

APR 17 2019

ORDER OF COMMISSIONSECRETARY OF STATE
COMMISSIONS DIVISION

In the matter of Objection Nos. 054-076 filed by St. Louis-Kansas City Carpenters Regional Council, on April 8, 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 rates for the occupational title of Carpenter in the Missouri Counties of Atchison – Section 003, Camden – Section 015, Cass – Section 019, Cooper – Section 027, Daviess – Section 031, Jackson – Section 048, Jefferson – Section 050, Laclede – Section 053, Lafayette – Section 054, McDonald – Section 060, Mercer – Section 065, Montgomery – Section 070, Newton – Section 073, Osage – Section 076, Platte – Section 083, Polk – Section 084, Ray – Section 089, St. Charles – Section 092, St. Louis County – Section 100, Stoddard – Section 107, Warren – Section 113, Washington – Section 114, and Wayne – Section 115.

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 8, 2019, the Labor and Industrial Relations Commission (Commission) received objections filed on behalf of St. Louis-Kansas City Carpenters Regional Council (Objector). We have designated these objections as Objection Nos. 054-076.

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 an objection to an annual wage order, so they may take appropriate and timely steps to participate in the proceedings before the Commission.

Here, Objector challenges the rates set by the Division for Carpenters in a number of localities, on the basis that Objector “has evidence of ... hours” worked at various, higher rates. However, Objector has failed to allege that said hours are properly considered by the Division and/or this Commission in calculating the prevailing wage rates.

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. Objector does not attach any contractor wage surveys, affidavits, or any other evidence to suggest the hours identified were ever reported by a contractor or subcontractor to the Division. In fact, Objector wholly overlooks this statutory requirement.

Where Objector does not allege or even suggest that the proffered hours qualify as "reportable" for purposes of § 290.257.5, we are left with no way to evaluate whether these hours will qualify for our consideration. It follows that these objections fail to state a prima facie claim that Objector is entitled to relief of the type the Commission would be authorized to provide. We conclude, therefore, 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 prevailing wage rates for Carpenters in these localities.

Accordingly, we conclude the appropriate action is to dismiss these objections.

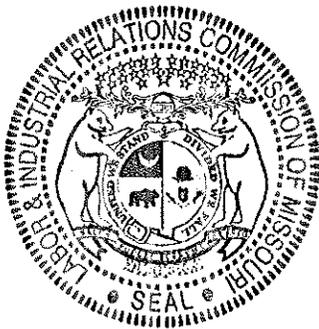
Order

We conclude that Objection Nos. 054-076 fail to satisfy Commission Rule 8 CSR 20-5.010(1).

We hereby dismiss Objection Nos. 054-076.

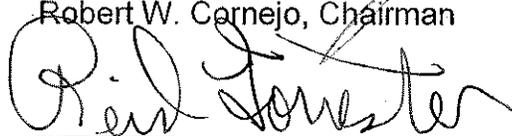
Given at Jefferson City, State of Missouri, this 17th day of April 2019.

LABOR AND INDUSTRIAL RELATIONS COMMISSION





Robert W. Carnejo, Chairman



Reid K. Forrester, Member

DISSENTING OPINION FILED
Curtis E. Chick, Jr., Member

Attest:

Secretary

DISSENTING OPINION

Based upon my review of the relevant statutory and case law authorities, I am convinced that the Commission majority errs in dismissing these objections without a hearing.

I believe the submission by St. Louis-Kansas City Carpenters Regional Council (Objector) sufficiently satisfies Commission Rule 8 CSR 20-5.010(1), in that these objections identify the particular rates and total numbers of hours at those rates that Objector would advance at a hearing. This provides sufficient notice to the Division of Labor Standards (Division), and any other parties that may wish to intervene in this matter, of the rates and hours Objector plans to advance.

Of course, the Commission majority is correct that, pursuant to the recent legislative amendments to § 290.257 RSMo, the Commission may only use “reportable hours” when we ultimately calculate the prevailing hourly wage rates for a particular occupational title within a particular locality. I disagree, however, with the Commission majority’s choice to read words into the legislative definition of “reportable hours” that simply aren’t there.

Section 290.257.5 RSMo provides as follows:

For purposes of this section, 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.

It appears that the Commission majority reads the foregoing as if it said:

For purposes of this section, the term “reportable hours” shall mean hours reported by a contractor **to the Division of Labor Standards** for work performed under such contractor in a particular occupational title within a particular locality.

In my view, if Objector has evidence of hours of work performed under contractors, Objector has a right to advance such hours in the context of the objection and hearing process authorized by § 290.262. Then, at the hearing (where the evidence almost certainly will include the exact sort of documentation the Commission majority finds lacking at this very early stage of the proceedings) we can better determine whether such hours are properly deemed “reported by a contractor” for purposes of § 290.257.5. In fact, if any contractor would prove to be reluctant to provide such documentation, I believe Objector would be entitled to process to compel a contractor to “report” the hours to this Commission, because the objection and hearing process under § 290.262 initiates a “contested case” for purposes of the Missouri Administrative Procedure Act.¹ See *HTH Cos. v. Mo. Dep’t of Labor & Indus. Rels.*, 157 S.W.3d 224 (Mo. App. 2004).

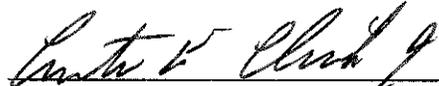
¹ The Missouri Administrative Procedure Act allows parties to a contested case to pursue discovery, including compulsory process such as the issuance of subpoenas. See § 536.077 RSMo.

The Commission majority's choice to summarily dismiss these objections prevents any opportunity to properly evaluate the hours advanced by Objector, and deprives Objector its statutory right to be heard in connection with the Division's Annual Wage Order. I do not believe this is what our legislature intended in amending Chapter 290.

This is because the legislature did not amend any of the relevant portions of § 290.262 RSMo that continue to permit "any person that is affected" by the Division's initial Annual Wage Order to file an objection and secure a hearing before the Commission on that objection. Historically, although the Division's regulations encourage the reporting of hours before January 31 in order to allow the Division to meet its March 10 deadline to file the initial Annual Wage Order with the Secretary of State,² objectors to an annual wage order have always been permitted to present hours to the Commission in the context of the subsequent objection and hearing process, and said hours have been included in the Commission's ultimate determination of the prevailing wage, with the Missouri courts repeatedly confirming the propriety of this procedure. See, e.g., *HTH Cos. v. Mo. Labor & Indus. Rels. Comm'n*, 995 S.W.2d 503 (Mo. App. 1999).

A well-established principle of Missouri law is that our legislature is presumed, when enacting statutory amendments, to know and understand the state of the relevant case law interpreting the prior statutes. *Beal v. Industrial Com.*, 535 S.W.2d 450, 458 (Mo. App. 1975). It stands to reason, then, that our legislature knew and understood that the § 290.262 objection and hearing process before the Commission represents an alternative means of advancing hours for purposes of determining the prevailing wage rates, and that if the legislature wished to preclude our consideration of hours reported in this context, they would have specifically so stated. To hold otherwise not only distorts the language chosen by our legislature, but works the practical effect that our determination of the prevailing wage rates will ultimately be less reliable and accurate than before the amendments were enacted.

In sum, I would accept these objections as filed and set them for prehearing and hearing before the Commission. Because the Commission majority has decided otherwise, I respectfully dissent.


Curtis E. Chick, Jr., Member

² See 8 CSR 30-3.010(4).