



July 8, 2013

Jeffrey Condit
Miller Nash
3400 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204-3699

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Parkrose School District – Movers
Requested by: Miller Nash on Behalf of Parkrose School District

Dear Mr. Condit:

On June 14, 2013 you submitted a request on behalf of Parkrose School District asking if the Prevailing Wage Rate law would apply to the District's "Moving Services" contract. Sufficient information to make a determination was received on June 26, 2013, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. Parkrose School District (the "District") has contracted for construction work on the Parkrose Middle School and Sacramento Elementary School.
 - a. The Parkrose Middle School project involves construction of a replacement middle school. The total project cost will be \$31,335,800. The project will be funded through May 2011 General Obligation Bond Measure funds. The District acknowledges that the Parkrose Middle School project is a public works project.

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- b. The Sacramento Elementary School project involves building additions, renovating existing school space and constructing improvements to the school's infrastructure. The total project cost will be \$3,952,700. The project will be funded through May 2011 General Obligation Bond Measure funds. The District acknowledges that the Sacramento Elementary School project is a public works project.
2. The District plans to hire movers to pack, unpack, move and store existing furniture, files, supplies and materials (the "moving services") currently used at Parkrose Middle School and Sacramento Elementary School.
3. The moving services are scheduled to occur before and after, but not during, the construction work at the Schools.
4. On April 1, 2013, the District issued a Request for Proposals ("RFP") for the moving services. On April 12, 2013, the District issued an addendum to the RFP stating that the prevailing wage rates would not apply to the moving services project.
5. The moving services contractor (the "Mover") entered into a contract with the District and not with the general contractor for the Parkrose Middle School and Sacramento Elementary School public works projects.
6. The moving services will be performed under the following guidelines and restrictions:
 - a. The Mover has no privity of contract with the District's general contractor, or any other party involved in construction work performed at the schools.
 - b. The Mover is only permitted to pack, unpack, move and store existing furniture, files, supplies and materials.
 - c. The Mover is not responsible for performing any services in relation to new furniture, files, supplies, equipment or materials brought to the schools after construction.
 - d. The Mover is prohibited from handling, and will not have access to, any construction tools, materials or equipment used at the schools.
 - e. The Mover will not be present during performance of the construction work. The Mover's only task is to perform the moving services before construction work commences and after it is complete.

- f. The general contractor, subcontractors or other personnel performing construction work at the schools cannot direct, schedule, control, coordinate or alter the moving services.
7. The total project cost for the moving services is \$81,477. The moving services will be funded through May 2011 General Obligation Bond Measure Funds.

CONCLUSIONS OF LAW:

1. The definition of “public works” under ORS 279C.800(6)(a)(A) includes “buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest.” Parkrose School District acknowledges that the Parkrose Middle School and Sacramento Elementary School projects are public works projects under this provision.
2. OAR 839-025-0004(25) defines “site of work” as “limited to the place or places where the construction called for in the contract will remain when work on it has been completed, and other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the site.” Work performed at the site of work of a covered construction project is covered by Oregon's PWR law. Some of the moving services will take place at the site of work.
3. OAR 839-025-0035(8) provides that “persons employed on a public works project for service work as opposed to construction work are not workers required to be paid the prevailing rate of wage. BOLI’s prevailing wage rate laws do not define “service work.”

The Public Contracting Code defines services to mean other than personal services designated under ORS 279A.055. ORS 279A.010(1)(kk). However, OAR 839-025-0035(8) uses the term “service work” and it is not clear that this definition would apply.

In the absence of a clear definition of “service work,” BOLI’s practice has been to consider employees hired to pack, unpack, move or store property on a public works project site to be “workers” as defined by OAR 839-025-0004(32). If the work takes place in preparation for or in contemplation of construction, reconstruction, major renovation or painting on a public works project site, then the “moving services” contract is covered by Oregon’s PWR law.

4. OAR 839-025-0004(32) describes a “worker” as "a person employed on a public works project and whose duties are manual or physical in nature.” The moving services workers will “pack, unpack, move and store existing furniture, files,

supplies and materials (the “moving services”) currently used at Parkrose Middle School and Sacramento Elementary School.” Packing, unpacking, moving and storing work is manual or physical in nature. Typically, this work is classified as “laborer” work. Additionally, the moving services will be, in part, performed on the sites of work.

Therefore, the workers that perform any packing, unpacking, moving and storing at the Parkrose Middle School or Sacramento Elementary School public works project job sites are workers under Oregon’s PWR law and are required to be paid the prevailing wage rate. However, these workers do not have to be paid prevailing wages for any work that is performed off-site, since this work will not be performed at the "site of work."

5. ORS 279C.840(1) and OAR 839-025-0035(1) provide that “every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed.”

Therefore, the Mover’s employees must be paid the applicable prevailing wage rates for work performed on the Parkrose Middle School and Sacramento Elementary School public works project job sites.

6. ORS 279C.827(1) prohibits the division of a public works project into more than one contract for the purposes of avoiding compliance with ORS 279C.800 to ORS 279C.870. The “moving services” contract would be considered part of the Parkrose Middle School public works project and part of the Sacramento Elementary School public works project and should not be treated as a separate public works project.

DETERMINATION:

The Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to Parkrose School District’s “Moving Services” contract.

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 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 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, OR 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: July 8, 2013

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries



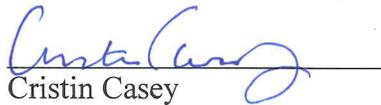
GERHARD TAEUBEL,
Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On July 8, 2013, I mailed the Prevailing Wage Rate Determination for the "Moving Services" contract to the requestor, as follows:

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Miller Nash
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111 S.W. Fifth Avenue
Portland, OR 97204-3699

Certified Mail – Return Receipt Requested
Article #: 7012 3050 0001 7255 2482



Cristin Casey
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries