

April 22, 2010

Bradford Aspell
Aspell, Della-Rose & Richard
122 S Fifth Street
Klamath Falls, OR 97601

Re: *Determination Whether Work is Subject to Prevailing Wage Rate Law*
Work to be Done: John Hancock Event Center Roof Replacement
Requested by: Aspell, Della-Rose & Richard

Dear Mr. Aspell:

On February 24, 2010, you submitted a request asking if the Prevailing Wage Rate law would apply to the proposed roof replacement on the John Hancock Event Center. Sufficient information to make a determination was received on March 8, 2010, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. The Klamath County Fair Board let a contract in 1999 to Bogatay Construction, Inc. (“Bogatay”) to erect a pre-engineered steel building on the Klamath County Fairgrounds. This contract with Bogatay apparently included a “twenty year weather tight warranty.”
2. Bogatay subsequently contracted with NCI¹ to supply the building and the roof components for the structure. The structure was erected and is now known as the John Hancock Event Center.
3. In 2007, Klamath County initiated litigation against both Bogatay and NCI. The County alleges the roof of the event center leaks due to defective installation. Bogatay and NCI deny the allegations.
4. The parties have reached a tentative settlement agreement, by which Bogatay, through escrow, agrees to hire an independent contractor to remove and reinstall a new roof on the event center. Under terms of the settlement, Bogatay is prepared

¹ No information was provided about this company other than the name “NCI.”

to fund the work to install the roof so as to be relieved of any further liability for the remaining ten years of the warranty.

CONCLUSIONS OF LAW

1. The erection of the event center on the Klamath County Fairgrounds in 1999 was a public works project subject to the prevailing wage rate law pursuant to *former* ORS 279.348(3).²
2. The original contract for the erection of the event center included a “twenty year weather tight warranty,” and the proposed roof replacement will be done under this warranty. The work to replace the roof will be subject to the prevailing wage rate laws, just as the work under the original contract was. The appropriate prevailing wage rates to use for this project are those that were in effect when the original bid specifications were first advertised; i.e., those used in the original construction of the event center.

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279.348 to ORS 279.380, and OAR Chapter 839, Division 016, will apply to the proposed roof replacement on the John Hancock Event Center.

This determination is based on the agency’s file as of the date of this determination. The commissioner may make a different determination if any of the project information is incorrect, or if the project or project documents are modified or supplemented after the date of this determination.

REQUEST FOR A RECONSIDERATION

After the commissioner issues a determination, the requestor or any public agency served with a copy of the determination may request that the commissioner reconsider the determination. A request for reconsideration must be submitted in writing to the Prevailing Wage Rate Unit, must include the reason or reasons for the request and any documents in support of the request, and must be received within 15 calendar days of the date the determination was mailed. A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.

RIGHT TO A HEARING

The requestor and any person adversely affected or aggrieved by this determination are entitled to a hearing as provided by the Administrative Procedures Act (ORS 183.413 to

² ORS Chapter 279 was repealed effective March 1, 2005. ORS Chapters 279A, 279B and 279C became effective March 1, 2005. OAR Chapter 839 Division 016 was repealed effective March 1, 2005. OAR Chapter 839 Division 025 became effective March 1, 2005. The facts that give rise to this determination occurred before March 1, 2005. Therefore, ORS Chapter 279 and OAR Chapter 839 Division 016 are applicable.

183.470) and ORS 279C.817. If you want a hearing, the Bureau of Labor and Industries, Wage and Hour Division must receive your written request for hearing within 21 days from the date this notice was mailed. Hearing requests should be addressed and delivered to:

Administrator
Wage and Hour Division
Bureau of Labor and Industries
800 NE Oregon St., Suite 1045
Portland, Oregon 97232

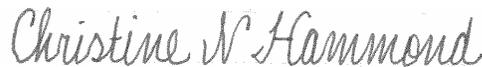
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel or an authorized representative. If you request a hearing, you will receive information on Contested Case Rights and Procedures before the hearing. After the hearing, an order confirming, modifying, or reversing this determination will be issued. This determination shall remain in effect until the final order is issued.

If you request a hearing, but fail to appear at any scheduled hearing, you will have waived your right to hearing, and the commissioner may issue a final order by default. If the commissioner issues a final order by default, the agency file on this matter shall serve as the record for purposes of proving a prima facie case. You are not entitled to judicial review of this determination order unless you have made a timely request for a hearing.

Date: April 22, 2010

Brad Avakian, Commissioner
Bureau of Labor and Industries



Christine N. Hammond, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On April 22, 2010, I mailed the Prevailing Wage Rate Determination for the proposed roof replacement on the John Hancock Event Center to the requestor and interested parties associated with the work, as follows:

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Susan Wooley
PWR Technical Assistance Coordinator
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Bureau of Labor and Industries