

## ORDER OF COMMISSION

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In the matter of Objection Nos. 135 & 136 filed by Columbia Curb & Gutter Co., on April 9, 2015, to Annual Wage Order No. 22 issued by the Department of Labor and Industrial Relations, Division of Labor Standards, filed with the Missouri Secretary of State on March 10, 2015.

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On March 10, 2015, the Division of Labor Standards (Division) filed with the Missouri Secretary of State a certified copy of Annual Wage Order No. 22 (AWO 22) containing the initial determination of the prevailing hourly wages in each locality for each occupational title. On April 9, 2015, the Labor and Industrial Relations Commission (Commission) received an objection thereto filed on behalf of Columbia Curb & Gutter Co.

In its objection, Columbia Curb & Gutter Co. identifies two grounds for objection to AWO 22. First, Columbia Curb & Gutter Co. objects to any interpretation of AWO 22 and the Occupational Title Rule that "normal work hours" and/or the "regular work day" may only be 8:00 a.m. to 4:30 p.m. Columbia Curb & Gutter Co. asserts that a "shift differential" should not apply when the "regular work day" for a project consists of set nighttime hours and the workers perform work only during those set nighttime hours. Columbia Curb & Gutter Co. does not identify any particular wage or payment schedule set forth in AWO 22 to which it objects, nor does it identify any particular counties or occupational title of work classifications affected by the complained-of interpretation of AWO 22; instead, Columbia Curb & Gutter Co. objects to how the existing rates or payment schedules in AWO 22 may be interpreted by the Division.

Second, Columbia Curb & Gutter Co. objects to any interpretation of AWO 22 and the Occupational Title Rule that the wage rate for the occupational title of Iron Worker be applied to time spent carrying steel to the area where the work is to be done for highway construction projects. Columbia Curb & Gutter Co. asserts that the wage rate for the occupational title of general laborer should apply to such work. Columbia Curb & Gutter Co. does not identify any language in 8 CSR 30-3.060 (the Missouri state regulation setting forth the occupational title of work descriptions) that must be changed or assigned to a different occupational title classification; instead, Columbia Curb & Gutter Co. objects to how the existing language in 8 CSR 30-3.060 may be interpreted by the Division.

Section 290.262 RSMo provides, in relevant part, as follows:

1. [T]he department shall annually determine the prevailing hourly rate of wages in each locality for each separate occupational title. ... The department shall, by March tenth of each year, make an *initial determination* for each occupational title within the locality.

...

5. At any time within thirty days ... any person who is affected thereby may object in writing to a *determination or a part thereof* that he deems objectionable by filing a written notice with the department, stating the specific grounds of the objection.

(emphasis added).

Additionally, the Missouri state regulation 8 CSR 30-3.060(6) provides, in relevant part, as follows:

Through an objection to a wage order, an interested party may assert that *any given description of work, as stated within this rule*, does not apply to a specific occupational title(s) and that a different work description should apply to that occupational title(s).

(emphasis added).

The foregoing provisions make clear that any person affected by the Division's initial determination of the prevailing wages in each locality for each separate occupational title, or given description of work as stated in 8 CSR 30-3.060, may file an objection to such determinations or descriptions. Through the objection process, interested parties have an opportunity to challenge the rates and schedules set forth in the initial annual wage order, as well as the language of the given descriptions of work contained in 8 CSR 30-3.060. Thereafter, the Division is charged with interpreting and enforcing the finalized wage order, as well as the descriptions of work contained in 8 CSR 30-3.060, consistent with the policy and procedures set forth in the Missouri Prevailing Wage Law and associated regulations.

Both grounds for objection identified by Columbia Curb & Gutter Co. pertain to an anticipated *interpretation* by the Division of AWO 22 and 8 CSR 30-3.060, and do not include any allegation that the actual rates or payment schedules set forth in the initial AWO 22, or the given occupational title of work descriptions set forth in 8 CSR 30-3.060, should be in any way modified by this Commission. It appears that Columbia Curb & Gutter Co. seeks, in essence, a declaratory judgment from this Commission as to what the rates/schedules in AWO22 and the descriptions of work in 8 CSR 30-3.060 *mean*. Columbia Curb & Gutter Co. fails to identify any statutory provision that would grant authority to the Commission to issue such an order or judgment through the objection process under § 290.262 and 8 CSR 30-3.060(6), and we are not aware of any such provision.<sup>1</sup>

We conclude that we do not have statutory authority to consider the propriety of any anticipated interpretation of AWO 22 and 8 CSR 30-3.060 by the Division, or to order the Division to adopt any particular interpretation. Because the objection filed by Columbia Curb & Gutter Co. fails to state a claim for relief that the Commission would be statutorily authorized to provide, the objection is hereby dismissed.

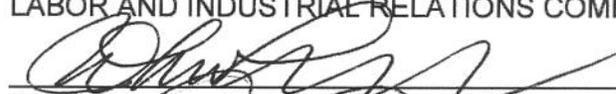
Given at Jefferson City, State of Missouri, this 17th day of April 2015.

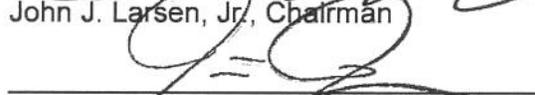


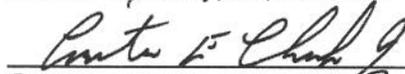
Attest:

  
Pamela M. Hofmann  
Secretary

LABOR AND INDUSTRIAL RELATIONS COMMISSION

  
John J. Larsen, Jr., Chairman

  
James G. Avery, Jr., Member

  
Curtis E. Chick, Jr., Member

<sup>1</sup> We note that § 536.050 RSMo invests the courts of this state with the power to render declaratory judgments respecting the threatened application of state regulations.