

**STATE OF ILLINOIS – DEPARTMENT OF LABOR
CONCILIATION/MEDIATION DIVISION
900 S. SPRING ST.
SPRINGFIELD, ILLINOIS 62704**

IN THE MATTER OF:)	
)	
ILLINOIS CENTRAL SWEEPING, L.L.C)	
)	
)	STATE FILE NO. 2014-H-TW07-0030
Petitioner(s),)	
)	DATE OF NOTICE: July 24, 2013
)	
)	CERT. MAIL/RETURN RECEIPT:
)	_____
v.)	
)	
JOSEPH COSTIGAN, DIRECTOR OF)	7012 2210 0001 8343 4909
LABOR and the ILLINOIS DEPARTMENT OF)	
LABOR,)	
)	
Respondent.)	
)	

NOTICE OF HEARING

PLEASE TAKE NOTICE that pursuant to section(s) 4 and 9 and of the Illinois Prevailing Wage Act [hereinafter, "PWA" or "Act"], 820 ILCS 130/0.01-12, Joseph Costigan, Director of Labor and the Illinois Department of Labor [hereinafter, "Respondent"] has received written objections filed by, Illinois Central Sweeping Services, L.L.C. ["Petitioner(s)"] and will convene a hearing in accordance with Article 10 of the Illinois Administrative Procedure Act, 5 ILCS 100/10-5-10-70 and the procedures stated in Respondent's rules at 56 Illinois Administrative Code 120.100 – 120.670.

DATE: AUGUST 29, 2013
TIME: 1:00 p.m.
PLACE: ILLINOIS DEPARTMENT OF LABOR
160 NORTH LASALLE STREET, SUITE C-1300
CHICAGO, ILLINOIS 60601

ADMINISTRATIVE LAW JUDGE:

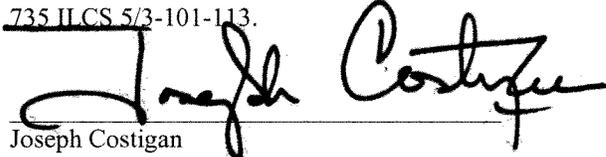
CLAUDIA D. MANLEY
CHIEF ADMINISTRATIVE LAW JUDGE
ILLINOIS DEPARTMENT OF LABOR
160 NORTH LASALLE STREET, SUITE C-1300
CHICAGO, ILLINOIS 60601

The hearing involves the written objections and hearing request (Exhibits A, attached hereto and made a part hereof) filed by Petitioner(s) involving and effecting Respondent's determination of the classification(s) and/or reclassification(s) of craft(s), or type of laborer(s), worker(s) or mechanic(s), engaging in work on public works projects in the in the following county: Cook located within the State of Illinois and the prevailing rate of wages for the classification(s). Petitioner requests establishment or clarification regarding new classifications and reclassification for street sweepers currently classified as Truck Driver I. The objection includes establishment of said rates including rates for wages and fringe benefits including vacation pay. Exhibit A.

The parties and their respective representatives must be prepared to proceed at the hearing. The parties must present all information, documents, records or witnesses necessary to substantiate their position(s) at the hearing.

Pursuant to 56 Illinois Administrative Code 120.640, the Administrative Law Judge shall render a decision and issue an order on the objections pursuant to 820 ILCS 130/4 and 9, 56 Illinois Administrative Code 120.100 – 120.670. The decision will be the decision for and of the Director of Labor. A certified copy of the final administrative decision shall be filed with the Secretary of State, and a copy served personal service or certified/registered mail on all parties to the proceeding.

The proceedings under this hearing are subject to judicial review in accordance with the provisions of the Administrative Review Law, 735 ILCS 5/3-101 - 3-113. The Director of Labor's determination on the objections is final and binding unless a party to this proceeding applies for and obtains judicial review of the final administrative decision in accordance with the provisions of the Administrative Review Law, 735 ILCS 5/3-101-113.



Joseph Costigan
Director of Labor

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July 15, 2013

Via Facsimile: 212-782-0596 and Regular Mail

Thomas Whalen
Illinois Department of Labor
900 South Spring Street
Springfield, Illinois 62704

Re: **ILLINOIS CENTRAL SWEEPING SERVICES, LLC'S 820 ILCS
130/9 OBJECTION TO PREVAILING WAGE SCHEDULE**

Dear Mr. Whalen:

This letter is intended to serve as notice of Illinois Central Sweeping Services, LLC's ("ICS") 820 ILCS 130/9 objections to the current prevailing wage schedule and classification for street sweepers in Cook County. ICS hereby requests a hearing, under Section 9, to pursue a separate classification for street sweepers and prevailing wages (including fringe benefits) for street sweepers that would more accurately reflect the local trade's wages and benefit compensation package.

The IDOL classifies street sweepers as a Truck Driver 1. The existing prevailing wage, under the current classification for street sweepers is higher than those rates prevalent within the collective bargaining agreements for work of this nature. In order to correct this inequality and to properly serve the purpose and policy of the Prevailing Wage Act ("PWA"), the IDOL should hear and address ICS's objections.

More problematic is the fact that the PWA does not recognize vacation time in setting the rates for street sweepers. This is largely because the union contract accepted by the IDOL for setting the rates of Truck Driver (the classification street sweepers have unjustifiably been "lumped" into) bargained away their vacation time in exchange for a base wage increase of \$2.00 per hour. *See*, M.A.R.B.A. Agreement dated June 2009 to May 2012, attached as Exhibit 1. Per Article 18 of this Agreement, "all vacations and vacation language were eliminated. In exchange, \$2.00 has been added to the base wage effective June 1, 2009." The Wages identified in Article 8 of the Agreement, as well as the Health and Welfare and Pension Fund, amounts contained in Articles 9 and 10, incorporated this \$2.00 increase. Thereafter the IDOL adopted the wages, health and welfare and pension of the M.A.R.B.A. Agreement as the Prevailing Wage for multiple classifications.

EXHIBIT A

ICS is not a member of M.A.R.B.A. and was not involved in negotiations related to eliminating vacation in that agreement (and thereafter with the PWA). Regardless, because the State adopted the M.A.R.B.A. wages, etc., as the new Prevailing Wage, ICS is also paying \$2.00 for a vacation buyout.

There must be a change in the current prevailing wage benefits for street sweepers. That prevailing wage should reflect those rates negotiated in good faith by Local 731 with ICS and its competitors, rather than the currently applied prevailing wages of a dissimilar classification. In addition, the Prevailing Wage Act does not currently recognize “sweepers” under any classification.

II. Objection as to Prevailing Wage Act Schedule as it currently applies to Street Sweepers.

a. Prevailing Wage Act

As the Prevailing Wage Act clearly sets forth, it is “the policy of the State of Illinois that a wage of no less than the general prevailing hourly rate is paid for work of a similar character in the locality in which the work is performed ... to all laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works.” 820 ILCS 130/1 (2007).

The Act does not intend to unlawfully delegate union authority to set wage rates. *Anderson v. County of Jo Daviess*, 81 Ill. App. 3d 354 (2d Dist. 1980). However, it is true that regional Collective Bargaining Agreements, technically, no longer set the prevailing wage in a location. *Anderson*, 81 Ill. App. 3d at 357. Instead, under the Act, the State is to “find” or “ascertain” rather than “fix” a wage standard. *Id.* Yet, in ascertaining the prevailing wage, only “work of a similar character on *public works*” may be considered and private construction works shall not be considered in the prevailing wage standard. 820 ILCS 130/3 (2007); *Anderson*, 81 Ill. App. 3d at 357. Since the standard is limited to “public works”, there is a possibility that the resulting prevailing wage may be fortuitously set by the local union scale. As noted in *Anderson*: “[t]he standard is not ‘union scale’ but ‘public works’ and in such times or situations as union labor predominates in the public works field, the union scale will no doubt set the standard for prevailing wage under the statute.” *Anderson*, 81 Ill. App. 3d at 358.

Evidence that labor contracts do, in fact, set the prevailing wage comes from testimony given by Carla Pulley, a certifying officer with the Conciliation and Mediation Division of the Illinois Department of Labor during a March 7, 2005 Administrative Hearing in the matter *Illinois Landscape Contractors Association v. Department of Labor ILCA v. IDOL*, Ill.App.3d 912 (2nd Dist. 2007). In her testimony, she admitted that the IDOL typically accepts the scales from the union that the IDOL has historically relied on. *Id.* This is true even if two unions submit competing agreements demonstrating *Id.* Clearly, the IDOL does not investigate the prevailing wage. Instead, it relies on the Unions to bargain for a rate then merely accepts the rate the Union has “always” relied on. *Id.* In a

Section 9 objection, the burden is on the moving party to demonstrate why an objection should be sustained. 820 ILCS 130/9 (West 2004).

The prevailing wage, by definition, includes not only hourly wages but the fringe benefits for health and welfare, insurance, vacations and pensions paid. 820 ILCS 130/2 (2007)

b. Current Prevailing Wage Rates are Unsuitable

A simplified comparison of the prevailing wage, the wages set by Mid-American Regional Bargaining Association (M.A.R.B.A.), and those wages negotiated by Local 731 reveals that the rates for health and welfare and pension negotiated by and between Local 731 and ICS (and similarly situated Employers) are far below the State's prevailing wage health and welfare and pension rates. For simplicity, this comparison focuses only on wages and Health and Welfare and Pension Fund benefits (together "fringe benefits").

In Cook County, street sweepers are currently incorporated into the classification for Truck drivers (East and West of Barrington). Importantly, the stated Prevailing Wage Table does not identify street sweeper under this category. It is unknown how employees performing the work of a street sweeper were lumped into this category, as opposed to being recognized as a separate category. Currently, the prevailing wage for Truck Drivers is \$33.85. The collective Health and Welfare and Pension benefits for Truck Drivers are \$16.65 per hour worked.

Most importantly, Collective Bargaining Agreements between Teamsters Local Union No. 731 and several Employers were created to establish hours, wages, benefits and other terms of employment in the "sweeping" industry. These employers perform the majority of public body street sweeping work. Thus the rates in their contracts are the prevailing rates. By way of comparison, the slightly varied agreements shed light on standard fringe benefit packages offered in the local area. Currently ICS is required, pursuant to its CBA, to pay fringe benefits totaling \$11.18 per hour based on a 40 hour week. At Waste Management a major ICS competitor, the hourly benefit rate is \$11.38 based on a 40 hour week.

What becomes clear is that the rates for fringe benefits negotiated by and between Local 731 and ICS (and similarly situated Employers) are far below the State's prevailing wage health and welfare and pension rates. At the same time, Local 731, through its association with M.A.R.B.A has reported that its health and welfare and pension rates with Employers are at the prevailing wage rate identified by the State. Local 731 is a member of M.A.R.B.A. Nonetheless for purposes of negotiating with ICS, it has knowingly negotiated fringe benefits at rates lower than M.A.R.B.A. and out of compliance with the PWA.

IDOL has failed to exercise its duty to ascertain and establish the proper prevailing wage for the sweeping industry. In Cook County, the currently established prevailing wage does not reflect the "general prevailing hourly rate" of the street sweepers and should, thus,

be changed to comport with the purpose and intent of the Prevailing Wage Act. Since union labor dominates the public works field of street sweeping, the Prevailing Wage Act would be best served by the adoption of the wages negotiated in good faith by Local 731. As such, ICS objects to the prevailing wage schedule for Truck Drivers as it applies to street sweepers and requests the prevailing wage be set at a wage consistent with the wages and benefits bargained for with Teamsters 731.

II. Objection as to the Current Classification of Street Sweepers.

a. Classifications

Under the Prevailing Wage Act, the prevailing rate of hourly wages for work must be paid for work of a similar character. 820 ILCS 130/3 (2008). Presumably in effort to simplify, classifications of work were established. The Department of Labor, along with other public bodies, is charged with determining classifications. *People v. Skoog Landscape & Design*, 337 Ill. App. 3d 232 (3rd Dist. 2003). Then, the Department of Labor annually investigates, ascertains, and publishes the prevailing wage for each classification.

Historically, the Department of Labor performed surveys to determine wage rates and classifications. However, as of 2001, the Department ceased conducting surveys to determine classifications. *Ill. Landscape Contr. Assoc. v. Dept. of Labor*, 372 Ill. App. 3d 912, 917 (2d Dist. 2007). The express language of the Prevailing Wage Act does not require that the Department of Labor annually investigate classifications. *Id.* at 921. Moreover, the Act does not provide any guidance as to how a classification should be investigated or determined by the Department of Labor. *Id.* at 923.

Still, the Act *requires* that wages of public workers meet the prevailing wage rates for work of a “similar character.” 820 ILCS 130/1 (2008). The Illinois Appellate Court has adopted the common sense definition of “similar:” “‘having characteristics in common: very much alike: comparable’ or ‘alike in substance or essentials’”. *Ill. Landscape Contr. Assoc.*, 372 Ill. App. 3d at 923. Furthermore, “in cases involving similarity of jobs” the Court has considered “requisite skills, training, and knowledge”. *Id.*

Thus, it follows, where a prevailing wage is ascertained for a certain classification, the wage is only proper as to those that fit into that classification by way of commonality in skill, training, knowledge and substance of work. In other words, it would be contrary to the Act to require a trade to meet the prevailing wage of another dissimilar craft’s classification. *See Frye v. County of Iroquois*, 140 Ill. App. 3d 749 (3d Dist. 1986) (discussing classifications).

The Act contemplates that new prevailing wage classifications may become necessary in order to properly ascertain prevailing wages. 820 ILCS 130/4(e). In addition, the Department of Labor has added that “if a task to be performed is not subject to one of the classifications of pay set out, the Department will, upon being contacted, state which

neighboring county has such a classification and provide such a rate, such rate being deemed to exist by reference in [the published monthly prevailing wages]. If no such neighboring county rate applies to the task, the Department shall undertake a special determination. . .”

b. Current Classification is Unsuitable

ICS has contracted with Teamsters 731 to employ street sweepers. The street sweepers are required to remove large and small debris from the road way. No Illinois County has a specific classification for street sweepers. In most instances, street sweepers have been included in the classification for Truck Driver. Also, neighboring counties do not provide a street sweeper classification. Therefore, the classification of “Truck Driver” has been capriciously applied for purposes of setting a prevailing wage for street sweepers.

The duties, equipment and work of a “Truck Driver” are not so “similar in character” to that of a street sweeper, that the two should be classified together. In fact, a review of the M.A.R.B.A. reveals that “sweeper” is not identified under a Group Classification, for purposes of setting a wage under that Agreement. Exhibit 1, Article 8.3.

Moreover, the fact that a Truck Driver’s prevailing wage does not equate with the local contracted rates of street sweepers unions is evidence that the “Truck Driver” rate is *not* the prevailing rate for street sweeping. Further, if the Department of Labor attempted to survey and ascertain the rates of local and similar street sweepers the Department would find a divergence from those rates ascertained for a “Truck Driver.” Therefore, street sweepers should be classified separately and the rates set for “Truck Drivers” should not be considered the “prevailing rates” for street sweepers. Upon information and belief, an investigation would reveal that the number of “sweepers” employed by members of M.A.R.B.A. is nominal in comparison to the number employed by sweeping companies such as ICS.

This contention is especially true in light of the actual rates negotiated in local contracts. Here, ICS has contracted at a rate, particularly for Health and Welfare and Pension benefits, which comports with rates of those whose work are similar in character and in locality; and finding of a violation would be converse to the purpose of Act. In fact, it would appear that ICS has set the prevailing wage and benefits for street sweepers.

Therefore, ICS objects to the classification of street sweepers as “Truck Drivers” and requests a separate classification for street sweepers.

V. Conclusion

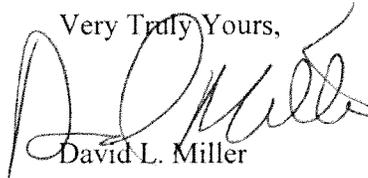
At all times, ICS, through negotiations with Local 731, was paying the agreed to wages and fringe benefits. Local 731, however, through its membership/association with M.A.R.B.A., has reported that its negotiated prevailing rates are the same as those posted by the IDOL as being the prevailing rates. A review of the collective bargaining agreements

between Local 731 and similarly situated Employers, reveals that the prevailing benefits rates are not being paid (nor required via the agreements) by any other employer in the "sweeping industry" which also performs public works as that term is defined by the Act.

According to the Act, the State is authorized to "ascertain" and/or "find" the prevailing wages and benefits through a review of relevant collective bargaining agreements. Primarily, it appears the State relies on the rates and wages identified and in the M.A.R.B.A. Agreement for purposes of "ascertaining" the prevailing wages, etc. in any given county where public works are performed. Unfortunately, while Local 731 appears to suggest that it abides by M.A.R.B.A. rates when negotiating with Employers, the current collective bargaining agreement by and between ICS demonstrates that this is not true. The prevailing wages for the industry in which ICS operates appears to be lower than those set by the M.A.R.B.A. Agreement.

ICS, therefore, respectfully requests a hearing on its objections within 45 days of the receipt of this notice. Further, ICS seeks a final written determination undertaking a correction of its prevailing rates for street sweepers for all counties in which it does work, based on the evidence and documentation provided. In the alternative, ICS respectfully requests IDOL create a new classification for street sweepers and set the prevailing wage, consistent with the wages and benefits ICS bargained for with Teamsters 731. We look forward to your reply.

Very Truly Yours,



David L. Miller

DLM:

Enclosures