduce new issues as provided under 56 Ill. Admin. Code 120.320@.
2. The parties and intervenor agree to accept service of pleadings via email.
3. General discovery (e.g. depositions, interrogatories, or request for production or admit) is not allowed pursuant to 56 Ill. Admin. Code 120.410a. **AC Paving's Motion for Discovery is Denied.**
4. All parties have consented in writing (or email) to waive the 45-day hearing provision of Section 9.
5. **The parties and intervenor shall file motions for third party subpoenas,** along with a draft copy of a subpoena (the subpoena shall show on its face the name and address of the party) at whose request the subpoena was issued with the undersigned **on or before December 23, 2021.**
6. **Subpoenas for the attendance and testimony of witnesses shall be filed on or before February 9, 2022.** The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.
7. **Each party and intervenor shall provide all parties with a copy of any document that it may offer into evidence. The parties and intervenor shall exchange documents on or before February 11, 2022.**
8. **Each party and intervenor shall provide all parties and the undersigned with a witness list containing the names/professional address/phone numbers for hearing of any witnesses who may be called to testify at hearing on or before February 9, 2022.** The disclosure must provide subjects/topics on which the witness will testify. the disclosure must sufficiently give reasonable notice of the testimony. The purpose of this disclosure is to prevent unfair surprise at hearing with creating an undue burden on the parties before the hearing.
9. All parties/intervenors shall have a duty to seasonably supplement all disclosures.
10. Any disclosure dispute is to be added with the opposing party/intervenor prior to filing any motion. Evidence demonstrating said outreach will be required before a motion will be entertained regarding the same.
11. **This matter is scheduled for telephonic hearing on April 6 & 7, 2022 at 9:00 a.m.**

DATE: December 6, 2021

/s/ John A. O'Meara  
John A. O'Meara  
Administrative Law Judge  
Illinois Department of Labor  
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Chicago, IL 60601  
DOL.Hearings@Illinois.gov

STATE OF ILLINOIS        )  
  )  
COUNTY OF COOK        )

CERTIFICATE OF SERVICE

Under penalties as provided by law, including pursuant to Section 1-109 of the Code of Civil Procedure, I Karen Lewis, a non-attorney, affirm, certify or on oath state, that I served notice of the attached Order or Decision upon all parties to this case, or their agents appointed to receive service of process, by enclosing a copy of the Order or Decision in Case No. **2022-H-RP08-2333 and 2022-H-RP08-2335** and a copy of the Certificate of Service in an envelope addressed to each party or party's agent at the respective address having caused each envelope to be served by U.S. mail certified mail return receipt requested or regular mail at 100 W. Randolph Street, Chicago, Illinois or via email addressed to each party or party's agent at the respective email address shown on the Certificate of Service, on **December 6, 2021** prior to 4:30 p.m.

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/s/Karen Lewis

Karen Lewis, Office Specialist  
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