

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF LABOR AND INDUSTRIES

IN THE MATTER OF

TESTCOMM LLC

APPELLANT

PREVAILING WAGE

OAH CASE NO. 2006-LI-0186

PROPOSED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND DECISION

Pursuant to due and proper notice, an administrative hearing was held in the above-entitled matter before Senior Administrative Law Judge David G. Hansen, in Spokane, Washington on March 22 and 23, 2007 and June 14, 2007. Testcomm LLC, Testcomm herein, appeared and was represented by Christine M. Weaver, Attorney at Law. The State of Washington, Department of Labor and Industries, Department herein, appeared and was represented by Anastasia Sandstrom, Assistant Attorney General. Sheet Metal Workers, Local Union 66, Interveners herein, appeared and was represented by Eric Martinson, business representative. The parties submitted post-hearing briefs and the record closed on August 15, 2007. The undersigned, having sworn the witnesses, heard the testimony and considered the admitted exhibits, briefs, and arguments of the parties, hereby enters the following:

**STATEMENT OF THE CASE**

By correspondence dated May 9, 2006, the Department's Prevailing Wage Program Manager, David J. Soma, advised Testcomm that the Department had determined that the testing, adjusting and balancing air-handling equipment and duct work in connection with a public works project falls within the Sheet Metal Scope of Work. Exhibit D-5, page 1. On May 24, 2006, Testcomm requested that the Department reconsider its May 9, 2006, determination that the testing, adjusting and balancing of air-handling equipment and duct work in connection with a public works project falls within the Sheet Metal Scope of Work. Exhibit D-4. On July 17, 2006, the Department affirmed its May 9, 2006, determination that the work in question falls within the Sheet Metal Scope of Work. Exhibit D-4. On September 11, 2006, the Department advised Testcomm of their right to file a petition for arbitration. Exhibit D-2. Testcomm filed a timely petition for arbitration dated September 18, 2006, and was received by the Department on September 21, 2006. Exhibit D-1.

PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION - 1-

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## **ISSUE**

Does the testing, adjusting, and balancing of air-handling equipment and duct work on public works projects come within the Sheet Metal Scope of Work and therefore subject to the prevailing wage requirements?

## **FINDINGS OF FACT**

### **I.**

Testcomm is a Spokane contractor that performs the testing, adjusting, and balancing, TAB herein, of the air-handling equipment in heating, ventilating, and air conditioning systems, HVAC herein. At or near the completion of a project and once the mechanical contractor has completed the initial installation of the HVAC system, Testcomm, an independent entity from the mechanical contractor, comes onto the project to insure that the system was installed as designed. Testcomm employees test, adjust, and balance the HVAC system in order to ensure that it is working to specification.

### **II.**

In performing this work, Testcomm employees operate the system, and make adjustments to such things as the dampers and fan speed. The employees use instruments and hand tools in the process. These adjustments are made either electronically or mechanically depending on the system. Fan speed is sometimes adjusted by manually changing a sheave. The tools and instruments used include ladders, wrenches and drills, as well as devices that measure air velocity, amp meters, flow hoods, and laptop computers.

### **III.**

If a Testcomm employee finds a deficiency in an HVAC system during the TAB process, that deficiency is reported to the proper authority. The deficiency is not repaired by the Testcomm employees. Once the deficiencies are corrected, Testcomm performs more TAB work on the HVAC system to verify that the mechanical contractor has corrected the deficiencies. Testcomm employees then finalize the system by setting and locking the controls.

### **IV.**

Generally, a tenant of a project does not take possession of the space until after Testcomm's work has been completed. It is not unusual however for a tenant of a public works project to occupy the building prior to the issuance of a Certificate of Occupancy by

the responsible governmental agency and before all the TAB work has been completed. In those situations, Testcomm employees are performing some TAB work after the space has been occupied by the tenants.

V.

Testcomm employees do not install equipment or build anything on projects. Testcomm is professionally certified by a national association which certifies TAB contractors. Testcomm contends that the majority of work they perform is unlike that of a sheet metal worker, namely, they perform tests with computers, and make complex calculations. The final product they produce is a report to others on how the HVAC system is performing. In addition to the TAB work, Testcomm employees test water systems and perform sound and vibration tests. TAB work is not subject to the prevailing wage requirements of the federal prevailing wage law.

**CONCLUSIONS OF LAW**

I.

The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this action for the Department of Labor and Industries, pursuant to chapter 39.12 RCW, and chapter 296-127 WAC. In the state of Washington it is required that all "laborers, workers, or mechanics, upon all public works..." be paid "the prevailing rate of wage for an hour's work in the same trade or occupation..." RCW 39.12.020.

II.

Pursuant to the Department's rule making authority, the Department is required to "issue scope of work descriptions for each trade and occupation recognized as being involved in public work." WAC 296-127-013(1). Sources for determining the scope of work descriptions are state apprenticeship and training council standards for apprenticeship; collective bargaining agreements; dictionaries of occupational titles; experts from organized labor, licenced contractors, and contractor's associations; and recognized labor and management industry practices. WAC 296-127-013(2). The prevailing wage rates are to be "determined by the scopes of work performed by those workers, and not by their specific job titles:" WAC 296-127-013(3). To that end the Department has issued a scope of work description for sheet metal workers.

**III.**

WAC 296-127-01372 states, in part, as follows: "For the purpose of the Washington state public works law, chapter 39.12 RCW, sheet metal workers perform the following work:..." (3) The testing and balancing of air-handling equipment and duct work.

**IV.**

In the case at hand, there is no issue as to whether the work in question is being performed is on a public works project. The sole issue is whether the TAB work described herein falls within the sheet metal scope of work and therefore subject to the payment of prevailing wages on public works projects.

**V.**

Applying the above to the case at hand and having carefully considered the matter, it is the undersigned's conclusion that the work performed by Testcomm in the testing, adjusting, and balancing of air-handling equipment and duct work is clearly within the sheet metal workers scope of work. The contentions of Testcomm are not discounted. However, the undersigned's first source of authority in this matter is the regulation. That regulation, WAC 296-127-01372(3), explicitly states that the testing and balancing of HVAC systems is within the scope of work for sheet metal workers. The regulation makes no distinctions or exceptions. The fact that Testcomm's employees use computers and perform complex calculations in the performance of their work is not material. In their work, the employees make adjustments, either mechanically with tools or electronically, to the HVAC systems they are balancing. The fact that the work performed by Testcomm employees is not what one would "traditionally" consider that of "laborers, workers, or mechanics" is not relevant either. The regulation is clear and unequivocal. The TAB work is not purely technical or professional. Additionally, it is not material that some of Testcomm's work is performed after a tenant takes occupancy of the space. Testcomm's work is part of the entire public works project irrespective of whether a tenant is in the space or not. The product produced by Testcomm, a report to others, does not remove the work from the scope in question. The TAB work is an integral and necessary component of the construction and completion of a public works project. Accordingly, the Department's industrial statisticians correctly determined the testing, adjusting, and balancing of HVAC systems to be within the scope of work for sheet metal workers.

**PROPOSED DECISION**

The testing, adjusting, and balancing of air-handling equipment and duct work on public works projects comes within the Sheet Metal Scope of Work and therefore subject to the prevailing wage laws of the State of Washington.

**PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION - 4-**

Dated at Spokane, Washington, this 3<sup>rd</sup> day of December, 2007.



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David G. Hansen  
Senior Administrative Law Judge  
Office of Administrative Hearings  
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Spokane WA 99201  
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#### **APPEAL RIGHTS**

A party aggrieved by the proposed decision may appeal to the Director of the Department within thirty (30) days of the date of this proposed decision. Any such appeal shall be filed with the Director and served on the parties of record.

**CERTIFICATE OF MAILING**

I, Patty McNeilly, hereby certify that the Proposed Decision and Order was sent by certified by U.S. mail on the 3<sup>rd</sup> day of December, 2007 to the following parties:

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