

STATE OF ILLINOIS – DEPARTMENT OF LABOR
160 N. LASALLE ST., STE. C-1300
CHICAGO, ILLINOIS 60601

IN THE MATTER OF:)
)
AC PAVEMENT STRIPING COMPANY,)
MARKING SPECIALISTS CORPORATION, and)
MAINTENANCE COATINGS COMPANY)
)
PETITIONER(S),) STATE FILE NO. 2022-H-RP08-2335
) 2022-H-RP08-2333
v.)
)
MICHAEL D. KLEINIK, DIRECTOR OF THE)
ILLINOIS DEPARTMENT OF LABOR, and)
THE ILLINOIS DEPARTMENT OF LABOR,)
)
RESPONDENTS.)
)

ORDER

THIS MATTER COMING on to be heard under the Prevailing Wage Act, 820 ILCS 130/0.01-12 and Notice of Hearing issued there under; and, pursuant to 56 Illinois Administrative Code 120.400 all parties having been duly advised on the premises;

IT IS HEREBY ORDERED:

1. Pursuant to 56 IAC 120.400 a **telephonic** pre-hearing conference shall be convened telephonically on **September 10, 2021 at 12:00 p.m.** The administrative law judge will initiate the conference call. Complainant attorney Jeffrey Risch will be phoned at 630-569-0079. Respondent Attorney Shayne Aldridge will be phoned at 217-557-3112. Technology constraints require that a direct dial phone number be provided for the pre-hearing conference. If the number listed is not a direct dial number or you require additional phone lines to be added, you are to provide the phone numbers and/or the names and phone numbers of the additional participants to DOL.hearings@illinois.gov
2. The pre-hearing conference shall be held to simplify the issues, determine necessity or desirability of amendment to documents for purposes of clarification, simplification or limitation, determine stipulations, admission of fact and of contents and authenticity of the documents, limit the number of witnesses, determine propriety of the prior mutual exchange among the parties who have prepared testimony or exhibits, and decide other matters as may tend to expedite the disposition of the proceedings and to assure a just conclusion thereof.

DATE: August 30, 2021

By: /s/ Claudia D. Manley
Claudia D. Manley
Chief Administrative Law Judge

IDOL
160 N. LaSalle St. Ste. C-1300
Chicago IL 60601
V: 312-793-1805
F: 312-793-5257
Dol.hearings@illinois.gov

STATE OF ILLINOIS)
)
)
COUNTY OF COOK)

CERTIFICATE OF SERVICE

Under penalties as provided by law, including pursuant to Section 1-109 of the Code of Civil Procedure, I Karen Lewis, a non-attorney, affirm, certify or on oath state, that I served notice of the attached Order upon all parties to this case, or their agents appointed to receive service of process, by enclosing a copy of the Order in Case No. 2022-H-RP08-2335 2022-H-RP08-2333 and a copy of the Certificate of Service in an envelope addressed to each party or party's agent at the respective address shown on the order or on the Certificate of Service, having caused each envelope to be served by U.S. I mail with postage prepaid at 100 W. Randolph Street, Chicago, Illinois on the 30 day of August, 2021 prior to 4:30 p.m.

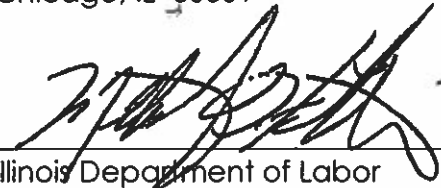
Jeffrey A. Risch
SmithAmundsen
3815 E. Main St., Ste. A-1
St. Charles IL 60174
jrisch@salawus.com

9489 0090 0027 6319 0049 95

Shayne Aldridge
Deputy General Counsel
Illinois Department of Labor
524 S. Second St., Ste. 400
Springfield, IL 62701
Shayne.L.Aldridge@illinois.gov

9489 0090 0027 6319 0049 88

HAND DELIVERED:
Michael D. Kleinik
Director of Labor
Illinois Department of Labor
160 N. LaSalle St., Ste. C-1300
Chicago, IL 60601



Illinois Department of Labor

STATE OF ILLINOIS – DEPARTMENT OF LABOR
160 N. LASALLE ST., STE. C-1300
CHICAGO, ILLINOIS 60601

IN THE MATTER OF:)

AC PAVEMENT STRIPING COMPANY,)
MARKING SPECIALISTS CORP. and)
MAINTENANCE COATING CO.)

PETITIONER(S),)

v.)

MICHAEL D. KLEINIK, DIRECTOR OF THE)
ILLINOIS DEPARTMENT OF LABOR, and)
THE ILLINOIS DEPARTMENT OF LABOR,)

RESPONDENTS.)

STATE FILE NO. 2022-H-RP08-2333

DATE OF NOTICE: August 30, 2021

CERT. MAIL/RETURN RECEIPT:

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NOTICE OF TELEPHONIC HEARING

PLEASE TAKE NOTICE that Michael D. Kleinik, Director of the Illinois Department of Labor, and the Illinois Department of Labor [hereinafter, "Respondents"] have received from AC Pavement Striping Company, Marking Specialists Corporation and Maintenance Coating Company, [hereinafter, "Petitioner(s)"] written objections to the prevailing wage determinations effective July 15, 2021 by the Department on its website, and a request for hearing on those objections pursuant to Section 9 of the Prevailing Wage Act [hereinafter, "IPWA" or "Act"], 820 ILCS 130/0.01 et seq.

Pursuant to the PWA, Article 10 of the Illinois Administrative Procedure Act, 5 ILCS 100/10-5 et seq., and 56 Ill. Admin. Code 120.100 et seq., Respondents will convene a hearing on:

DATE: SEPTEMBER 20, 2021
TIME: 9:00 A.M.
COMPLAINANT ATTORNEY PHONE #: 630-569-0079
RESPONDENT ATTORNEY PHONE #: 217-557-3112

ADMINISTRATIVE LAW JUDGE:

JOHN O'MEARA
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 filed by Petitioner(s), attached hereto and made a part hereof (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 issue a Decision and Order. In the event no timely or proper exceptions are filed, the findings, conclusions, recommendations and order of the administrative law judge shall automatically become the decision and order of the Director of Labor.

This hearing will be conducted **BY TELEPHONE** with the ALJ contacting you on the date and time stated above. If the phone number listed is incorrect, contact the hearings section at dol.hearings@illinois.gov as soon as possible with the corrected number. If additional individuals are to be contacted, the party is to provide the name and direct dial phone number of the additional individual to be included during the hearing to DOL.hearing@illinois.gov. If the phone number listed is not a direct dial phone number, please provide a **DIRECT DIAL NUMBER** to dol.hearings@illinois.gov as soon as possible. Technology constraints require you provide a **DIRECT DIAL PHONE NUMBER ONLY**. Also, technology constraints do not allow caller dial through or the ability to navigate automated operators. Non-direct dial numbers will result in the call not going through. **For those with caller identification, this call will originate from various locations throughout the country, including but not limited to San Francisco. SOME CALLS PLACED BY THE DEPARTMENT ARE BLOCKED, IF YOUR PHONE HAS PRIVACY MANAGER OR ANONYMOUS CALL BLOCKER, THE CALL MAY NOT GO THROUGH.** All calls placed by the Department are recorded.

The proceedings are subject to judicial review in accordance with the provisions of the Administrative Review Law, 735 ILCS 5/3-101 et seq. 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.



Michael D. Kleinik
Director of Labor



SmithAmundsen

Jeffrey A. Risch
Direct Dial: (630) 569-0079
Email: jrisch@salawus.com

EXHIBIT A

August 12, 2021

2022-H-RPO8-2333

**Via FedEx – Overnight Delivery,
Electronic Mail to michael.kleinik@illinois.gov, and
Facsimile to (217) 782-0596**

Michael D. Kleinik
Director
Illinois Department of Labor
160 N. LaSalle – 13th Floor
Chicago, IL 60601

**RE: AC Pavement Striping Company's, Marking Specialists Corporation's and
Maintenance Coatings Companies' 820 ILCS § 130/9 Objections to the Illinois
Department of Labor's July 15, 2021 Prevailing Wage Schedule—and Demand for
Section 9 Hearing**

Dear Director Kleinik:

Our firm represents AC Pavement Striping Company (an Illinois Corporation), Marking Specialists Corporation (an Illinois Corporation) and Maintenance Coatings Companies (an Illinois Corporation) (hereinafter, individually and collectively referred to as the "Petitioner(s))." This letter constitutes the Petitioners' written notice of their objections to the Illinois Department of Labor's July 15, 2021 Prevailing Wage Schedule and determinations made thereto with respect to the classification of Traffic Safety Worker.

More specifically, Petitioners' dispute with the Department's current Prevailing Wage Schedule centers on the fact the Schedule recognizes only one Traffic Safety Worker position, when the Schedule should instead recognize two separate positions: Traffic Safety Worker I ("TSW I") and Traffic Safety Worker II ("TSW II"). This notice is submitted and filed pursuant to 820 ILCS §§ 130/4 and 130/9.

By way of background, Petitioners are members of the Traffic Safety Collective Bargaining Association ("Association"). The Association represents various contractors that perform traffic safety work on public works projects in Illinois north of I-80; specifically including the entire counties of Cook, DuPage, Kane, Lake, McHenry and Will. The Petitioners regularly transact business and perform traffic safety work on public works projects in these counties. The Association is party to a collective bargaining agreement (hereinafter referred to as the "CBA") with a coalition of Teamsters Local Unions (Local Nos. 179, 301, 330, 673 and 731, hereinafter referred to as the "Local Unions"). Each Petitioner is signatory to the CBA. The underlying CBA



helps establish the prevailing rate of wages and benefits for workers who perform traffic safety work on public works in the counties of Cook, DuPage, Kane, Lake, McHenry and Will.

The Department recognized the classification of Traffic Safety Worker in Cook, DuPage, Kane, Lake, McHenry and Will counties in the July 15, 2021 Prevailing Wage Schedule and determinations because the majority of workers performing this work have historically been covered by collective bargaining agreements with the Local Unions and Association identified above. In particular, a majority of these workers have been directly employed by members of the Association, including, but not limited to, the Petitioners.

However, the Department's Schedule fails to recognize that the applicable CBA actually has two distinct Traffic Safety Worker positions, commonly referred to as TSW I and TSW II. Pursuant to the applicable CBA, the TSW I performs work associated with *the delivery, installation, pick-up and servicing of safety devices during periods of roadway construction, including such work as set-up and maintenance of barricades, barrier wall reflectors, drums, cones, delineators, signs, crash attenuators, glare screen and other such items, and the layout and application or removal of conflicting and/or temporary roadway markings utilized to control traffic in constructions zones, as well as flagging for these operations.*

Additionally, pursuant to the applicable CBA, the TSW II performs *all work associated with the installation or removal of permanent pavement markings and/or pavement markers including both installations performed by hand and installations performed by truck.*

As there is no question that the applicable CBA recognizes two distinct Traffic Safety Worker positions, there can also be no dispute that the Department's Prevailing Wage Schedule should be revised to recognize TSW I and TSW II as separate positions. This is particularly so because the Department has historically looked to applicable CBAs when establishing Prevailing Wage Schedules, and because the Illinois Prevailing Wage Act favors deferral to applicable CBAs with respect to establishing prevailing wage rates and job titles.

Indeed, pursuant to 820 ILCS § 130/4, “[t]he prevailing rate of wages paid to individuals covered under this Act shall not be less than the rate that prevails for work of a similar character on public works in the locality in which the work is performed *under collective bargaining agreements or understandings between employers or employer associations and bona fide labor organizations relating to each craft or type of worker or mechanic needed to execute the contract or perform such work, and collective bargaining agreements or understandings successor thereto*, provided that said employers or members of said employer associations employ at least 30% of the laborers, workers, or mechanics in the same trade or occupation in the locality where the work is being performed.” (italics added.)

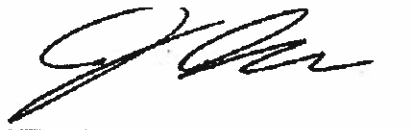
The Petitioners assert that they, and the other employers of the Association they each belong to, are covered by the prevailing area-wide CBA for Traffic Safety Workers, and that the Petitioners employ workers under the CBA that account for no less than 30% of the workers performing the work of Traffic Safety Workers (both TSW I and II) in the counties of Cook, DuPage, Kane, Lake, McHenry and Will. However, the Department's July 15, 2021 Prevailing Wage Schedule for each

of the aforementioned counties fail to recognize the TSW I and TSW II distinction—and fail to recognize the higher wages and fringe benefits paid to the TSW II position under the CBA.

Because the Department's current Prevailing Wage Schedule improperly ignores the existence of the two distinct Traffic Safety Worker positions—and because the Schedule fails to recognize the proper wage and fringe benefits that should be paid to TSW I and TSW II under the applicable CBA, the Department's Schedule should be revised to comply with the CBA in all material respects.

Thank you for your attention to this matter. Please contact me to discuss any further questions you may have, and to schedule a date for the Section 9 Administrative Hearing.

Sincerely,
SmithAmundsen LLC



Jeffrey A. Risch

cc: IDOL Hearings Department (via E-mail: DOL.Hearings@illinois.gov)

STATE OF ILLINOIS)
)
)
COUNTY OF COOK)

CERTIFICATE OF SERVICE

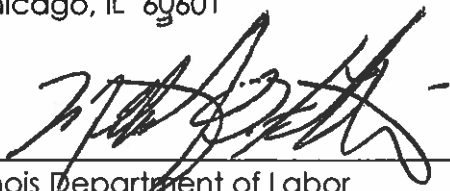
Under penalties as provided by law, including pursuant to Section 1-109 of the Code of Civil Procedure, I Karen Lewis, a non-attorney, affirm, certify or on oath state, that I served notice of the attached Notice of Hearing upon all parties to this case, or their agents appointed to receive service of process, by enclosing a copy of the Notice of Hearing and Attachments in Case No. 2022-H-RP08-2333 and a copy of the Certificate of Service in an envelope addressed to each party or party's agent at the respective address shown on the Notice of Hearing or on the Certificate of Service, having caused each envelope to be served by U.S. mail certified mail return receipt requested and regular mail with postage prepaid at 100 W. Randolph Street, Chicago, Illinois on the 30 day of August, 2021 prior to 4:30 p.m.

Jeffrey A. Risch
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3815 E. Main St., Ste. A-1
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jrisch@salawus.com

Shayne Aldridge
Deputy General Counsel
Illinois Department of Labor
524 S. Second St., Ste. 400
Springfield, IL 62701
Shayne.L.Aldridge@illinois.gov

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