



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Prevailing Wage
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August 23, 2011

Laurie A. Pinard, General Counsel
ICON Materials
P. O. Box 88050
Tukwila, WA 98138-2050

Re: WSDOT Contract #8051
SR 900, MP 11.03 to MP 11.55, Bronson Way N to Sunset Blvd N – Paving, F.A. No.
STPF-0900 (925), King County, Washington
Compensation for Special Shift Hours

Dear Ms. Pinard:

Thank you for your inquiry letter of August 18 and for your interest in prevailing wage compliance. In your letter, you explained your position that the prevailing wage overtime provisions derived from the Teamsters Master Labor Agreement (CBA) and associated with prevailing wage Truck Drivers wage rate should not apply to hours worked during a "Special Shift."

In discussing that position, you state that the referenced CBA contains provisions authorizing a Special Shift outside regular shift hours of 6:00 a.m. to 6:00 p.m. Monday through Friday, at the straight time rate, and further state your conclusion that because the CBA establishes those Special Shift rates, the overtime code used in connection with the prevailing wage rate "must either account for the Special Shift or be read not to apply to it." It is your further position that the overtime code published with applicable prevailing wage rate does not take into account the straight time nature of a Special Shift, and must be reconciled with the CBA from which the Code and the Special Shift are derived. You also cited additional points to support your position, all of which directly pertain to the relationship between the project contract and CBA.

I understand that resolution of this issue is critical for you because the WSDOT contract provisions for the above-referenced project require that work be performed outside the regular single shift hours, and that the Teamsters Union is objecting to your payment at the straight time rate for time worked from 8:00 p.m. or 9:00 p.m. on Sunday to 4:00 a.m. or 5:00 a.m. on Monday. It is the union's position that any time worked during this period must be paid at double the straight time rate of pay.

Pursuant to RCW 39.12.015, determinations of the prevailing rate of wage are made by the Industrial Statistician. As you know, surveys are conducted to obtain necessary data in setting

such rates, and where a particular CBA sets the majority wage determined to have prevailed, wage updates are based on that same CBA. Individual project agreements do not alter the survey results in which a particular CBA was determined to have prevailed. In this instance, an update to the overtime language in the prevailing CBA was picked up in the wage update. Appropriately, language in that CBA pertaining to Special Shifts was not included in the prevailing wage overtime code. The overtime code that is attached to the prevailing wage rate at issue here provides as follows:

Overtime Calculations are based on the hourly rate actually paid to the worker. On public works projects, the hourly rate must be not less than the prevailing rate of wage minus the hourly rate of the cost of fringe benefits actually provided for the worker.

ALL HOURS WORKED IN EXCESS OF EIGHT (8) HOURS PER DAY OR FORTY (40) HOURS PER WEEK SHALL BE PAID AT ONE AND ONE-HALF TIMES THE HOURLY RATE OF WAGE.

Work performed in excess of eight (8) hours of straight time per day, or ten (10) hours of straight time per day when four ten (10) hour shifts are established, or forty (40) hours of straight time per week, Monday through Friday, or outside the normal shift, and all work on Saturdays shall be paid at time and one-half the straight time rate. ***Hours worked over twelve hours (12) in a single shift and all work performed after 6:00 pm Saturday to 6:00 am Monday and Holidays shall be paid at double the straight time rate of pay.*** The Employer shall have the sole discretion to assign overtime work to employees. Primary consideration for overtime work shall be given to employees regularly assigned to the work to be performed on overtime situations. After an employee has worked eight (8) hours at an applicable overtime rate, all additional hours shall be at the applicable overtime rate until such time as the employee has had a break of eight (8) hours or more.

[Truck Drivers, King County (except Transit Mixer) 12/15/2010, overtime code 1 T, emphasis added.]

Note: The Transit Mixer Driver is overtime code 1 for King County projects bid 12/15/2010.

This overtime code would apply a double time rate to the time you described being worked from 8:00 p.m. or 9:00 p.m. on Sunday to 4:00 a.m. or 5:00 a.m. on Monday. Additional facts could add further requirements. However, it is the overtime code language associated to the applicable prevailing wage rate that is of concern regarding prevailing wage compliance.

Laura Herman previously provided to you two determinations, both dated March 11, 2011, from David J. Soma, the prior Industrial Statistician. Mr. Soma made it clear in those determinations that the Industrial Statistician is “not an arbiter of private contractual arrangements that may require conditions in addition to those provided in the state prevailing wage law.” I reiterate that stance here. The referenced project agreement and other terms of the applicable CBA that were not adopted as part of the overtime code associated with the applicable rate may exceed the requirements in chapter 39.12 RCW with respect to the applicable wage rate, but they cannot create a standard which is lower than what the law requires.

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Whether and how you are able to reconcile what you have identified as an apparent contradiction between the project agreement and the CBA has no bearing upon the prevailing wage requirement that ICON must, pursuant to the published overtime code, pay at least the double time rate for all work performed after 6:00 pm Saturday to 6:00 am Monday.

I appreciate the opportunity to explain how chapter 39.12 RCW applies to your situation. Please remember that any private contractual requirements that may exceed prevailing wage requirements are not interpreted in this review.

If I can be of further assistance, please let me know.

Regards,



L. Ann Selover
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