

STATE OF ILLINOIS – DEPARTMENT OF LABOR
160 N. LASALLE ST., STE. C-1300
CHICAGO, ILLINOIS 60601

MID-AMERICA CARPENTERS)
REGIONAL COUNCIL,)
)
PETITIONER(S),)
)
v.)
)
JANE R. FLANAGAN, ACTING DIRECTOR OF)
THE ILLINOIS DEPARTMENT OF LABOR, and)
THE ILLINOIS DEPARTMENT OF LABOR,)
)
RESPONDENT(S),)
And)
)
ALAN GOLDEN, MEMBER AND BUSINESS)
MANAGER for the INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL WORKERS,)
LOCAL 364 AND LOCAL 364,)
)
STANLEY SIMRAYH, MEMBER of the)
INTERNATIONAL UNION OF OPERATING)
ENGINEERS, LOCAL 150,)
)
GLEN JONES, MEMBER of the LABORERS)
INTERNATIONAL UNION OF NORTH)
AMERICAN LOCAL 32 AND LIUNA GREAT)
PLAINS LABORERS' DISTRICT COUNCIL,)
)
INTERVENOR(S).)

STATE FILE NO. 2022-H-RP01-2337

ORDER

THIS MATTER COMING on to be heard under the Prevailing Wage Act, 820 ILCS 130/0.01-12 and Respondent's Answer and Motion to Dismiss, Petitioner's Motion for Time to Reply and Intervenors' Joint Motion to Strike Petitioner's Reply, pursuant to 56 Illinois Administrative Code 120.400 all parties having been duly advised on the premises issues this order;

FINDINGS:

Intervenors' Joint Motion to Strike

On April 1, 2022, Respondent filed an answer and a Motion to Dismiss. Petitioner requested time to respond to the Motion to Dismiss. In large part, the undersigned issued an order due to Petitioner's request to reply to Respondent's Motion to Dismiss. Petitioner requested an April 11, 2022 deadline for filing. On April 6, 2022, an order issued providing that any responses are due on or before April 11, 2022. Petitioner filed its reply on April 12, 2022 at

9:06 a.m. Petitioner filed the reply after the deadline provided by the undersigned. All replies from other parties and intervenors were timely filed on April 11, 2022.

Intervenors filed a Joint Motion to Strike Petitioner's reply based upon timeliness.

56 Ill Adm. Code 120.130 (a) provides, in pertinent part:

When the Act or this Part requires the filing of a motion, brief, exception or other paper in any proceeding, the document must be received by the Department or the officer or agent designated to receive that matter before the official closing time of the receiving office on the last day of the time limit, if any, for the filing or extension of time that may have been granted. Filings received after 5:00 p.m. will be considered filed on the following business day.

In this instance, Petitioner filed on April 12, 2022 as opposed to April 11, 2022 before 5:00 p.m. 56 Ill. Adm. Code 120.130 (b) provides for extensions of time to file documents. No such extension request was received.

Petitioner's written response to Respondent's Motion to Dismiss is found untimely under 56 Ill Adm. Code 120.130 (a). Petitioner's reply to the Motion to Dismiss is stricken. However, this matter was set down for oral argument on Respondent's Motion, Petitioner was provided the ability to orally respond to the Motion.

Respondent's Motion to Dismiss

Respondent moves to dismiss based upon its interpretation of the 2019 amendment to Section 9 of the Act arguing that Petitioner's hearing request is untimely. The Prevailing Wage amendment at issue in Section 9 of the Act has not heretofore been addressed or ruled upon in any Section 9 administrative hearing. After consideration of all written motions and oral argument, it is found that Respondent's Motion is defective in that Respondent adds words to the statute to gain its preferential interpretation.

Section 9 of the Act provides as follows:

To effectuate the purpose and policy of this Act the Department of Labor shall, during the month of June of each calendar year, investigate and ascertain the prevailing rate of wages for each county in the State and shall publish the prevailing wage schedule ascertained on its official website no later than July 15 of each year. If the prevailing rate of wages is based on a collective bargaining agreement, any increases directly ascertainable from such collective bargaining agreement shall also be published on the website.

Further, Section 9 also provides:

At any time within 30 days after the Department of Labor has published on its official web site a prevailing wage schedule, any person affected thereby may object in writing to the determination or such part thereof as they may deem objectionable by filing a written notice with the Department of Labor stating the specified grounds of the objection.

820 ILCS 130/9.

Respondent argues that the portion of the statute which provides "If the prevailing rate of wages is based on a collective bargaining agreement, any increases directly ascertainable from such collective bargaining agreement shall also be published on the website" to mean the Department may publish changes in rates in 'real time' as the rates become effective in a collective bargaining agreement throughout the year rather than once per year on July 15. Respondent pleads where this occurs the rate "must be amended and published by the Department to reflect the increase." *Respondent Motion to Dismiss, Para. 4*. However, Respondent further argues that the 30-day mechanism to request a hearing under Sections 4 and 9 of the Act only applies where the rate is changed in a given month's posting but does not apply where the Department is merely republishing a rate previously posted.

Respondent's Motion to Dismiss pleads that statutory construction is narrow in that courts are to interpret statutes to give effect to the intent of the legislature. *Respondent Motion to Dismiss, Paragraph 12*. This statement by the Respondent, is indeed accurate and the undersigned agrees, however, the undersigned finds that Respondent is not narrowly interpreting the statute, but rather is expanding the meaning of the statute and rendering a portion of it meaningless.

"The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. When concerning statutory construction, the reviewing court should give the interpretation of the agency charged with the statute's administration "substantial weight and deference." *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 387 n. 9, 925 N.E.2d 1131, 339 Ill. Dec. 10 (2010). This is in recognition of the agency's role as an informed source of the legislature's intent, in addition to the agency's expertise and experience. Ultimately, the administrative agency's interpretation is not binding, and this court may reject it if it is unreasonable or erroneous. *Shields v. Judges' Retirement System of Illinois*, 204 Ill. 2d 488, 492, 791 N.E.2d 516, 274 Ill. Dec. 424 (2003).

Senno v. Ill. Dept of Healthcare & Family Services, 398 Ill. Dec. 711, 44 N.E.3d 1123 (2015).

The Act provides Respondent the authority to ascertain rates in June of each year. The 2019 amendment to the Act provides the basis of a rate to emanate from and be based upon a collective bargaining agreement. The Respondent is then charged with publishing the ascertained rates on or before July 15 of each year. Where a collective bargaining agreement provides for increases between July 15 and June 30 those increases are still able to be published on July 15 to reflect the rate that will be in effect in the future. Such increases provided for union members throughout the year are contained within collective bargaining agreements and are ascertainable in June and able to be published once per year on or before July 15.

Where the collective bargaining agreement is the basis for a rate, Respondent represents that the collective bargaining agreement, may not provide the allocations in that agreement as of July 15, sometimes the allocations are made outside of the Respondent's ascertainment period of June and publication date of July 15. Respondent indicates that rates for benefits, health and welfare, pension vacation, training and other insurance rates are continuously supplemented by the unions whose agreement has been found to be

the basis of the prevailing wage rate in a given County and classification. The Department then publishes the benefit changes in 'real time' monthly by posting rate changes throughout the year rather than a singular July 15 publication date.

The Act provides specifically as follows:

To effectuate the purpose and policy of this Act the Department of Labor shall, during the month of June of each calendar year, investigate and ascertain *the* [emphasis added] prevailing rate of wages for each county in the State and shall publish *the* [emphasis added] prevailing wage schedule ascertained on its official website no later than July 15 of each year.

820 ILCS 115/9.

It is found that, the 2019 amendment allows the Department the ability to consider collective bargaining agreement wage rates when setting the prevailing wage. The 2019 amendment and the Act do not provide the Department with statutory authority to continuously publish rates throughout the year in 'real time' based on supplemental information provided to Respondent. The Act provides respondent with the authority under Section 9 to publish 'the' prevailing rate of wages not 'a' prevailing rate of wages. The use of the word 'the' is interpreted to mean there is one publication not monthly publications reflecting changes made outside of the relevant timeframe. Without these legislative provisions and using a narrow interpretation, the undersigned finds that Respondent maintains authority to publish rates no later than July 15 once per year and can reflect future rates in the collective bargaining agreement so long as the publication occurs on July 15. It is further found that the Respondent lacks statutory authority to publish rates other than those ascertained in its survey as of June of each year to be published on or before July 15 of each year. Even if Respondent has a lack of people power to do so. The Act does not address how or what is to be ascertained or what questions are to be posed in Respondent's annual survey. Even where the undersigned provides deference to the enforcing agency' interpretation it is found that Respondent's interpretation renders the dates provided in the Act meaningless.

Using narrow statutory construction and providing deference to the enforcing agency's interpretation, the undersigned adopts this ruling, it is indeed found that Petitioner's request for hearing is untimely. Respondent is vested only with statutory authority to publish rates annually on or before July 15, therefore, Petitioners have 30 days by statute to request a rate/classification hearing. Petitioner's request for hearing was filed in January in response to the Department's publication made January 6, 2022. It is acknowledged that Petitioner's did file within 30 days of that publication. However, Respondent lacks proper statutory authority to have made that publication, Thus, the undersigned lacks jurisdiction to hear this matter and the matter is dismissed.

Respondent's Motion to Dismiss is granted because the Section 9 hearing request made by Petitioner's was not filed within 30 days of the only date the Department is granted authority to publish those rates which is on July 15 of each year, not on the basis argued and presented by the Department.

IT IS HEREBY ORDERED:

1. **Respondent's Motion to Dismiss** is **granted**. **2022-H-RP01-2337** is **dismissed** due to want of an **untimely** Section 4 and Section 9 hearing request having been filed by Petitioners.
2. The **Laborer's International Union of North America, Local 32's Petition for Subpoenas** is **stricken** based upon this ruling.

DATE: April 20, 2022

By: /s/ Claudia D. Manley

Claudia D. Manley
Chief Administrative Law Judge
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NOTE: Any party may obtain a review of the granting of the motion by filing a request with the Director stating the grounds for review and, immediately upon filing, shall serve a copy of the request on the other parties. Unless the request for review is filed within 15 days from the date of the order of dismissal or granting of summary judgment, the decision of the ALJ shall become final. 56 Ill. Adm. Code 120.301 (d) and (i).

This Order is a final administrative decision within the provisions and meaning of the Administrative Review Law and is also subject to judicial review in accordance with the provisions of 735 ILCS 5/3-101 et seq. Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision or as provided in 735 ILCS 5/3-103.

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 Blanca Rodriguez, a non-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 Order in Case No. 2022-H-RP01-2337 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. I mail with postage prepaid at 100 W. Randolph Street, Chicago, Illinois on the 21st day of April, 2022 prior to 4:30 p.m.

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