

Official notice is taken of a court order entered in the matter of *Charles Shempf, as member of the Midwest Region of the Laborers' International Union of North America et. al v. Hugo Chaviano, Director of the Illinois Department of Labor and the Illinois Department of Labor*, 16 CH 12963 on May 19, 2017 by Judge Thomas Allen of the Circuit Court of Cook County ordering the Illinois Department of Labor to "publish 2016 prevailing wage rates on its website by 5 p.m. May 29, 2017." The order was later amended to correct a scrivener's error and to properly reflect the date the court actually ordered which was May 26, 2017. IDOL responded to the court's order posting the rates on May 26, 2017 but added a caveat to the website providing that the rates became effective June 5, 2017. See *Petitioner's Request for Section 9 Hearing*, page 2.

Petitioner's Section 9 Hearing request is dated June 30, 2017. If one were to utilize the May 26, 2017 as the date of publishing as provided in the Act, this matter would be time barred by 5 days.

Section 9 of the Act does not provide the Department with the authority to create an effective date for rates after publication, however, it also does not provide that it cannot create an effective date either. In so creating the effective date, the Department in essence created an ambiguity or uncertainty for its regulated community. The effective date served to confuse as to which date serves as the date of publication for purposes of triggering a section 9 hearing request time frame.

In construing this matter in a light most favorable to the petitioner, it is found that one could reasonably conclude that adding an effective date could rationally be viewed by some as the date of publication for purposes of triggering the Section 9 hearing request clock. In so doing, the Department is expanding the amount of time an interested person has to request/file for a Section 9 hearing. As such, Petitioner's Section 9 hearing request is found to be timely and the undersigned properly maintains jurisdiction under the Prevailing Wage law.

With this said, should IDOL undertake a subsequent action of the same consequence, one can reasonably assume that such a provision creates an ambiguity for the regulated public. The regulated public's best interest would be served by providing a clarifying statement on the Department website to provide notice as to which date is considered the publishing date for Section 9 hearing request purposes.

Petition to Intervene

56 Ill. Adm Code 120.320 provides as follows:

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.

On August 1, 2017, the undersigned set a deadline of August 14, 2017 for the timely filing a Petition to Intervene in this matter. The order was subsequently published on IDOL's website under Section 9 hearings. The Laborers filed a Petition to Intervene on or about July 27, 2017. It is undisputed that this Petition has been timely filed. The matter was briefed and the issue came before the undersigned on September 5, 2017 for argument.

It is found that the Laborers have successfully demonstrated with specificity that its membership may be adversely effected by the establishment of different rates in the Operating Engineer River 1 and 2 ("River 1 and 2") classifications as well as in the Operating Engineer 3 and 4 "All" and "O & C" classifications. Laborers have successfully demonstrated that its members can and have been able to perform some tasks in the Operating Engineer River 1 and 2 Classifications as well as Operating Engineer 3 and 4, "All" and "O & C" classifications ("Operator 3 and 4" and any change in the rates and or descriptions provided therefor may adversely affect is membership regardless of whether those rates as set increase or decrease from that which a member is currently paid. River 1 and 2 as well as Operator 3 and 4 classifications/rates have been put into play by Petitioner in filing the June 30, 2017 Request for a Section 9 Hearing.

In addition, it is found that the Laborers are a necessary party with necessary information to enable the undersigned the ability to properly hold a full and fair hearing. Having previously performed tasks associated with the classifications identified by Petitioner in its Request for a Section 9 hearing, it is concluded that the Laborers have valuable information which will impact the fact finding in this hearing. As such, the Laborers have successfully proven under the regulation that it may be both adversely affected and is a necessary party to this dispute. The Laborers are allowed to intervene in this matter.

IT IS HEREBY ORDERED:

1. The Illinois Department of Labor is vested with proper jurisdiction over this matter.
2. The Laborers' International Union of North America Southern & Central Laborers' District Council and their affiliated Local Unions, Petition to Intervene is granted. Intervenors take the case as it is found and are not to introduce new issues as provided under 56 Ill. Adm. Code 120.320 (c). The caption of this matter is amended as reflected above.
3. The parties and intervenor agree to accept service of pleadings via email.
4. General discovery (e.g., deposition, interrogatories or request to produce or admit) is not permitted. 56 Ill. Adm. Code 120.410 (a).
5. Each party, including 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 **September 22, 2017**. Each party or intervenor shall provide newly discovered documents, except for witness statements, as they become known to the party intending to introduce the document. Any newly discovered documents must be produced on or before **September 29, 2017**. A party will require leave of the administrative law judge to provide any documents after this date, except for documents obtained pursuant to a third-party subpoena.

6. 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 **October 6, 2017**. The parties and intervenor maintain a duty to supplement its document exchange wherein documents have been obtained in this fashion. In any case, those documents shall not be produced to the opposing parties after **October 20, 2017** without leave of the administrative law judge or as agreed to among the parties and intervenor.
7. Subpoenas for the attendance and testimony of witnesses shall be filed on or before **October 13, 2017**. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.
8. Each party and intervenor shall provide all parties and the undersigned with a witness list containing the name and address of any witness who may be called to testify on or before **October 20, 2017**. Witnesses not on these lists will require leave of the administrative law judge to be allowed to testify.
9. Any discovery dispute is to be addressed with the opposing party/intervenor prior to filing a motion. Evidence demonstrating said outreach will be required before a motion will be entertained regarding same.
10. This matter is set for a **telephonic status conference** on **October 26, 2017 at 11:30 a.m.** at which time all outstanding issues will be discussed as well as any pending motions. The undersigned will initiate the conference at previously provided phone numbers.
11. This matter is scheduled for hearing on **November 7, 8 and 9, 2017 at 9:00 a.m.** at the **Illinois Department of Labor, 160 N. LaSalle St., Ste. C-1300, Chicago, IL 60601**. Entrance into the building requires presentation of valid government issued photo identification and security screening.

DATE: 9/7/17

/s/ Claudia D. Manley

Claudia D. Manley
Chief Administrative Law Judge

Claudia D. Manley
Chief Administrative Law Judge
Illinois Department of Labor
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STATE OF ILLINOIS)
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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 Claudia Manley an attorney, affirm, certify or on oath state, that I served notice of the attached Order upon all parties to this case, or their agents appointed to receive service of process, by enclosing a copy of the final Order in Case No. 2018-H-PK-07-1916 and a copy of the Certificate of Service in an envelope addressed to each party or party's agent at the respective address shown on the Order or on the Certificate of Service, having caused each envelope to be served by U.S. mail with postage prepaid at 100 W. Randolph Street, Chicago, Illinois on the 8th day of September, 2017 prior to 4:30 p.m. and placed on the Illinois Department of Labor's official website at and placed on the Illinois Department of Labor's official website at www.state.il.us/agency/idol/

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/s/ Claudia D. Manley 