

ORDER OF COMMISSIONSECRETARY OF STATE
COMMISSIONS DIVISION

In the matter of Objection Nos. 006-037 filed by BAC Administrative Council of Eastern Missouri on April 9, 2014, to Annual Wage Order No. 21 issued by the Division of Labor Standards, Department of Labor and Industrial Relations, filed with the Secretary of State on March 10, 2014, seeking to add the occupational titles of Marble Finisher, Terrazzo Finisher, and Tile Finisher in the counties of Bollinger – Section 009, Butler – Section 012, Cape Girardeau – Section 016, Carter – Section 018, Clark – Section 023, Crawford – Section 028, Dunklin – Section 035, Franklin – Section 036, Iron – Section 047, Jefferson – Section 050, Lewis – Section 056, Lincoln – Section 057, Madison – Section 062, Marion – Section 064, Mississippi – Section 067, New Madrid – Section 072, Pemiscot – Section 078, Perry – Section 079, Pike – Section 082, Ralls – Section 087, Reynolds – Section 090, Ripley – Section 091, St. Charles – Section 092, Ste. Genevieve – Section 094, St. Francois – Section 095, St. Louis City – Section 096, St. Louis County – Section 100, Scott – Section 104, Stoddard – Section 107, Warren – Section 113, Washington – Section 114, and Wayne – Section 115.

I. Introduction

On April 9, 2014, BAC Administrative Council of Eastern Missouri (objector) filed objections to the above-referenced Annual Wage Order No. 21 with the Labor and Industrial Relations Commission (Commission). A prehearing conference in the matter was held on May 6, 2014, and a hearing was set for June 2, 2014.

On May 30, 2014, the Commission received a motion styled "Agreed Statement of Facts" (hereinafter "Joint Motion") wherein the objector and the Division of Labor Standards (Division) asked the Commission to cancel the hearing and instead consider Objections 006-037 based on the pleadings, the evidence filed at the prehearing conference, and a supplemental affidavit attached to the Joint Motion. The Division agreed to objector's filing of the supplemental affidavit, although it declined to adopt the statements set forth therein.

In order to prevent prejudice to any parties who may have wished to be heard on the issues involved in the objections, the Commission convened the hearing as scheduled on June 2, 2014. When no additional parties appeared to intervene in the objections, the Commission granted the parties' Joint Motion and cancelled the hearing.

The Commission has carefully considered the pleadings, the evidence filed at the prehearing conference, and the supplemental affidavit, and hereby sustains in part and overrules in part Objections 006-037, for the reasons set forth below.

II. Findings of Fact

Although the parties styled their Joint Motion an "Agreed Statement of Facts," it does not contain any agreement between the parties as to any issue of fact involved in this matter. Rather, the parties have agreed that we should render our determination upon the evidence that has been submitted. Objector presents (1) the prepared direct testimony of Mike Burns, Business Manager of BAC Local Union No. 18, and referenced exhibits, (2) a poster entitled "Best Terrazzo Projects" providing photographs of what appear to be various terrazzo projects, (3) a poster entitled "Outstanding BAC Craftsmanship" providing photographs of what appear to be various projects, and (4) the supplemental affidavit of Mike Burns. The Division presents the prepared direct

testimony of Jeff Edmondson, Program Director for the Division, and referenced exhibits. We hereby admit this evidence into the record, and find from it as follows.

Proposed occupational titles

Objectors propose that Annual Wage Order No. 21 provide for three additional occupational titles of work, specifically, those of Marble Finisher, Terrazzo Finisher, and Tile Finisher. Objector provides descriptions setting forth the work performed under the proposed titles, and alleges applicable rates for basic hourly wages, fringe benefits, holiday schedules, and overtime. The Division generally opposes any changes to the occupational titles, and takes the position that the existing occupational titles are sufficient. The Division has also made clear, however, that it neither supports nor opposes the additions sought by objector, so long as the additions do not create overlap among the specific work duties encapsulated by existing occupational titles.

Generally, the duties identified in the descriptions proposed by objector cover preparation or incidental work to ensure that workers performing duties falling under the existing occupational title of work descriptions for Terrazzo Worker-Marble Mason and Tile Setter are able to effectively and efficiently perform their work. Under the proposed work descriptions, Marble Finishers, Terrazzo Finishers, or Tile Finishers would (among other duties) assist Terrazzo Worker-Marble Masons or Tile Setters by performing initial preparation work, mixing construction chemicals, moving needed materials around the jobsite, applying and removing grout, drilling holes for wall anchors, storing materials, removing debris, and cleaning up the jobsite.

Turning to the affidavits from Mike Burns, we find testimony describing why the existing occupational title of work descriptions are not sufficient to account for the tasks performed by individuals who specifically handle the preparation and incidental work involved in terrazzo, marble, and tile installations. We note that although the Division declined to endorse this testimony from Mr. Burns, the Division did not provide any evidence to specifically contradict it. We find the testimony from Mr. Burns to be persuasive on this point.

Especially where the Division has not provided any evidence to specifically explain why the proposed occupational title of work descriptions should be deemed superfluous, or to overlap with those already contained in the Missouri Code of State Regulations, we find that the proposed work descriptions for Marble Finisher, Terrazzo Finisher, and Tile Finisher are sufficiently distinguishable from those currently set forth in 8 CSR § 30-3.060(8). We find that Missouri workers routinely perform the duties set forth in the proposed occupational title of work descriptions, and that the proposed descriptions accurately describe the duties performed by Marble Finishers, Terrazzo Finishers, and Tile Finishers.

Rates

When the Commission convened the hearing in this matter on June 2, 2014, counsel for both objector and the Division agreed that, in the event the Commission found it proper to add the proposed occupational titles to Annual Wage Order 21, the Commission would consult with the Division regarding the issue of how to set the prevailing wages for the three new occupational titles. The Division's representative has informed the Commission that no hours were reported to the Division for any Missouri county under the occupational titles of Marble Finisher, Terrazzo Finisher, or Tile Finisher during any preceding reporting period. We note that objector has not provided any evidence of hours actually worked by Marble Finishers, Terrazzo Finishers, or Tile

Finishers for any Missouri county during any preceding reporting period. We find that no hours were reported to the Division for any Missouri county under the occupational titles of Marble Finisher, Terrazzo Finisher, and Tile Finisher during any preceding reporting period.

Turning to the affidavit from Mike Burns, we note that the witness identifies various collective bargaining agreements (included as exhibits to the affidavit), as well as exhibits setting forth rates that are purportedly payable under the agreements. The Division did not object to the inclusion of this evidence in the record, and declined to challenge this evidence or cross-examine Mr. Burns regarding this evidence at a hearing. We deem Mr. Burns's testimony and the collective bargaining agreements to be sufficiently persuasive evidence for our purposes, except where specifically noted below. Reading the agreements in connection with Mr. Burns's testimony, we find as follows.

St. Louis Chapter

In his affidavit, Mike Burns identifies Exhibit 1, a collective bargaining agreement entitled "Bricklayers And Allied Craftworkers International Union of America - Tile And Marble Setters And Finishers Local Union #18 Of Eastern Missouri Administrative District Council - Agreement With Tile And Marble Contractors Association St. Louis And Vicinity - June 1, 2011 Through June 30, 2014." This agreement covers Tile Finisher and Marble Finisher employees for the Missouri counties of Clark, Lewis, Marion, Ralls, Pike, Lincoln, Warren, St. Charles, St. Louis, St. Louis City, Franklin, Jefferson, and Crawford.

The agreement states that during the applicable period, Tile Finisher and Marble Finisher employees were to be paid total wages of \$38.39 per hour. The agreement does not contain a specific breakdown of basic hourly wages versus fringe benefits. The agreement does set forth overtime and holiday schedules/rates for Tile Finisher and Marble Finisher employees; we note that these are generally the same overtime and holiday schedules/rates as for Marble Mason and Tile Setter employees as set forth in the Division's Annual Wage Order 21 for the relevant counties.

Turning back to Mr. Burns's testimony, we note that he identifies Exhibit 4 as setting forth the wage rates payable to Tile Finishers and Marble Finishers under the collective bargaining agreement Exhibit 1. Exhibit 4 suggests the following rates for Tile Finishers and Marble Finishers: Basic Hourly Wages: \$25.81 per hour; Fringe Benefits: \$12.56 per hour; Overtime and Holiday Rates: Same as for Marble Mason and Tile Setter. We note that the total wages (including fringe benefits) as set forth in Exhibit 4 adds up to \$38.37 per hour, which differs from the total wages of \$38.39 set forth in the collective bargaining agreement Exhibit 1. Faced with this discrepancy, we defer to the collective bargaining agreement Exhibit 1, and infer that objector has included a typographical or clerical error in Exhibit 4. We find that the collective bargaining agreement Exhibit 1 provides for the following rates for Tile Finishers and Marble Finishers for the Missouri counties of Clark, Lewis, Marion, Ralls, Pike, Lincoln, Warren, St. Charles, St. Louis, St. Louis City, Franklin, Jefferson, and Crawford:

Basic Hourly Wages: \$25.83 per hour

Fringe Benefits: \$12.56 per hour

Overtime and Holiday Rates: Same as for Marble Mason and Tile Setter.

Also in his affidavit, Mike Burns identifies Exhibit 2, a collective bargaining agreement entitled "Bricklayers And Allied Craftworkers International Union of America – Mosaic And Terrazzo Workers & Finishers Local Union #18MO of the Eastern Missouri District Council - Agreement With Mosaic And Terrazzo Contractors Of Greater St. Louis – May 1, 2012 through April 30, 2015." This agreement covers Terrazzo Finisher employees for the Missouri counties of Clark, Lewis, Marion, Ralls, Pike, Lincoln, Warren, St. Charles, St. Louis, St. Louis City, Franklin, Jefferson, and Crawford. The agreement states that during the applicable period, Terrazzo employees were to be paid total wages of \$40.59 per hour. As with Exhibit 1, this agreement does not contain a specific breakdown of basic hourly wages versus fringe benefits. The agreement does set forth overtime and holiday schedules/rates for Terrazzo Finisher employees; we note that these are generally the same overtime and holiday schedules/rates as for Terrazzo Worker employees as set forth in the Division's Annual Wage Order 21 for the relevant counties.

Mr. Burns identifies Exhibit 5 as setting forth the wage rates payable to Terrazzo Finishers under the collective bargaining agreement Exhibit 2. Exhibit 5 suggests the following rates for Terrazzo Finishers: Basic Hourly Wages: \$29.98 per hour; Fringe Benefits: \$10.61 per hour; Overtime and Holiday Rates: Same as for Terrazzo Worker. We note that the total wages (including fringe benefits) as set forth in Exhibit 5 adds up to \$40.59 per hour, which matches the total wages set forth in the collective bargaining agreement Exhibit 2. We find that the collective bargaining agreement Exhibit 2 provides for the following rates for Terrazzo Finishers in the Missouri counties of Clark, Lewis, Marion, Ralls, Pike, Lincoln, Warren, St. Charles, St. Louis, St. Louis City, Franklin, Jefferson, and Crawford:

Basic Hourly Wages: \$29.98 per hour

Fringe Benefits: \$10.61 per hour

Overtime and Holiday Rates: Same as for Terrazzo Workers.

Cape Girardeau Chapter

In his affidavit, Mike Burns identifies Exhibit 3, a document entitled "Collective Bargaining Agreement Between B.A.C. Administrative District Council Of Eastern Missouri AFL-CIO – Cape Girardeau Agreement And Mason Contractors Association Of Southeast Missouri And Other 'Employer' Masonry Contractors Signatory Hereto." This agreement states that it covers employees working under the jurisdiction of the agreement in the Missouri counties of Washington, St. Genevieve, St. Francis, Iron, Madison, Perry, Cape Girardeau, Bollinger, Wayne, Scott, Stoddard, Butler, New Madrid, Pemiscot, Dunklin, Mississippi, Reynolds, Carter, and Ripley.

The agreement states that during the applicable period, employees were to be paid total wages of \$41.74 per hour for "refractory construction" and \$38.24 per hour for "masonry construction." The agreement does not contain specific rates for Tile Finishers, Marble Finishers, or Terrazzo Finishers; in fact, there is no specific reference to Tile Finishers, Marble Finishers, or Terrazzo Finishers anywhere in the language of Exhibit 3.

In his testimony, Mike Burns identifies Exhibit 6 as setting forth the wage rates payable to Tile Finishers and Marble Finishers under the collective bargaining agreement Exhibit 3, and Exhibit 7 as setting forth the wage rates payable to Terrazzo Finishers under Exhibit 3. Exhibit 6

suggests the following rates for Tile Finishers and Marble Finishers: Basic Hourly Wages: \$19.93 per hour; Fringe Benefits: \$10.10 per hour; Overtime and Holiday Rates: Same as for Marble Mason and Tile Setter. Exhibit 7 suggests the following rates for Terrazzo Finishers: Basic Hourly Wages: \$29.98 per hour; Fringe Benefits: \$10.16 per hour; Overtime and Holiday Rates: Same as for Terrazzo Worker.

We note that the total wages suggested by Exhibit 6 (\$30.03) and Exhibit 7 (\$40.14) do not match the rates for either "refractory" (\$41.74) or "masonry" (\$38.24) construction set forth in Exhibit 3. Nowhere in his testimony does Mr. Burns reference or explain this discrepancy. Nor does he explain why Exhibit 3 should even be read as covering work performed by Marble Finishers, Tile Finishers, or Terrazzo Finishers, where those terms are not referenced anywhere in the agreement. Given these circumstances, we find the testimony from Mr. Burns lacking credibility with respect to the applicability of Exhibit 3 and the rates reflected in Exhibits 6 and 7.

Because objector has not provided any other evidence to establish rates for the remaining counties identified in its objection, there is insufficient evidence to permit us to make any findings with respect to the rates payable to Marble Finishers, Tile Finishers, and Terrazzo Finishers in the Missouri counties of Washington, St. Genevieve, St. Francis, Iron, Madison, Perry, Cape Girardeau, Bollinger, Wayne, Scott, Stoddard, Butler, New Madrid, Pemiscot, Dunklin, Mississippi, Reynolds, Carter, and Ripley.

III. Conclusions of Law

Proposed occupational titles of work

The Missouri Code of State Regulations, specifically 8 CSR § 30-3.060(3), provides the following procedure for adding an occupational title:

- (3) Any person wishing to add, delete or modify an occupational title of work description shall submit to the director of the Division of Labor Standards a written request containing the proposed changes. Proposals shall contain the following information:
 - (A) Occupational title;
 - (B) A description of the physical duties to be performed by workers under the title;
 - (C) A copy of any current collective bargaining agreements that are relevant to the proposal, if any;
 - (D) Evidence of hours worked and wages paid while performing work under the title, including fringe benefits paid, if any;
 - (E) Identification of the county(ies) where the work was performed;
 - (F) Evidence that the proposed occupational title of work description is for a type or class of work that is commonly utilized by the construction industry on building or heavy and highway construction projects in Missouri; and

(G) Other information concerning the proposed addition, deletion or modification as the director of the Division of Labor Standards may deem advisable under the circumstances.

Objector has chosen instead to advance its proposed occupational titles through the objection process to the Division's annual wage order, under the procedures set forth in 8 CSR § 30-3.060(6):

The occupational titles and work descriptions for each type or class of work contained herein are valid throughout the entire state of Missouri. 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). The interested party shall have the burden of proving by a preponderance of the evidence the inapplicability of the description of work within that particular occupational title, but shall be afforded the opportunity to do so in a hearing on an objection before the Labor and Industrial Relations Commission.

Although the foregoing language is somewhat inapplicable to these circumstances (in that objector is not seeking to prove the inapplicability of a description of work contained within an existing occupational title but rather seeking to add three *new* titles) we conclude that because objector has chosen to utilize the foregoing procedure to advance its proposal, that the burden of proof mentioned in the foregoing rule is applicable here. Consequently, we conclude that objector has the burden of proof in this matter.

The Division, as the sole party in opposition to objector's proposal, has made clear that its primary interest is in the efficient enforcement of the law, and that if its concerns are accounted for, that it has no reason to oppose objector's request. We have found that the proposed work descriptions for Marble Finisher, Terrazzo Finisher, and Tile Finisher are sufficiently distinguishable from those currently set forth in 8 CSR § 30-3.060(8), and that Missouri workers routinely perform the duties set forth in the proposed occupational title of work descriptions, and that the proposed descriptions accurately describe the duties performed by Marble Finishers, Terrazzo Finishers, and Tile Finishers. We conclude that objector has met its burden of proving that Annual Wage Order 21 should be amended to provide for the three new occupational title of work descriptions for Marble Finisher, Terrazzo Finisher, and Tile Finisher for the Missouri counties of Clark, Lewis, Marion, Ralls, Pike, Lincoln, Warren, St. Charles, St. Louis, St. Louis City, Franklin, Jefferson, and Crawford. The applicable descriptions for such new occupational titles of work shall be as proposed by objector as follows:

Marble Finisher – Applies to workers who: Prep floors, and/or walls by scraping, sweeping, grinding, and related methods for Marble Mason to install construction materials on floor and/or walls. Supplies and mixes construction materials for Marble Mason. Applies grout to installed marble. Moves marble installation materials, tools, machines, and work devices to work areas. Mixes grout, as required, following standard formulas and using manual or machine mixing methods. Moves mixed mortar or plaster to installation area, manually or using wheelbarrow. May assist Marble Setter in the selection of the marble slab for installation following numbered sequences or drawings. Drills holes and chisels channels in edges of marble slabs to install wall anchors, using power drill and

chisel. May assist Marble Setter in bending or forming of wire to form metal anchors, using pliers; may assist Marble Setter in inserting anchors into holes of marble slab; and may assist Marble Setter to secure anchors in place with wooden stakes and plaster if in fact Marble Setter needs assistance. Moves marble slabs to install and removes excess grout, using wet sponge. May assist Marble Setter under Marble Setter's direction in grinding and polishing marble, using abrasives, chemical and/or manual, or may also assist Marble Setter in the assistance of machine grinding and/or in the assisting of polishing techniques. Cleans installed marble surfaces, work and storage areas, installation tools, machinery, and work aids, using water and cleaning agents. Stores marble, installation material tools, machines, and related items. May modify mixing, material moving, grouting, polishing, and cleaning metal pieces, using a torch, spatula, and heat sensitive adhesive and filler. May secure marble anchors to studding, using and covering ends of anchors with plaster to secure anchors in place. May assist Marble Mason to move and position marble. May erect scaffolding and related installation structures. Removes Marble Mason materials and related debris from immediate work area.

Terrazzo Finisher – Applies to workers who: Prep floors and/or walls by scraping, sweeping, grinding, and related methods for Terrazzo Worker to install construction materials on floors, base and/or walls. Supplies and mixes construction materials for Terrazzo Worker. Applies grout finishes to surfaces of installed terrazzo. Moves terrazzo installation materials, tools, machines, and work devices to area, manually or using wheelbarrow. Measures designated amounts of ingredients for terrazzo or grout, using graduated containers and scale, following standard formulas and specs, and loads portable mixer using proper means of transport. Mixes materials according to experience and requests from Terrazzo Worker, dumps mixed materials that form base or top surface of terrazzo into prepared installation site, using wheelbarrow. Applies curing agent to installed terrazzo to promote even curing, using brush or sprayer. May assist Terrazzo Worker in grinding surfaces of cured terrazzo, and may also assist Terrazzo Worker in the use of powder grinders. Spreads grout across terrazzo to finish surface imperfections, using trowel. Fine grinds and polishes surface of terrazzo, when grout has set, using power grinders. Washes surface of polished terrazzo, using cleaner and water, and applies sealer, according to manufacturer specifications, using brush. Installs grinding stones in power grinders, using hand tools. Cleans installation site, and storage areas, tools, machines, and equipment. May modify mixing, grouting, grinding, and cleaning position and secure moisture membrane and wire mesh prior to pouring base materials for terrazzo installation. Spread marble chips or other material over fresh terrazzo surface and press into terrazzo using roller. May cut grooves in terrazzo stairs, using power grinder, and fill grooves with nonskid material. Removes Terrazzo Worker materials and related debris from immediate work area. Preparing, mixing by hand, by mixing machine or transporting of pre-mixed materials and distributing with shovel, rake, hoe or pail, all kinds of concrete foundations necessary for Mosaic and Terrazzo work.

Tile Finisher – Applies to workers who: Prep floors and/or walls by scraping, sweeping, grinding, and related methods for Tile Setter to install construction

materials on floors and walls. Supplies and mixes construction materials for Tile Setter. Supplies and mixes materials for Tile Setter, applies grout, and cuts installed tile. Moves tiles, tile setting tools, and work devices from storage area to installation site manually or using wheelbarrow. Mixes mortar and grout accordingly to standard formulas and request from Tile Setter using bucket, water hose, spatulas, and portable mixer. Supplies Tile Setter with mortar, using wheelbarrow and shovel. Applies grout between joints of installed tile, using grouting trowel. Removes excess grout from tile joints with a sponge and scrapes corners and crevices with a trowel. Wipes surfaces of tile after grouting to remove grout residue and polish tile, using non-abrasive materials. Cleans installation site, mixing and storage tools, and equipment, using water and various cleaning tools. Stores tile setting material machines, tools, and equipment. May apply caulk, sealers, acid, steam, or related agents to caulk, seal, or clean installed tile, using various application devices and equipment. May modify mixing, grouting, grinding, and cleaning procedures according to type of installation or material used. May assist Tile Setter to secure position of metal lath, wire mesh, felt paper, Dur/rock or wonderboard prior to installation of tile. Removes Tile Setter materials and related debris from immediate work area.

However, as further discussed immediately below with respect to the issue of prevailing rates for these occupational titles, objector has failed to meet its burden of proving that Annual Wage Order 21 should be disturbed in any fashion with respect to the Missouri counties of Washington, St. Genevieve, St. Francis, Iron, Madison, Perry, Cape Girardeau, Bollinger, Wayne, Scott, Stoddard, Butler, New Madrid, Pemiscot, Dunklin, Mississippi, Reynolds, Carter, and Ripley.

Prevailing Rates

We turn now to the issue of the applicable prevailing hourly rates for the above-described occupational titles. Section 290.262 RSMo provides, in relevant part, as follows:

1. Except as otherwise provided in section 290.260, the department shall annually determine the prevailing hourly rate of wages in each locality for each separate occupational title. In doing so, the department shall accept and consider information regarding local wage rates that is submitted in either paper or electronic formats. A final determination applicable to every locality to be contained in an annual wage order shall be made annually on or before July first of each year and shall remain in effect until superseded by a new annual wage order or as otherwise provided in this section. The department shall, by March tenth of each year, make an initial determination for each occupational title within the locality.
2. The prevailing wage rate for an occupational title in a locality shall, with the exception of localities that are counties of the third and fourth classification and any county of the second classification with more than fifty-eight thousand but fewer than sixty-five thousand inhabitants, be the wage rate most commonly paid, as measured by the number of hours worked at each wage rate, for that occupational title within that locality. In determining such prevailing wage rates, the department shall ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, when no wages were

reported.

3. With respect only to localities that are counties of the third and fourth classification and any county of the second classification with more than fifty-eight thousand but fewer than sixty-five thousand inhabitants, the prevailing wage rate for an occupational title within such locality shall be determined in the following manner:

(1) The total number of hours worked that are not paid pursuant to a collective bargaining agreement for the time period in that occupational title in the locality and the total number of hours worked that are paid pursuant to a collective bargaining agreement for the time period in that occupational title in the locality shall be considered;

(2) If the total number of hours that are not paid pursuant to a collective bargaining agreement, in the aggregate, exceeds the total number of hours that are paid pursuant to such an agreement, in the aggregate, then the prevailing wage rate shall be the rate most commonly paid that is not paid pursuant to a collective bargaining agreement as measured by the number of hours worked at such rate for that occupational title within the locality;

(3) If the total number of hours that are paid pursuant to a collective bargaining agreement, in the aggregate, exceeds the total number of hours that are not paid pursuant to such an agreement, in the aggregate, then the prevailing wage rate shall be the rate most commonly paid that is paid pursuant to a collective bargaining agreement as measured by the number of hours worked at such rate for that occupational title within the locality;

(4) If no work within a particular occupational title has been performed in a locality at any wage rate, the prevailing wage rate for that occupational title in that locality shall be determined in the following manner:

(a) If wages were reported for an occupational title within a locality within the previous six annual wage order reporting periods and the prevailing wage rate was determined by a collective bargaining agreement by hours worked pursuant to such agreement in the most recent annual wage order reporting period where such wages were reported, then the wage rate paid pursuant to the current collective bargaining agreement shall be the prevailing rate for that occupational title within the locality;

(b) If wages were reported for an occupational title within a locality within the previous six annual wage order reporting periods and the prevailing wage rate was not determined by hours worked pursuant to a collective bargaining agreement in the most recent annual wage order reporting period where such wages were reported, then the wage rate paid in the most recent annual wage order reporting period when such wages were reported shall be the prevailing wage rate for that occupational title within the locality;

(c) If no wages were reported for an occupational title within a locality within the

previous six annual wage order reporting periods, the department shall examine hours and wages reported in all adjacent Missouri counties during the same periods. The most recent reported wage rate in a given wage order period in the adjacent Missouri county with the most reported hours actually worked for that occupational title in the wage period during the previous six annual wage order reporting periods shall be used to determine the prevailing wage rate;

(d) If no wages were reported for an occupational title within any adjacent Missouri county within the previous six annual wage order reporting periods, then the rate paid pursuant to the current collective bargaining agreement shall be the prevailing wage rate for that occupational title within the locality.

We have found that no hours were reported to the Division for any Missouri county under the occupational titles of Marble Finisher, Terrazzo Finisher, and Tile Finisher during any preceding reporting period. Consequently, under the foregoing statutory provisions, the only source for setting a rate for the three new occupational titles is a current collective bargaining agreement. We have found rates payable under current collective bargaining agreements for the occupational titles of Marble Finisher, Tile Finisher, and Terrazzo Finisher for the Missouri counties of Clark, Lewis, Marion, Ralls, Pike, Lincoln, Warren, St. Charles, St. Louis, St. Louis City, Franklin, Jefferson, and Crawford, as follows:

For Tile Finishers and Marble Finishers:

Basic Hourly Wages: \$25.83 per hour

Fringe Benefits: \$12.56 per hour

Overtime and Holiday Rates: Same as for Marble Mason and Tile Setter.

For Terrazzo Finishers:

Basic Hourly Wages: \$29.98 per hour

Fringe Benefits: \$10.61 per hour

Overtime and Holiday Rates: Same as for Terrazzo Workers.

In light of our findings, we conclude that Annual Wage Order 21 should be amended to provide for the foregoing rates for the three above-described occupational titles of work for the Missouri counties of Clark, Lewis, Marion, Ralls, Pike, Lincoln, Warren, St. Charles, St. Louis, St. Louis City, Franklin, Jefferson, and Crawford.

However, we conclude that objector has failed to meet its burden of proving prevailing rates for the above-described occupational titles for the Missouri counties of Washington, St. Genevieve, St. Francis, Iron, Madison, Perry, Cape Girardeau, Bollinger, Wayne, Scott, Stoddard, Butler, New Madrid, Pemiscot, Dunklin, Mississippi, Reynolds, Carter, and Ripley. This is because the collective bargaining agreement submitted by objector does not clearly pertain to the occupational titles of Marble Finisher, Tile Finisher, or Terrazzo Finisher, and because the testimony of Mike Burns lacks credibility where he identified exhibits that set forth rates that

differ from those identified within the language of the collective bargaining agreement, and where he did not provide any explanation for this discrepancy, or even acknowledge it in any way.

Under § 290.262.8 RSMo, we are required within 20 days of hearing to rule on an objection and make the final determination that we "believe the evidence warrants." While we are convinced that the occupational title descriptions of work for Marble Finisher, Tile Finisher, and Terrazzo Finisher are valid for the Missouri counties of Washington, St. Genevieve, St. Francis, Iron, Madison, Perry, Cape Girardeau, Bollinger, Wayne, Scott, Stoddard, Butler, New Madrid, Pemiscot, Dunklin, Mississippi, Reynolds, Carter, and Ripley, the Division's obligation under § 290.262.1 RSMo, is to "annually determine the prevailing hourly rate of wages in each locality for each separate occupational title." Where objector has not proven the prevailing hourly rate of wages in those counties for the occupational titles of Marble Finisher, Tile Finisher, and Terrazzo Finisher, we believe the evidence in this matter warrants a determination that Objections 006-037 are overruled with respect to the Missouri counties of Washington, St. Genevieve, St. Francis, Iron, Madison, Perry, Cape Girardeau, Bollinger, Wayne, Scott, Stoddard, Butler, New Madrid, Pemiscot, Dunklin, Mississippi, Reynolds, Carter, and Ripley. It is so ordered.

IV. Order

With respect to the Missouri counties of Clark, Lewis, Marion, Ralls, Pike, Lincoln, Warren, St. Charles, St. Louis, St. Louis City, Franklin, Jefferson, and Crawford, Annual Wage Order 21 is amended to provide for the three new occupational title of work descriptions, as well as the prevailing hourly wages, fringe benefits, and overtime and holiday schedules as set forth herein.

The Commission notes that this order pertains solely to Annual Wage Order 21 and does not amend the Missouri Code of State Regulations.

Given at Jefferson City, Missouri, this 10th of June 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

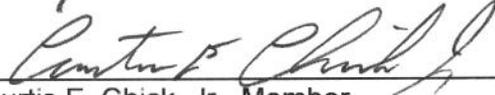




John J. Larsen, Jr., Chairman



James G. Avery, Jr. Member



Curtis E. Chick, Jr., Member

Attest:



Secretary