

APR 17 2019

ORDER OF COMMISSIONSECRETARY OF STATE  
COMMISSIONS DIVISION

In the matter of Objection Nos. 052 & 053 filed by Operative Plasterers & Cement Masons International Association, Local No. 518, on April 5, 2019, to Annual Wage Order No. 26 issued by the Department of Labor and Industrial Relations, Division of Labor Standards, filed with the Missouri Secretary of State on March 8, 2019, pertaining to the wage rate for the occupational title of Cement Mason in the Missouri Counties of Callaway – Section 014, and Platte – Section 083.

On March 8, 2019, the Department of Labor and Industrial Relations, Division of Labor Standards (Division), filed with the Missouri Secretary of State a certified copy of Annual Wage Order No. 26 containing the initial determination of the prevailing hourly rate of wages and, where applicable, the public works contracting minimum wage, for each occupational title within every locality.

On April 5, 2019, the Labor and Industrial Relations Commission (Commission) received two objections filed on behalf of Operative Plasterers & Cement Masons International Association, Local No. 518 (Objector). We have designated these objections as Objection Nos. 052 & 053. In each, Objector's allegations are materially identical, and read as follows:

The basic hourly rates and total fringe benefits in proposed Annual Wage Order No. 26 are incorrect in that they do not take into consideration all hours worked in cement masonry in [the locality].

A. The rate in proposed Annual Wage Order No. 26 for the "Cement Mason" Occupational Title in [the locality] is \$27.12. The Division of Labor Standards used this rate because fewer than 1,000 hours were submitted pursuant to R.S.Mo. § 290.257.2.

B. In 2018, more than 1,000 hours of work designated as "Cement Mason" construction work was performed within [the locality]. The Department has not included additional work performed by Cement Mason employees within [the locality]. Upon information and belief, various employers paid Cement Masons wage rates and fringe benefits that are greater than the wage rates and fringe benefits included in the proposed Annual Wage Order No. 26 during 2018. Objector will present evidence in the forms of payroll and contractor surveys to establish the following hours<sup>1</sup> actually worked and the foregoing rate<sup>2</sup> in [the locality]. As such, all the aforementioned<sup>3</sup> hours should be considered a single rate with the greater rate prevailing under R.S.Mo. § 290.262.8.

<sup>1</sup> Although Objector refers to "the following hours," no specific sets of hours are identified in these objections.

<sup>2</sup> Although Objector references a "foregoing rate," no specific rate is identified in these objections, apart from the objected-to rate set by the Division.

<sup>3</sup> Again, although Objector uses the word "aforementioned," no specific sets of hours are identified within these objections.

C. Upon information and belief, there are workmen ready, willing and able to perform work in [the locality] at the rates as provided in the payroll and contractor surveys to be provided by the Objector. Workers performed at these rates in these localities to a greater extent than work performed at the published rate in the objected to proposed Annual Wage Order, and such work has been performed to a greater extent at all times pertinent to the Annual Wage Order at issue. The payroll hours and contractor surveys to be submitted are more reflective of the hours that should prevail in the geographic jurisdiction at issue and performed under an appropriate collective bargaining agreement.

Commission Rule 8 CSR 20-5.010(1) provides, in relevant part:

Within thirty (30) days after the certified copy of a wage order has been filed with the secretary of state and the commission, any person who may be affected by the wage order may object, in writing, to the wage order, or any part thereof that the party considers objectionable by filing the objections in triplicate with the commission. If the objection is to a wage rate, the objector shall set forth in writing, the specific grounds of objection and not merely a conclusion that the wage rate is too high or too low, but shall set out in detail how the objector reaches the conclusion that the rate is either too high or too low.

The foregoing rule is intended to ensure that all interested parties can easily determine the nature and basis of any objection to an annual wage order, so they may take appropriate and timely steps to participate in the proceedings before the Commission.

Here, Objector alleges the Division erred in using the public works contracting minimum wage (PWCMW) for Cement Masons in Callaway and Platte Counties, on the basis that there were more than 1,000 hours performed by Cement Masons in those localities in 2018.<sup>4</sup> However, in both submissions, Objector has: 1) failed to identify the rate(s) that Cement Masons are alleged to have been paid in the localities; 2) failed to identify the total(s) of any specific set(s) of hours alleged to have been worked at those rates; and 3) failed to allege that said hours are “reportable”—or otherwise properly considered by the Division—for purposes of § 290.257 RSMo.<sup>5</sup>

Where Objector does not identify the actual rate(s) alleged to have been paid in the localities at issue, but instead summarily alleges that the rates are “greater,” “more reflective,” and “should prevail,” we conclude Objector has alleged “merely a conclusion that the wage rate is too high or too low,” in direct contravention of the above-cited Commission rule. With regard to whether the hours qualify as “reportable” for purposes of § 290.257.5, we believe any objection to a rate set forth in an annual wage order

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<sup>4</sup> Pursuant to the 2018 amendments to § 290.257 RSMo, the PWCMW becomes the applicable rate whenever less than 1,000 total hours are reported for a particular occupational title within a particular locality.

<sup>5</sup> Pursuant to the 2018 amendments to § 290.257 RSMo, only “reportable hours” are utilized in the calculation of the prevailing wage rates for each occupational title within each locality, where “the term ‘reportable hours’ shall mean hours reported by a contractor for work performed under such contractor in a particular occupational title within a particular locality,” see § 290.257.5 RSMo.

should, at the very least, contain some indication and/or allegation that the identified hours are properly considered pursuant to the recent legislative changes; otherwise, it would appear that there is no prima facie claim that the Objector is entitled to relief of the type the Commission would be authorized to provide.

We conclude that Objector has failed to substantially comply with the Commission Rule requiring specificity, and that to accept these objections and set them for a hearing would prejudice the Division and any other interested parties who may wish to be heard as to the appropriate rates for Cement Masons in these localities. Accordingly, we conclude the appropriate action is to dismiss these objections.

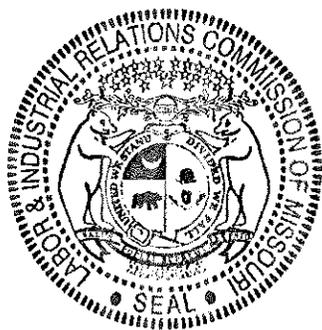
**Order**

We conclude that Objection Nos. 052 & 053 fail to satisfy Commission Rule 8 CSR 20-5.010(1).

We hereby dismiss Objection Nos. 052 & 053.

Given at Jefferson City, State of Missouri, this 11<sup>th</sup> day of April 2019.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



*Robert W. Cornejo*

Robert W. Cornejo, Chairman

*Reid K. Forrester*

Reid K. Forrester, Member

*Curtis E. Chick, Jr.*

Curtis E. Chick, Jr., Member

Attest:

*Pamela M. Hofmann* / *PK*

Secretary