

MAY 20 2020

ORDER OF COMMISSIONSECRETARY OF STATE
COMMISSIONS DIVISION

In the matter of Objection No. 001-003 filed by Local 513, International Union of Operating Engineers, on April 3, 2020, to Annual Wage Order No. 27 issued by the Department of Labor and Industrial Relations, Division of Labor Standards, filed with the Missouri Secretary of State on March 10, 2020, pertaining to the wage rate for the occupational title of Operating Engineer in the Missouri Counties of Boone – Section 010, Callaway – Section 014, and Marion – Section 064.

On March 10, 2020, the Division of Labor Standards (Division) filed with the Secretary of State a certified copy of Annual Wage Order No. 27 (AWO) containing its initial determinations of the prevailing hourly rates of wages for each occupational title and, where applicable, the public works contracting minimum wage, within every locality. As relevant to this matter and because fewer than 1,000 hours were reported for each county, the Division set the rate for Operating Engineer at the public works contracting minimum wage (PWCMW), pursuant to § 290.257.2, RSMo, of \$27.06 in Boone County; \$26.10 in Callaway County; and \$54.86 in Marion County.

On April 3, 2020, the Labor and Industrial Relations Commission (Commission) received an objection filed on behalf of Local 513, International Union of Operating Engineers (Objector).¹

In its objection, Objector identifies hours designated as operating engineer construction work as follows:

- in Boone County, 327 hours at the rate of \$29.16 in wages and \$27.17 in fringe benefits from January 1, 2019, through April 30, 2019, and 1,045.5 hours paid from May 1, 2019, through December 31, 2019, at the rate of \$30.31 in wages and \$27.29 in fringe benefits;
- in Callaway County, 9,513.5 hours at the rate of \$29.16 in wages and \$27.17 in fringe benefits from January 1, 2019, through April 30, 2019, and 2,090.5 hours paid from May 1, 2019, through December 31, 2019, at the rate of \$30.31 in wages and \$27.29 in fringe benefits;
- in Marion County, 472 hours at the rate of \$29.16 in wages and \$27.17 in fringe benefits from January 1, 2019, through April 30, 2019, and 2,679 hours paid from May 1, 2019, through December 31, 2019, at the rate of \$30.31 in wages and \$27.29 in fringe benefits.

In support, Objector attached copies of what appear to be contractor's wage surveys showing these hours with a reporting date to the Division of March 26, 2020 for Boone and Marion counties, and April 3, 2020 for Callaway County. Objector does not provide any explanation as to why these hours were not reported by January 31, 2020.

¹ On April 1, 2020, the Division filed a Motion to Amend the AWO. This Motion does not affect the rates at issue in this objection.

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

If the objection is premised, in whole or in part, upon hours that were not previously reported to the Division of Labor Standards on or before January 31 of the year in which the objection is filed, the commission will consider the objection only if the objector is able to allege and prove a good cause why the hours were not previously reported to the Division of Labor Standards. If the objector fails to identify and allege such good cause in the written objection, the objection may be dismissed by the commission without a hearing. For purposes of this rule, "good cause" shall mean those circumstances in which the objector acted in good faith and reasonably under all the circumstances.

8 CSR 20-5.010(1).

Here, the objection does not comply with the requirements of 8 CSR 20-5.010(1). The objection sets forth allegedly reportable hours performed in 2019, and includes wage reports to support those hours. However, the Objector did not explain why those hours were not reported to the Division prior to January 31, 2020. Pursuant to 8 CSR 20-5.010(1), the Commission is to "consider objections *only* if the objector is able to allege and prove a good cause why the hours were not previously reported to the Division[.]" (emphasis added).

As the Objector failed to allege good cause as to why the hours were not reported to the Division by January 31, 2020, we conclude the appropriate action is to dismiss this objection.

Order

We conclude that Objection No. 001-003 fails to satisfy Commission Rule 8 CSR 20-5.010(1).

We hereby dismiss Objection No. 001-003.

Given at Jefferson City, State of Missouri, this 10th day of April 2020.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



Robert W. Cornejo, Chairman



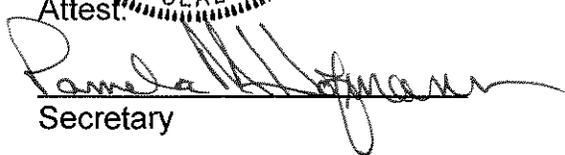
Reid K. Forrester, Member

DISSENTING OPINION FILED

Shalonn K. Curls, Member



Attest:



Secretary

DISSENTING OPINION

After my own review of 8 CSR 20-5.010(1), I disagree with the Commission majority's choice to dismiss the objection for the alleged failure to "prove a good cause why the hours were not previously reported to the Division of Labor Standards."

The provisions of 8 CSR 20-5.010(1) are relatively new and require objecting parties to take steps that were not required previously. The Commission has historically considered hours submitted after January 31 of any given year when raised in the context of an objection. Given the novelty of these requirements, and as the substance of the objection is more important than procedural protocols, I would be lenient in allowing the objection and proceed to a hearing on the objection.

Because the Commission majority has decided otherwise, I respectfully dissent.



Shalonn K. Curls, Member