



STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES

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November 2, 2018

Armorclad Floors
Judd H. Lees, Attorney at Law
Sebris Busto James
14205 S.E. 36th St Suite 325
Bellevue, WA 98006

Assignment No. 15-117-R
UBI No. 601764878 Account number 928,939-00

Re: Request for Redetermination of the December 21, 2016 determination by the Industrial Statistician for the Tukwila Pool Project.

Dear Mr. Lees:

Thank you for your January 19, 2017 reconsideration request of the December 21, 2016 determination by the Industrial Statistician Jim Christensen. Mr. Christensen determined the correct rate of wage for the workers on the Tukwila Pool project was Laborers for the preparatory work and Cement Mason for the “floor painting work”. You contend that the correct prevailing rate of wage for the “preparation of the Tukwila Pool Project floor as well as a subsequent application of a resin/converter mixture” is that of Painter.

Issue:

Is the Cement Mason rate of wage correct for the “Application of a resin/converter mixture;” for the Tukwila Pool Project?

I affirm the determination of December 21, 2016.

In reaching my decision, I reviewed the materials submitted to the department for the original determination and request for modification and the materials you provided during the redetermination process as well as the information provided the interested parties. I want to take this opportunity to thank the parties for their time in preparing the materials submitted and for attending the meetings. Your participation was essential.



Facts:

1. Existing floor was damaged/worn. Grinding was necessary as preparation
2. Floor was created to build up, repair the floor, and provide a new non-slip surface
3. Method:
 - a. Layer of epoxy, spread with a squeegee trowel
 - b. Back rolled and smoothed with rollers
 - c. Hand-broadcast solids
 - d. Vacuum/sweep
 - e. Steps a, b, c and d were repeated
 - f. Layer of epoxy, spread with a squeegee trowel
 - g. Back rolled and smoothed with rollers
4. Thick (manufacturer specified 1/8")
5. Non-slip
6. The material used is an epoxy-based product

Rules:

The relevant Scope of work descriptions for Painters (WAC 296-127-01356), Laborers (WAC 296-127-01344) and Cement Masons (WAC 296-127-01315) are attached for your reference.

Analysis:

The Painter scope of work is interpreted narrowly because of the specific nature of the language, "the job description for painters is as follows". The effect of the language of the Painter scope is that if the material is not applied with brushes, spray guns or rollers, then the work falls outside the Painter scope of work. For the facts in this case, the relevant phrases within this scope include

"Application of.....epoxy as waterproofing or protective coatings....with brushes, spray guns or rollers."

The Cement Mason scope of work (WAC 296-127-01315) is interpreted more broadly due to the language "includes, but is not limited to:" For the facts in this case, the relevant phrases within this scope include:

"...all work where finishing tools are used....trowels.....The installation of seamless composition floors and the installation and finishing of epoxy based coatings....to all surfaces, when....applied by spraying or troweling."

The purposes of the tools described in this installation are both an applicator and a finishing tool.

The Cement Mason scope of work is decidedly the most appropriate scope for this type of work for two reasons: First, the Cement Mason scope is the only classification that includes

the use of finishing tools and specifically lists trowels in its description. The epoxy was applied with squeegee trowels. Second, the Cement Mason scope also mentions specific methods used in this circumstance, such as, "The installation of seamless composition floors." This phrase best describes the work of building up and creating a new, smooth floor by applying successive layers of epoxy and solids to achieve a new floor that is 1/8" thick. The brief explanation in the December 21, 2016 letter is persuasive:

"...the work on the floors at the Tukwila Pool extended beyond "floor painting" or "Application of ... coatings" but was instead the installation of a seamless composition flooring system, made of a combination of cement (epoxy) and aggregate (sand)." (emphasis in original)

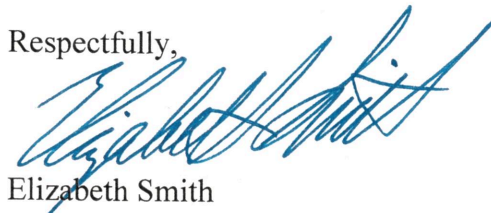
For these reasons, the correct rate of wage for the installation of the Tukwila Pool Deck Seamless Composition Floor is that of Cement Mason.

Although my current position is agency Deputy Director, you submitted, and I gathered information and testimony relating to this request while serving as the Assistant Director. I am issuing this redetermination regarding the application of Washington's prevailing wage requirements of this specific question and is made pursuant to RCW 39.12.015. See the attached documents, "Prevailing Wage Determination Request and Review Process."

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 -061 within 30 days to the director of the Department of Labor and Industries at the above address.

If you have further questions or concerns, please do not hesitate to contact me.

Respectfully,



Elizabeth Smith
Deputy Director

cc: Eric Coffelt, Business Manager OPCMIA Local 528
David Ciprut, Rebound
Edward C. Smith, FCA International
Miriam Israel Moses, Rebound
Denis Sullivan, Painter District Council 5
Mike Cassidy
Phillip Lindquist, Painter District Council 5
Chris Bowe, Assistant Director
Fraud Prevention and Labor Standards
Jim Christensen, Program Manager, Prevailing Wage
Jerold Billings, Litigation Specialist

Painters.

For the intents and purposes of the Washington state public works law, chapter 39.12 RCW, the job description for painters is as follows:

- (1) Preparation of surfaces.
 - (a) Washing, cleaning and smoothing of surfaces, using sandpaper, brushes or steel wool.
 - (b) Removal of old paint or other coatings from surfaces, using paint remover, scraper, wire brush or by sandblasting.
 - (c) Filling of nail holes, cracks and joints with putty, plaster or other fillers.
- (2) Color matching and mixing.
- (3) Application of paint, varnish, stain, enamel, lacquer, vinyl, wallpaper and other materials of whatever kind or quality applied to walls or ceilings with paste or adhesive using brushes, spray gun or paint rollers.
- (4) Application of polyurethane elastomers, vinyl plastics, neoprene, resin, polyester and epoxy as waterproofing or protective coatings to any kind of surfaces (except roofs) when applied with brushes, spray guns or rollers.
- (5) Application of sprayed on fire retardant foam.
- (6) Texturing and decorating.
- (7) Erecting of scaffolding or setting up of ladders to perform the work above ground level.
- (8) Responsible for all the cleanup required in connection with painters work.

Cement masons.

For the purpose of the Washington state public works law, chapter 39.12 RCW, cement masons perform all work where finishing tools are used.

The work includes, but is not limited to:

- The setting of screeds, the rodding (buildings), shaping, smoothing and finishing of the surfaces of freshly poured concrete floors, walls, sidewalks, curbs, steps and stairways, the finishing of extruded barrier rails, or any other concrete surface requiring finishing, using hand tools or power tools, including floats, trowels, screeds and straightedge.
- The removing of rough or defective spots from concrete surfaces, using grinder or chisel and hammer and patching holes with fresh concrete or epoxy compound preparatory to sacking. (The finishing of a large surface of patched holes.)
- The moulding of expansion joints and edges, using edging tools, jointers and straightedge.
- The application of penetrating sealer and primer protective coatings to concrete floors and steps for the first twenty-four hours after pouring, when part of the finishing process.
- The installation of seamless composition floors and the installation and finishing of epoxy based coatings or polyester based linings to all surfaces, when the coatings or linings are applied by spraying or troweling.
- Sandblasting or waterblasting for architectural finish or preparatory to patching.
- The setting of all forms one board high.
- The cutting of joints with concrete saw for the control of cracks in buildings and contiguous to buildings.
- The setting of concrete curb, gutter and sidewalk forms as a composite crew with laborers.
- All cleanup work required in connection with the above work.