



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
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December 19, 2007

Mike Leininger
Northwest Fair Contracting Association
204 West Clark
Pasco, WA 99301-5625

Dear Mr. Leininger:

You asked for a determination of the requirement to pay the prevailing rate of pay for the removal of excavated materials from a Sound Transit public works project where the materials were first deposited in close proximity to the project site. The completion of the removal of that excavated material was performed in a second step on a subsequent date.

For at least one of the temporary storage piles, the storage was apparently without permission of the landowner. In that instance, in a letter dated August 23, 2005, City Light demanded the stored materials be removed from their property.

Given a potential for liability, Sound Transit's position in a letter from Greg Mowat, PLA Specialist; to Mike Kirsch, Teamsters Local 174, is not surprising: The responsibility for the materials passed to the contractor when it was removed from Sound Transit property and deposited at several sites and was no longer within the scope of the Project Labor Agreement (PLA).

The determination below is based on the facts of the Sound Transit project. References to the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC) are included. Again, this answer is based on a specific fact set. A different set of facts may have a different answer.

The scope of any labor agreement or PLA is not necessarily relevant to and does not define the scope of the state's prevailing wage law, Chapter 39.12 RCW. Whether or not some particular work is within the scope of a PLA is a distinct question from whether the work is a public work for which the prevailing rate of pay is required.

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RCW 39.12.020 requires that "The hourly wages to be paid to laborers, workers or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality, or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such work is performed."

RCW 39.12.030 requires that contract specifications for public works must specify the rate of wages to be paid, "not less than the prevailing rate of wage," to the laborers, workers or mechanics employed in the performance of the public work. The wage requirements apply to all work by the "contractor subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract."

Guidance on how to apply the prevailing wage statute, RCW 39.12, comes from the Washington State Supreme Court: The Court mandates liberal construction of the "remedial" statute for its purpose to protect the employees of contractors and to preserve local wage standards. See *Everett Concrete Prods., Inc. v Dept. of L&I* 109 Wn.2d819, 823 (1988).

Here, the excavated materials were removed to a temporary location. This temporary storage was not sufficient to complete the whole of the work contemplated by the contract. Subsequent movement from the temporary locations was necessary and essential to the completion of the work contemplated by the public works contract. The prevailing rate of wage must be paid for this subsequent movement of the excavated materials.

Washington State prevailing wage information, including the WACs, are available on the Department's web site: <http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp>

I hope this answers your questions. If you need additional information or have questions, please call or email me at 360 902-5330 or somd235@lni.wa.gov.

Sincerely,



David J. Soma
Industrial Statistician
Prevailing Wage Program Manager