



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
PO Box 44000 • Olympia, Washington 98504-4000

April 30, 2008

Aaron A. Roblan
Davis, Wright and Tremaine
Suite 800
505 Montgomery Street
San Francisco, California 94111-6533

RE: Request for Redetermination for work done at Bethlehem Construction, Inc. Pre-Cast Concrete Manufacturing Plant (BCI), Cashmere, Washington
Contract: C755 Central Link Light Rail Project
Contract Number: RTA/LR 88-04

Dear Mr. Roblan:

This letter responds to your request for re-determination of the Industrial Statistician's determination relating to the appropriate classification and prevailing wage rate of pay for work performed on the above mentioned contract at Bethlehem Construction, Inc.'s (BCI) Pre-Cast Concrete Manufacturing Plant in Cashmere, Washington.

In response to your request I conducted a broad review of the issues and events surrounding this case. My review in this case included but was not limited to:

- Your correspondence.
- The determination made by David Soma on January 5, 2007.
- All the supporting documentation provided by interested parties.
- *Lockheed Shipbuilding Co. v. Department of Labor and Industries*, which provides guidance regarding the application of the prevailing wage law in cases relating to products built off of the primary construction site.

In addition to this review, I toured Bethlehem's plant on July 27, 2007, and my staff conducted interviews with some of the workers on the project.

I carried out an investigation of the communications between your client BCI, and Prevailing Wage Program staff during the fall of 2005. These investigations lead me to two conclusions. The first is that the proper wage classifications for this type of work are the construction classifications of Ironworker, Carpenter and Laborer. The second is that, because BCI reasonably relied upon statements from Labor and Industries' staff after an initial investigation in determining which prevailing wage rate to use on this project, based on the principles of equitable estoppel, the department will not take compliance action against BCI in this matter. The department will not so limit itself against other companies.



Estoppel is applied to this circumstance because BCI reasonably relied on a department statement that the Fabricated Pre-Cast Concrete rate of pay was the appropriate rate of pay. The department also told BCI that it would contact them if that was not correct. Because there is no information indicating that this follow up contact occurred, BCI was left to believe that they were paying the appropriate prevailing wage rate.

The prevailing wage requirement itself is not at issue in this case. The point of disagreement is whether the work done was Fabricated Pre-Cast Concrete work or construction work. As a result, my analysis of this case will focus on the nature of the work performed.

Fabricated Pre-Cast Concrete work is work that is generally repetitive in nature and performed by workers in a manufacturing setting who do not possess the specialized skills of construction workers. When I apply this principle to the work in question, I conclude that it is work most similar to that done by skilled construction tradespersons and should be paid at the construction worker rate.

My analysis in this case focuses on whether the type of work performed is more similar in nature to prefabrication work or construction work. RCW 39.12.010(1) defines the "prevailing rate of wage" as: "the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workmen, laborers, or mechanics, in the same trade or occupation." The courts clarified this point in *Lockheed Shipbuilding Co. v. Department of Labor and Industries*. In this case the Washington State Court of Appeals ruled that the department was correct in its conclusion that pipefitter construction rate, rather than boilermaker shipyard rate, was applicable prevailing wage rate for welding work performed on public works project based on "type" of work performed, rather than the fact that it was performed at a shipyard by shipyard workers.

In this case the principles of Lockheed apply. We must consider whether the work on the C755 project was more similar to work performed in the trade or occupation covered by the relevant construction classifications or the Fabricated Pre-Cast Concrete classification. Photographs taken on the worksite by Labor and Industries staff, and drawings provided by other interested parties were helpful in this analysis. Key factors in this decision are as follows:

- The concrete segments are sophisticated in their engineering and given their ultimate use are complex and relatively unique. While some segments are alike it is clear that the structure varies from one to the next as required by the engineering of the transit spans. For this reason the skills required to construct these products were neither simple nor repetitive, and therefore do not qualify for the Fabricated Pre-Cast Concrete rate.

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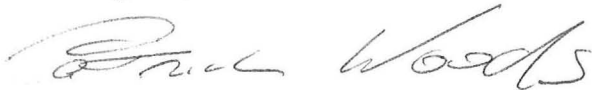
- The photographs and drawings provided show that the infrastructure of the segments was sophisticated and therefore required sophisticated skills for their construction. In these photographs we see that the work was not simple but rather required a significant understanding of the way the component parts of each segment (rebar, etc.) would interrelate with the other components of each segment (concrete, etc.) and with the project as a whole.
- The Fabricated Pre-Cast Concrete classification covers work not requiring specialized skills of construction workers. Because the work on the Sound Transit project required knowledge above and beyond simple and repetitive tasks associated with prefabrication, it is clear that the Fabricated Pre-Cast Concrete rate is not appropriate.

Please do not interpret this redetermination to mean that you may no longer use the Fabricated Pre-Cast Concrete rate for other types of work on Prevailing Wage projects where appropriate. If you have any questions about what constitutes the appropriate use of this or any other scope of work please contact the Industrial Statistician, David Soma at 360-902-5330.

The department intends to enforce this redetermination prospectively against BCI, for that reason, if any party in interest disputes this redetermination, you must file a petition for arbitration of the redetermination pursuant to WAC 296-127-060 and WAC 296-127-061 within 30 days to the director of Labor and Industries at the address listed above.

If you have any questions about this determination, please feel free to contact me at 360-902-6348.

Best Regards,



Patrick Woods
Assistant Director

Cc: Michael J. Addleman, President, Bethlehem Construction, Inc.
Robynne Thaxton Parkinson, Groff, Murphy, Trachtenberg & Everard
Richard H. Robblee, Robblee, Brennan & Detwiler
Steven Pendergrass, Ironworkers Local Union 86
Amanda Goss, Assistant Attorney General