

## Pacific Northwest Regional Council of Carpenters



*Affiliated with*  
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Labor & Industries  
James Christensen  
Industrial Statistician and Prevailed Wage Program Manager  
Tumwater, WA

Subject: Determination of the appropriate Prevailed Wage for construction of a multi-story, supported scaffold for use by multiple trades

Dear Mr. Christensen:

This letter seeks a Determination of the appropriate Prevailed Wage for constructing a multi-story scaffold for the application of exterior insulation and siding<sup>1</sup> at Mercer Hall on the University of Washington in 2013. PetroChem Insulation Inc. (hereafter PetroChem) filed Affidavits<sup>2</sup> for the project which required the building of scaffolding seven stories<sup>3</sup> high. These filings confirm PetroChem's understanding that the scaffolding work performed at U.W. Mercer Hall fell within the Prevailed Wage Law. The Pacific Northwest Regional Council of Carpenters (hereinafter Carpenters) supplied these the PetroChem affidavits in its Prevailed Wage Complaint<sup>4</sup> filed on September 4, 2013.

The complaint alleged that PetroChem should have paid Carpenter wages rather than laborers wages as the prevailed wage. The difference between what PetroChem paid its scaffold builders and what PetroChem should have been paid its scaffold workers is approximately \$150,000. This amount reflects the difference between the average journeyman laborer rate of \$40 and the average journeyman carpenter rate of \$48 per hour times the number of journeyman hours worked erecting and dismantling scaffold 14,147 plus the difference between the laborer apprentice rate of \$28 and the carpenter journeyman rate of \$48 times the number of apprentice hours worked. The Department rejected the complaint twice as insufficient.

The initial rejection came because the complaint form, a fillable PDF, when printed and delivered did not show the name of the company in the violator box. After the initial rejection and a telephone discussion

<sup>1</sup> North Shore performed the exterior insulation and siding work. See LNI Approved Affidavit #477506. See also, Attachments A & R.

<sup>2</sup> See LNI Approved Affidavit #458606 showing 13,829.50 JM hours and 1,879 APP hours [Affidavit Details](#); LNI Approved Affidavit #406621 showing 317.50 JM hours [Affidavit Details](#); LNI Approved Affidavit #376757 showing 16.00 hours [Affidavit Details](#) See also, Attachment B, Carpenters' September 2013 Prevailed Wage Complaint.

<sup>3</sup> See Attachments C & R; see also, <http://opb.washington.edu/sites/default/files/opb/Architecture/ULAC%202011-3-10%20Mercer%20Hall%20Replacement%20-%20Community%20Roots.pdf>

<sup>4</sup> See Attachment B.

## Request for Determination on Petrochem complaint

with Frank Fazekas, the assigned prevailed wage agent, the Carpenters resubmitted the complaint<sup>5</sup> on November 19, 2013.

In addition, the Carpenters met<sup>6</sup> with Mr. Fazekas, his Supervisor, you, and Assistant Director Elizabeth Smith in March. Based on the March meeting, the Carpenters provided additional evidence<sup>7</sup> showing that PetroChem built a multi-story, supported scaffold for use by insulators and siders. On March 28, 2014, the Carpenters submitted supplemental evidence explaining that the only way Petrochem could have constructed the multi-story, supported scaffold involved the use of carpenter tools<sup>8</sup>.

The evidence presented by the Carpenters conformed to the Industrial Statistician's 2012 Determination<sup>9</sup> that directed a look at the tools used in the construction of the scaffolding when deciding between the application of the carpenter and the laborer prevailed wage scopes of work. One witness<sup>10</sup> identified the scaffolding constructed at the site as manufactured by At Pac. Four other expert witnesses reviewed photographs taken by carpenter representatives. Based on their experience in constructing scaffolding, all four identified several carpenter tools<sup>11</sup> that would have been required to erect the scaffolding they observed in the photographs. In addition, the carpenters provided a training video<sup>12</sup> from At Pac that showed how the supported scaffold used needed to be constructed. Finally, the carpenters provided references to Washington State DOSH regulations<sup>13</sup> that impose very specific safety requirements on *multi-story supported scaffolding* construction. These requirements included: constructing a level surface upon which the scaffolding could sit<sup>14</sup>, adding toe boards<sup>15</sup> to prevent tools and materials from falling on to workers, and tying or bracing<sup>16</sup> the scaffold at regular height and length intervals to the building structure.

The second agency rejection came on July 1, 2014. The Department's own case file indicates that the prevailed wage agent assigned the complaint concluded that the scaffold at the UW could be erected

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<sup>5</sup> See Attachment D

<sup>6</sup> The Carpenters requested the meeting to clarify whether the agency interpretation of the language "tools used to perform the work" referred to the work of constructing the scaffold or the work performed from the scaffold itself. Prior to the telephone conversation with Mr. Fazekas, the carpenters understood the language to refer to the work performed from the scaffold itself and believed that the evidence provided in both the September and November filings showed that insulation and siding work had been performed from the scaffolding and such work would be performed using carpenter tools.

<sup>7</sup> See Attachment E; see also Attachment J from the LNI website which depicts many types of scaffolds and was provided with the PetroChem complaint.

<sup>8</sup> One witness identified the scaffolding constructed at the site as manufactured by At Pac. Four other expert witnesses reviewed photographs taken by carpenter representatives. Based on their experience in constructing scaffolding, all four identified several carpenter tools would have been required to erect the scaffolding they observed in the photographs. In addition, the carpenters provided a training video from At Pac that showed how the supported scaffold used needed to be erected. Finally, the carpenters provided references to Washington State DOSH regulations that impose very specific safety requirements on multi-story supported scaffolding construction. These requirements included: tying such scaffold to the building structure at 20 foot height intervals, adding toe rails to prevent tools and materials from falling on to workers, and constructing a level surface upon which the scaffolding could sit.

<sup>9</sup> See LNI Determination; see also, attachment F.

<sup>10</sup> See Attachment E; see also, text referenced by footnote 45 below

<sup>11</sup> See Attachment E; see also, text referenced by footnote 46 below

<sup>12</sup> See Attachment E; see also, text referenced by footnote 45 below

<sup>13</sup> See generally WAC 296-874

<sup>14</sup> WAC 296-874-4006

<sup>15</sup> WAC 296-874-20070

<sup>16</sup> WAC 296-874-40004

## Request for Determination on Petrochem complaint

using a proprietary peen hammer<sup>17</sup> supplied by the manufacturer, Safway. Because this conclusion seemed at odds with the evidence presented<sup>18</sup> and the closing letter did not articulate any appeal rights<sup>19</sup>, the Carpenters requested a meeting with the Department to learn the basis of the agent's conclusion and to decide upon its next step<sup>20</sup>. Both an initial and a follow-up meeting were held with the Department. Our decision to request this Determination came after the second meeting<sup>21</sup> held October 21, 2014.

In the October 21, 2014 meeting, the Department maintained that the agent did not use the "tool" analysis<sup>22</sup> established by the 2012 Determination. Instead, the agency said that the agent applied a broader analysis<sup>23</sup> and considered several factors<sup>24</sup> besides tools. The analysis includes the purpose, methods, and materials. Both you and the Assistant Director agreed with the broader analysis approach and expressed the agency desire to retreat from the limited analysis of the 2012 Determination that concentrated only on the tools used to construct the scaffold. Any retreat must consider not only the specific language of the carpenter scope, but also the language of all the scopes that mention scaffolding to ensure that any retreat remains measured and consistent with long standing practice of the construction industry.

The carpenters agree that the 2012 Determination needs clarification. It suffers two serious errors when distinguishing between carpenters and laborers. The Determination failed to read the scopes together as a single public policy and acknowledging the legal principle of construction that different words cannot mean the same thing. Accordingly, the Industrial Statistician ignored the language differences between the various scopes that actually mention scaffolding;<sup>25</sup> i.e. the two that use the verb build and three that use the verb erect. The second error was its failure to consider industry practice as evidenced by the Building Trades Plan.

The scopes of work, like all adopted laws and regulations, must be read in total<sup>26</sup> rather than singling out a phrase that mentions scaffolding. Only five scopes<sup>27</sup> of work mention scaffolds specifically. These are:

<sup>17</sup> The Carpenters filed a FOIA request for the agency's complaint file. See Attachment G which includes two pages from the case file and a Carpenters' Table of Contents of the CD provided in the FOIA response.

<sup>18</sup> See Attachment G which shows Frank Fazekas entered into the agency electronic file called ESCH on 4/22/14 the following: "The site shows a special Safway Pry Bar hammer and wrench as tools needed to build and tear down scaffold." On 5/5/14 another entry by Russell Hauss entitled "Supervisor Review" said: "As per your April notes appears the Issues of Carpenters proprietary use of tools... and the ER did not use improper classification." Finally, Mr. Fazekas' June 6, 2014 entry included the following: "...video rec'd from Int Prty as evidence of scaffold erection showing carpenter hammer used in Canada warehouse. System erected not a Safway system. INT party also submitted Safway systems scaffold erection manual which requires a special hammer as part of system to erect Safway scaffold.... Closing case unsubstantiated."

<sup>19</sup> The APA requires that all orders closing a contested case clearly state the reasoning behind the decision and appeal rights. See RCW 34.05.416

<sup>20</sup> See Attachment H which contains the Carpenters' request for a meeting

<sup>21</sup> The Department provided a scribe to record the meeting. See notes provided by the agency and included in Attachment I

<sup>22</sup> See Attachment F.

<sup>23</sup> See Attachment I at pages 1-2.

<sup>24</sup> See Attachment I at page 2.

<sup>25</sup> See Attachment Q which contains all five scopes that actually make reference to scaffolding.

<sup>26</sup> See Washington State Republican Party v. State Public Disclosure Commission 141 Wn. 2d 245, 280-281 (2000); See also, State v. Krall 125 Wn. 2d 146, 148 (1994)

<sup>27</sup> See Attachment Q which contains all five scopes that actually make reference to scaffolding

Request for Determination on Petrochem complaint

the carpenter<sup>28</sup> scope, the mason tender<sup>29</sup> scope, the painter<sup>30</sup> scope, the drywall finisher<sup>31</sup> scope, and the laborer<sup>32</sup> scope.

As you well know the Prevailed Wage scopes of Work were adopted by Emergency Rule in 1999. This occurred after the Department agreed<sup>33</sup> with a legal challenge arguing that the scopes could only be enforced if adopted as Washington Administrative Code through the APA process. Later, the agency adopted<sup>34</sup> the emergency rule whole cloth in 2000. Each WAC scope constitutes a summary of the tasks and processes rather than an exhaustive statement of all possible tasks and processes.

The carpenter scope contained in WAC 296-127-01310 reads as follows:

.... *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 ....

The use of the word build is also used in the Hod carriers, mason tenders, and mortarmen scope contained in WAC 296-127-10332 which reads as follows:

... hod carriers, mason tenders and mortarmen assist bricklayers and masons

The work includes, but is not limited to:

- o *Building of scaffolds* ...

The only two other scopes of work which mention scaffolding use the word erect instead of build. Specifically, the painters scope contained in WAC 296-127-01356 reads as follows:

... *Erecting of scaffolding* ...

Finally, the laborer scope of work contained in WAC 296-127-01344 reads as follows:

... *laborers perform a variety of tasks such as:*

.... *Erect scaffolding*, shoring and braces.

When read together, the regulations which use both erect and build mean clearly to distinguish between laborers and carpenters. Words that are not terms of art and that are not statutorily defined

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<sup>28</sup> WAC 296-127-01310

<sup>29</sup> WAC 296-127-01332

<sup>30</sup> WAC 296-127-01356

<sup>31</sup> WAC 296-127-01318

<sup>32</sup> WAC 296-127-01344

<sup>33</sup> See WSR 00-15-077 and Attachment K

<sup>34</sup> See WSR 00-15-077 and Attachment K

## Request for Determination on Petrochem complaint

are customarily given their ordinary meanings, often derived from the dictionary<sup>35</sup>. The dictionary defines the verb build<sup>36</sup> as follows:

- : to make (something) by putting together parts or materials
- : to develop or form (something) gradually
- : to increase the amount of (something)

The same dictionary defines the verb erect<sup>37</sup> as follows:

- : to build (something) by putting together materials
- : to set or place (something) so that it stands up

Erect can mean either to build or to set. But, by using erect in one scope and build in another, the agency meant clearly to distinguish between build and erect. Accordingly, in the carpenter scope scaffold can be built, but in the laborer scope it can only be erected, set, or placed. This distinction fits because some types of scaffold which are built can stand alone while those erected cannot. Those that cannot require additional work that falls squarely within the carpenter scope<sup>38</sup>. The only other scope that allows building scaffold is the Mason Tender Scope<sup>39</sup> also uses the word build rather than erect.

This approach reflects not only the specific language of the WAC, but also the industry practice. In a union environment, this approach has been codified in the Building Trades Plan<sup>40</sup>. The Plan provides that carpenters and laborers can construct scaffolding, but also that scaffolding above two frames high can be constructed only by carpenters unless the scaffold will be used for masonry work alone. When masonry work alone is being performed from the scaffolding, the laborers can construct it. Below two frames high<sup>41</sup>, laborers can erect scaffold for multi-trade work from the scaffold.

This language distinction and Building Trades Plan Agreement reflect a full understanding of the carpenter scope of work. Besides, building scaffolds, the carpenter scope of work covers a wide array of work processes. Using carpenter hand tools and power tools, carpenters:

- Install ladders, handrails, walkways, platforms ...
- Prepare layout, using rule, framing square and calipers
- Assemble, cut and shape materials and fasten them together ...

<sup>35</sup> See Western Telegraph, Inc. v. City of Tacoma 140 Wn.2d 599, 609-610 (2000); See also, Ravenscroft V. Water Power Co. 136 Wn.2d 920, 922 and 924-925 (dictionary use fits with plain meaning and no ambiguity)

<sup>36</sup> Build - Definition and More from the Free Merriam-Webster Dictionary See also, Attachment L

<sup>37</sup> Erect - Definition and More from the Free Merriam-Webster Dictionary See also, Attachment M.

<sup>38</sup> See WAC 296-127-01310 Carpenters

<sup>39</sup> See WAC 296-127-01332 Hod carriers, mason tenders, and mortarmen

<sup>40</sup> See Attachment N The Plan for the Settlement of Jurisdictional Disputes (Revised - May 1, 2011)

<sup>41</sup> A frame is 8 feet high. Two frames will allow work to be performed up to 20 feet in height. This height coincides with the safety standards adopted by both OSHA and DOSH (Washington's Federally approved State Plan administered by LNI). Any scaffold constructed above 20 feet in height must be tied to a structure or braced in such a manner as to be self-standing. Although the safety standards do not specifically state 20 feet, they do require tying or bracing when the height is four or more times the width of the base of the scaffold. Today's system scaffold all have a common width of five feet. So, four times five yields the 20 foot height. An example of how the base can be extended beyond five feet arises when out riggers are added to increase the base width. Such approach can lead to the construction of a self-standing scaffold hundreds of feet high.

## Request for Determination on Petrochem complaint

- Verify trueness of structure with plumb bob and carpenter's level....

Scaffolding that must be constructed more than two frames requires work methods that fall squarely within the scope of the carpenters. This request asks that you look at the complexity of the work needed to make the scaffold safe for the workers and materials that will be on the completed scaffold.

Accordingly, when scaffolding requires: the installation of ladders, handrails, walkways, platforms; layout preparation; the assemblage and fastening of cut or shaped materials; verification of structure trueness; or the erection of framework to maintain the integrity of the scaffold the work falls squarely within the carpenter scope which specifically includes these work processes. Moreover, these processes can only be done using carpenter tools.

In its PetroChem complaint, Pacific Northwest Regional Council of Carpenters (PNRCC) provided LNI Prevalued Wage Agent Frank Fazekas the following relevant evidence.<sup>42</sup>

- Photographs<sup>43</sup> taken by PNRCC representative and identified as work being performed from the scaffold erected by PetroChem at the U.W. Mercer Hall. Several pictures show the scaffold type to be wedge-lock scaffold and others show PetroChem employees to be wearing carpenter tool bags while dismantling the scaffold. NOTE: This evidence was contained in both the September and November 2013 filings, but the LNI investigator stated in a March 2014 meeting that he could not ascertain from the pictures alone what specific tools were used in the erection and dismantling of the scaffold.
- Two expert witness statements<sup>44</sup> experienced in the scaffold erection industry corroborate the identity of the type of scaffold in the pictures taken at the U.W. Mercer Hall site as wedge-lock scaffold. NOTE: This evidence was provided in a supplemental packet sent to LNI in March 2014.
- A PNRCC representative who visited the PetroChem staging yard not only identifies the wedge-lock scaffold used by the company as **At Pac** scaffold, but also provides a Quick Link to an **At Pac** training video<sup>45</sup> describing how its scaffold should be erected. NOTE: This evidence was provided in a supplemental packet sent to LNI in March 2014.
- Four expert witness statements,<sup>46</sup> from two labor and two management representatives with no less than 46 years of experience in the erection of scaffolding that detail the carpenter tools necessary to erect and dismantle wedge-lock scaffolding. All four experts agree that the required tools include: a tool bag or belt, a level, at least two wrenches, a tape measure, and a hammer. NOTE: This evidence was provided in a supplemental packet sent to LNI in March 2014.

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<sup>42</sup> Washington Court Rules of Evidence 401 defines relevant evidence as evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. [Washington State Courts - Court Rules](#)

<sup>43</sup> Washington Court Rule of Evidence 409(5) states that photographs are admissible. [Washington State Courts - Court Rules](#)

<sup>44</sup> Washington Court Rule of Evidence 704 allows testimony in the form of an opinion even if it embraces an ultimate issue to be decided by the trier of fact. [Washington State Courts - Court Rules](#)

<sup>45</sup> Washington Court Rule of Evidence 1001 defines photographs to include video. [Washington State Courts - Court Rules](#)

<sup>46</sup> Washington Court Rule of Evidence 704 allows testimony in the form of an opinion even if it embraces an ultimate issue to be decided by the trier of fact. [Washington State Courts - Court Rules](#)

## Request for Determination on Petrochem complaint

- The **At Pac** Training video corroborates the statements of the four experts because it shows workers using all of the tools identified above. Each required tool coincides with a work process described specifically in the Carpenter Scope of Work<sup>47</sup>.
- LNI DOSH website detailing the safety requirements for a supported scaffold include: preventing tipping, properly supported, safe access and egress, and constructed and loaded properly.<sup>48</sup> These safety requirements cannot be met for complex, multi-story scaffolding without using the types of carpenter tools mentioned in the carpenter's prevailed wage scope of work mentioned above.<sup>49</sup>

The construction of the scaffolding by PetroChem involved not only the assembly of a wedge lock system, but also the construction of a mudsill base to which the system could be secured and leveled<sup>50</sup>, the addition of wood toe guards<sup>51</sup> to working platforms to ensure that materials did not fall on workers below, and the tying or bracing<sup>52</sup> of the scaffold to the building structure itself to make it a stable structure. Many scaffolds exist which do not require such work and materials.

The LNI website created by the Division of Occupational Safety and Health (DOSH) and provided by the Carpenters with the Petrochem complaint<sup>53</sup> contains a trove of information on scaffolding. In addition, the DOSH website defines<sup>54</sup> a scaffold as "a temporary elevated platform, including its supporting structure and anchorage points, used for supporting employees or materials." The Prevailed Wage Program acknowledged this definition in 2011. Assistant Director Steve McLain's Redetermination dated June 21, 2011 deciding the wage rate applicable to the erection of suspended scaffold for bridge painting quoted the DOSH definition<sup>55</sup>. The Safespan System Installation not only decided that the painter's wage was appropriate for construction of suspended scaffolding for a painting project, but also stated that the carpenter's wage would apply if the work involved multiple trades.

The DOSH regulation identifies two types of scaffolding<sup>56</sup> that it covers: suspended and supported. A **suspended scaffold**<sup>57</sup> is one or more platforms suspended from an overhead structure by ropes or other

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<sup>47</sup> See WAC 296-127-01310 Carpenters which mentions installing ladders, handrails, walkways, platforms ...; preparing layout, using rule, framing square and calipers; assembling, cutting, shaping materials and fasten them together with nails ...; verifying trueness of structure with plumb bob and carpenter's level...; and, erecting frame work for structures... NOTE: The 2014 63<sup>rd</sup> Annual Governor's Safety and Health Conference features a Carpenter JATC Instructor doing Scaffold Erection Safety Training. See 2014 GISHC Session Schedule See also, Attachment P which contains an abridged version of the training presentation. It was abridged to contain only those safety requirements that pertain to supported scaffolds and to delete safety training requirements.

<sup>48</sup> <http://www.lni.wa.gov/Safety/Rules/Chapter/874/WAC296-874.pdf>

<sup>49</sup> See WAC 296-127-01310 Carpenters. No agency filings affecting this section since 2003. (Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051, WSR 00-15-077, § 296-127-01310, filed 7/19/00, effective 7/19/00.)

<sup>50</sup> As required by safety standards. WAC 296-874-4006

<sup>51</sup> As seen in the photos provided. See Attachment E

<sup>52</sup> As required by safety standards. WAC 296-874-40004

<sup>53</sup> See WAC 296-874 Scaffolds. The Petrochem complaint of March 28, 2014 provided this reference.

<sup>54</sup> See WAC 296-874-100

<sup>55</sup> See Prevailed Wage Policies and Determinations #06212011 Safespan System Installation at page 2.

<http://www.lni.wa.gov/TradesLicensing/PrevWage/files/Policies/SafespanSystemInstallation.pdf>

<sup>56</sup> See WAC 296-874-100 This WAC mentions but excludes certain temporary elevated platforms covered by other DOSH regulations including: elevating work platforms and aerial lifts, go to elevating work platforms. WAC 296-24-875: crane or derrick suspended personnel platforms, go to WAC 296-24-23533; and personnel platforms supported by powered industrial trucks (PITs), go to chapter 296-863 WAC.

<sup>57</sup> See WAC 296-874-100

Request for Determination on Petrochem complaint

non-rigid means. A **supported scaffold**<sup>58</sup> is one or more platforms supported by rigid means such as outrigger beams, brackets, poles, legs, uprights, posts, or frames.

Because the Petrochem complaint does not involve suspension scaffolding, it will not be discussed in this request. Moreover, as mentioned above, the agency already has a Redetermination<sup>59</sup> posted to its website stating that carpenter's wage rate applies for the suspended scaffold if the work performed from the scaffold involves multiple trades.

The DOSH regulations remain essential to any decision on the prevailed wage applicable to the construction of scaffolding because they describe essential requirements to make the scaffolding safe for use by workers, their tools, and building materials. The first three pages of the scaffolding standard identify no less than 38 possible requirements for scaffolds. These include:

- Maintain structural integrity when intermixing scaffold components<sup>60</sup>
- Make sure platforms are properly planked or decked<sup>61</sup>
- Provide safe access to scaffolds<sup>62</sup>
- Protect employees from weather hazards<sup>63</sup>
- Provide falling object protection<sup>64</sup>
- Make sure guardrail systems meet these requirements<sup>65</sup>
- Make sure toe boards meet these requirements<sup>66</sup>

In addition, the scaffolding regulations identify no fewer than 21 possible requirements for supported scaffold. These include:

- Prevent supported scaffolds from tipping<sup>67</sup>
- Make sure supported scaffolds are properly supported<sup>68</sup>
- Meet these requirements when using fabricated frame scaffolds (tubular welded frame scaffolds)<sup>69</sup>
- Meet these requirements when using tube and coupler scaffolds<sup>70</sup>

The scaffold constructed at the U.W. Mercer Hall was a supported scaffold. Specifically, it was a wedge lock system. The width of the base of the scaffold was five feet wide. Its length was longer than five feet. The scaffold went six stories up. Any scaffold that has as its minimum base length five feet must be braced or tied at regular intervals of height<sup>71</sup> and length<sup>72</sup> to a permanent structure. Additional safety requirements for the Mercer Hall scaffolding mandated attaching the scaffold to a level base and adding

<sup>58</sup> See WAC 296-874-100

<sup>59</sup> <http://www.lni.wa.gov/TradesLicensing/PrevWage/files/Policies/SafespanSystemInstallation.pdf>; see also Attachment O.

<sup>60</sup> See WAC 296-874-20006

<sup>61</sup> See WAC 296-874-20008

<sup>62</sup> See WAC 296-874-20020

<sup>63</sup> WAC 296-874-20048

<sup>64</sup> WAC 296-874-20056.

<sup>65</sup> WAC 296-874-20066

<sup>66</sup> WAC 296-874-20070

<sup>67</sup> WAC 296-874-40004

<sup>68</sup> WAC 296-874-40006

<sup>69</sup> WAC 296-874-40018

<sup>70</sup> WAC 296-874-40040

<sup>71</sup> WAC 296-874-40004

<sup>72</sup> WAC 296-874-40004

Request for Determination on Petrochem complaint

toe rails to prevent tools or materials from falling on to workers below. All of these mandated requirements can be seen in the photographs that the carpenters provided.

A determination that acknowledges the fundamental difference between the work required to build scaffolding and the work required to erect scaffolding should not preclude laborers from either assisting carpenters on composite crews to build scaffolding above two stories high or erecting scaffolding that can be used up to two stories. The Helpful Tool<sup>73</sup> section of the DOSH website shows sixteen different illustrations<sup>74</sup> of scaffolding. These illustrations include no less than five that can be erected, set, and placed less than two stories in height including the following:

- R-5 Fabricated frame scaffold
- R-7 Horse scaffold
- R-9 Ladder jack scaffold
- R-10 Mobile scaffold
- R-15 Trestle ladder scaffold

As discussed above, fabricated frame scaffolding that has a minimum base of 5 feet can be erected up to four times in height without tying or bracing on a level surface<sup>75</sup> does not require tying and bracing. Horse, ladder jack and trestle ladder scaffolds all have height limitations at or below two stories. Also, mobile scaffolds cannot be more than two times the least base dimension. Still, much scaffolding for multiple trades below two frames high remains for laborers to erect and for individual trades.

The determination sought by this request complies with the plain language of the carpenter scope, remains consistent with the language of all the scopes that specifically mention scaffolding, matches construction practice within the industry, and aligns with required industry safety requirements.

Thank you in advance for your time and consideration. Based on our discussions over the telephone, I did not provide acknowledgement letters from contractors or a detailing of the hours performed by our signatory contractors over the past few years. Let me know if you need any additional information. My telephone numbers are: 253-945-8817 (office) and 206-406-8497 (cell). My e-mail is [apaja@nwcarpenters.org](mailto:apaja@nwcarpenters.org).

Sincerely,

Alan S. Paja  
Representative

Cc: Doug Tweedy, Evelyn Shapiro-O'Connor, Dan Shanley, Thomas Barrett, David Casteel, Billy Wallace Jr.

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<sup>73</sup> <http://www.lni.wa.gov/safety/rules/chapter/874/HelpfulTools/874-HelpfulTools02-07.pdf>

<sup>74</sup> See Attachment J

<sup>75</sup> The easiest to envision is scaffolding erected inside a building on an already leveled floor surface. Such scaffolding can be used to by multiple trades to install electrical, paint, etc.