

STATE OF ILLINOIS – DEPARTMENT OF LABOR
CONCILIATION/MEDIATION DIVISION
1 W. OLD STATE CAPITOL PLAZA, 3RD FLOOR
SPRINGFIELD, ILLINOIS 62701

IN THE MATTER OF:)
)
A-1 LOCK, INC.,)
)
Petitioner(s),)
)
v.) STATE FILE NO. 10-H-TW-07-0004
)
CATHERINE M. SHANNON,)
DIRECTOR OF)
LABOR and the ILLINOIS)
DEPARTMENT OF LABOR,)
)
Respondent,)
)
And)
)
MID-CENTRAL ILLINOIS REGIONAL)
COUNCIL, UNITED BROTHERHOOD)
OF CARPENTERS AND JOINERS)
OF AMERICA, and INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL)
WORKERS, LOCALS #34, #146, #193,)
#197, #309, #538, #601, #649, and #702,)
)
Intervenors.)
)

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, Petitioner’s Motion to Sever/Limit Presentation of Issues for Review, all Parties and Intervenors having been duly advised on the premises;

FINDINGS:

Petitioner filed a Motion to Sever/Limit Presentation of Issues for Review. Respondent and Intervenors filed responses in objection to Petitioner’s Motion. Petitioner moves that this administrative body hear evidence only as to the issue of whether Petitioner’s proposed classification of locksmith services is sufficiently dissimilar to the work performed in the existing recognized classifications of carpenter, electrician, electronic system technician and truck driver under Section 9 of the Illinois Prevailing Wage Act, 820 ILCS 130/9 , and, if the evidence supports the proposed classification to set an additional hearing as to the proposed wage rate.

The Illinois Code of Civil Procedure provides that an action may be severed, and actions may be consolidated, as an aid to convenience, whenever it can be done without prejudice to a substantial right. 735 ILCS 5/2-1006_ (2008). A motion to sever is left to the

discretion of the trier of fact and is exercised on a case by case basis appraising administrative convenience and the possibility of prejudice to substantial rights of the litigants in the light of the particular problems which will arise in the course of the trial. (*Mount v. Dusing* (1953), 414 Ill. 361, 367, 111 N.E.2d 502, 505.) *Pickering v. Owens-Corning Fiberglas Corp.*, 26 Ill. App. 3d 806, 638 N.E.2d 1127 (5th Dist. Ill. App. Ct. 1994).

The hearing regulations under which this matter is being heard provides:

In the interest of convenient, expeditious and complete determination of matters, the Administrative Law Judge may consolidate or sever hearing proceedings involving any number or parties or issues, and may join or sever parties for the complete administration of justice.

56 IAC 120.310 (Consolidation and Severance of Matters).

Complainant argues that: 1) *Ludwig v. ILCA*, 372 Ill. App. 3d 912, 866 N.E.2d 592 (2d Dist. 2007) is controlling as it held that a classification determination can be made on its own, and; 2) severing the issues will result in a savings on fewer witnesses, less evidence, fewer legal issues, less attorney fees and costs to the parties.

Review of *Ludwig v. ILCA*, *Id.* demonstrates that the administrative hearing held in that matter gathered facts related to both the issue of classification and possible wage schedule. Thus, the administrative law judge heard evidence regarding whether a new classification should be adopted based upon various facts individual to that matter and, whether a wage schedule to reflect any new classification should be adopted. The issues were not severed at the administrative level. The *Ludwig* case centers around whether or not a new classification should be adopted, however, the court did not issue a new wage schedule though the Court did have all of the facts gathered should it have been necessary to issue a new wage rate. Furthermore, the facts gathered as to wage rate at the administrative level were clearly considered by the court even though the matter turned on the issue of classification. *Id.* at 866 N.E.2d 601 (2007). Thus, it must be concluded that without proof of a new wage rate different than that which IDOL currently recognizes there can be no new classification. Without proof that the work described in the Petitioner's proposed classification is sufficiently dissimilar to the work performed in the existing classification there can be no new wage rate. As such, the issues are intertwined.

Second, Petitioner argues there will be a cost savings as to fewer witnesses, less evidence, fewer legal issues and less attorney's fees and costs. Most of the savings outlined in this argument will save the Petitioner, Respondent and Intervenor time, effort, energy and costs. However, the contrary is true for the administrative tribunal and any possible reviewing tribunal (circuit court, appellate court). That is, if the matters are severed and a decision reached, the entire record as to all issues will not be available for the undersigned and the reviewing court to reach a whole and complete decision. This leaves a possibility of having to engage in additional discovery and reconvene to hear

witnesses who have already been heard. This, in turn, will result in a less expeditious resolution of the matter. Severing the issues will not allow the complete determination of the matter and will result in piecemeal litigation.

Third, if the motion were to be granted and the undersigned determine that a new classification is necessary the parties would have to initiate a second round of discovery to address the issue of the wage rate. Furthermore, severing the matters would likely lead to an argument as to whether a decision reached regarding one of the intertwined issues was ripe for administrative review.

In applying the standards laid out by the Illinois Code of Civil Procedure, and more importantly the administrative hearing regulations under which this matter is being heard, it is found that there will be no substantial prejudice if this matter is heard in whole rather than as a severed matter. For these reasons and those laid out above, it is found that in the best interest of justice it is more convenient, expeditious and provides for full and complete determination of the matters that the Motion to Sever be denied.

IT IS HEREBY ORDERED:

Petitioner's Motion to Sever/Limit Presentation of Issues for Review is denied.

DATE: 3/15/10

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

CLAUDIA D. MANLEY
Chief Administrative Law Judge
Illinois Department of Labor
160 N. LaSalle St., Ste. C-1300
Chicago, IL 60601
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing:

ORDER

prior to 4:30 p.m. on 3/15, 2010, to the following addresses shown below

via facsimile and U.S. Mail:

John E. Nolan
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