

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 the Order issued *sua sponte* to Consider a Stay of Proceedings, all parties having been duly notified, the Administrative Law Judge having been duly advised on the premises:

PROCEDURAL HISTORY

The current proceeding is brought pursuant to the Illinois Prevailing Wage Act (“PWA” or “Act”), 820 ILCS 130/0.01-12 and the Notice of Hearing issued thereunder filed pursuant to sections 4 and 9 of the PWA. A Notice of Hearing was issued on the instant cause pursuant to a timely request made by Complainant dated, July 1, 2009. *See Exhibit A, Notice of Hearing.*

On or about April 26, 2010, the undersigned ordered Petitioner to file all relevant pleadings regarding an alleged related civil matter pending in Sangamon County Circuit Court so that the undersigned may consider the propriety of proceeding forward or staying the matter. The parties and intervenors were given an opportunity to review the pleadings and file position statements regarding a possible stay. Respondent filed a position statement on or about May 19, 2010. On or about June 7, 2010, Petitioner filed its position statement regarding same. The intervenors took no position as to this issue. The matter was initially set for oral argument on June 14, 2010 but was continued to June 28, 2010. On June 28, 2010, arguments regarding a stay were heard.

Complainant filed a verified complaint in the Circuit Court of the Seventh Judicial Circuit, County of Sangamon against then Director of Labor, Art Ludwig, in his official capacity as Director of Labor, the Illinois Department of Labor, and Lisa Madigan in her capacity as Illinois Attorney General, 2006 MR 99 seeking injunctive and declaratory relief against Director Ludwig because the Act as written and enforced by the Illinois Department of Labor and the Office of the Attorney General allegedly violates due process rights. The suit additionally seeks a declaration that the wage classifications as applied by the Department are erroneous. Further, the complaint prays for preliminary and permanent injunctive relief to restrain the Department "from taking any action or investigation against the Plaintiff to enforce the IPWA in any manner which applies wage rates of carpenters, electronic systems technicians, electricians, or any other trade rates for locksmith services on any public work project performed by employees of Plaintiff". See *Verified Complaint for TRO, Injunctive and Declaratory Relief*, page 29.

APPLICABLE LAW

Section 9 of the Prevailing Wage Act which provides:

... also the general prevailing rate for legal holiday and overtime work, as ascertained by the public body or by the Department of Labor shall be paid for each craft or type of worker needed to execute the contract or to perform such work, and it shall be mandatory upon the contractor to whom the contract is awarded and upon any subcontractor under him, and where the public body performs the work, upon the public body, to pay not less than the specified rates to all laborers, workers and mechanics employed by them in the execution of the contract or such work...

820 ILCS 130/4

The Department of Labor shall during the month of June of each calendar year, investigate and ascertain the prevailing rate of wages for each county in the State. If a public body does not investigate and ascertain the prevailing rate of wages during the month of June as required by the previous paragraph, then the prevailing rate of wages for that public body shall be the rate as determined by the Department under this paragraph for the county in which such public body is located.

At any time within 30 days after the Department of Labor has published on its official web site a prevailing wage schedule, any person affected thereby may object in writing to the determination or such part thereof as they may deem objectionable by filing a written notice with the public body or Department of Labor, whichever has made such determination, stating the specified grounds of the objection. It shall thereafter be the duty of the public body or Department of Labor to set a date for a hearing on the objection after giving written notice to the objectors at least 10 days before the date of the hearing and said notice shall state the time and place of such hearing. Such hearing by a public body shall be held within 45 days after the objection is filed, and shall not be postponed or reset for a later date except upon the consent, in writing, of all the objectors and the public body. If such hearing is not held by the public body within the time herein specified, the Department of Labor may, upon request of the objectors, conduct the hearing on behalf of the public body.

The public body or Department of Labor, whichever has made such determination, is authorized in its discretion to hear each written objection filed separately or consolidate for hearing any one or more written objections filed with them. At such hearing the public body or Department of Labor shall introduce in evidence the investigation it instituted which formed the basis of its determination, and the public body or Department of Labor, or any interested objectors may thereafter introduce such evidence as is material to the issue. Thereafter, the public body or Department of Labor, must rule upon the written objection and make such final determination as it believes the evidence warrants, and promptly file a certified copy of its final determination with such public body and the Secretary of State, and serve a copy by personal service or registered mail on all parties to the proceedings. The final

determination by the Department of Labor or a public body shall be rendered within 30 days after the conclusion of the hearing.

820 ILCS 130/9.

Furthermore, the administrative rules under which this matter is being heard provide:

An Administrative Law Judge shall be guided to the extent practicable by any pertinent provisions of the Illinois Supreme Court Rules and the Code of Civil Procedure [735 ILCS 5], regarding any procedural question not regulated by this Part, the appropriate Act and the IAPA.

56 IAC 120.160.

The issue is whether or not this matter will be stayed by this administrative tribunal pursuant to 735 ILCS 2-619 (a) (3) which provides:

Involuntary dismissal based upon certain defects or defenses. (a) Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit:

(3) That there is another action pending between the same parties for the same cause.

To stay a proceeding there is a two level inquiry to be made. First, it must be determined whether the two actions are based on substantially the same set of facts. Those facts only have to arise out of a common transaction or occurrence. Furthermore, the purpose of the two actions need not be the same, rather there only needs to be a substantial similarity of issues amongst them. *Village of Mapleton v. Cathy's Tap*, 246 Ill. Dec. 203, 313 Ill. App.3d 264, 729 N.E.2d 854 (3d Dist. 2000).

The second inquiry that must be made prior to determining the appropriateness of a stay, a tribunal must consider the following factors: (1) comity; (2) the prevention of multiplicity, vexation and harassment; (3) the likelihood of obtaining complete relief in a foreign jurisdiction; and (4) the *res judicata* effect of a foreign judgment on the local forum. *Id.*, at 857.

FINDINGS

I. THE WAGE RATE CLASSIFICATION CHALLENGE UNDER SECTION 9, 820 ILCS 130/9 AND THE SANGAMON COUNTY CIVIL LAWSUIT ARE BASED ON SUBSTANTIALLY THE SAME SET OF FACTS.

A-1 Lock, Inc. is a plaintiff in a Sangamon County Circuit Court lawsuit seeking *inter alia* constitutional and declaratory relief against Department and the Director of Labor, 06-MR-99. The lawsuit pleads that: the Department has unconstitutionally failed to exercise its statutory mandate in its process and procedures utilized for setting rates and classifications, the Department has engaged in underground rulemaking without due process and as such the process used for rate setting and classification setting is unconstitutional, the Department has failed to follow section 9 of the Act by abrogating its duty, through its investigative process in ascertaining the type of work for appropriate for each classification, the Department be permanently enjoined from certifying or applying wage classifications of carpenter, electronic system technician, electrician and/or truck driver to locksmith services work.

In the instant Section 9 proceeding, A-1 Lock, Inc. seeks to create various new locksmith classifications and rates under the Prevailing Wage Act. Under said proceeding, the Department of Labor is bound to introduce evidence regarding the investigation it instituted that formed the basis of its wage classification determination. 820 ILCS 130/9. In this instance the process, investigation and procedures used to classify the work performed by what is commonly referred to as locksmiths into the categories of carpenter, electronic system technician,

electrician and truck driver for purposes of prevailing wage. Thus, the issues to be considered by the undersigned will include the investigative process and procedure used by the Department for rate and classification setting. The Petitioner will also introduce material evidence.

For the undersigned to reach a decision either way, both parties will necessarily have to introduce evidence regarding the Department's investigative process, procedures and methodologies utilized in the setting of rates and classifications. This is the very issue pending before the Circuit Court in Sangamon County. Furthermore, Petitioner will have to necessarily dispute that the setting of rates and classifications are dissimilar to the category which they wish to be created. In doing so, it will necessarily attack the methods, and methodologies utilized in setting the rates. Thus, it is found that both actions arise out of a common set of substantially similar facts, whether or not the investigative process and methods used for rate and classification setting by the Department regarding locksmiths is legally appropriate.

II. THE PURPOSES OF COMITY, PREVENTION OF MULTIPLICITY, VEXATION AND HARASSMENT, AS WELL AS LIKELIHOOD OF ABILITY TO OBTAIN COMPLETE RELIEF IN THE CIRCUIT COURT AND THE EFFECT OF THE JUDGMENT ON THIS FORUM ARE SERVED AND A STAY IS APPROPRIATE IN THIS INSTANCE.

First, it must be determined whether comity would be served if a stay were issued. In this instance, the undersigned is without authority to determine whether a law or enforcement policies are unconstitutional. If the circuit court determined that either the PWA itself, the rates set by IDOL or the methods used to set the rates were unconstitutional, this forum would defer to the circuit court's expertise in constitutional interpretation. Therefore, comity would be served if a stay were to issue.

Second, it is clear that by allowing the circuit court to issue judgment as to the constitutional questions raised before it that multiplicity of differing judgments would be avoided both at the administrative level, and the circuit court level as well. Therefore, prevention of multiplicity of judgments is well served by issuance of a stay.

Third, the Complainant has the ability to gain complete relief at the circuit court level. If the Circuit Court were to determine that the methods, methodologies and enforcement policies of the PWA were unconstitutional or that the Department's actions in enforcing the PWA were unconstitutional, presumably, those methods would be declared null and void. As a result the possibility exists that the Department would be permanently enjoined from, certifying or applying wage classifications of carpenter, electronic system technician, electrician and/or truck driver to locksmith services work. A section 9 hearing would no longer be necessary. Therefore, the Complainant does have the ability to obtain complete relief at the Circuit Court level. Any impediment caused by a stay in the administrative action is temporary and both parties may well be able to litigate the Section 9 hearing. Thus, the parties' rights are also protected and preserved.

Fourth, a District Court decision in favor of A-1 would trigger the doctrine of *res judicata*. Said doctrine would preclude the parties, from re-litigating the constitutional and injunction issues in the federal lawsuit at the administrative level. Thus, staying the action promotes judicial and administrative economy.

Because the case at bar has met all of the levels of inquiry necessary to issue a stay, it is hereby found that a stay will issue.

IT IS HEREBY ORDERED THAT:

1. This matter is stayed.
2. The parties are under a continuous duty to file a motion in this matter within 30 days of the date the circuit court reaches an appealable decision on 06 MR 99, State of Illinois, Circuit County of the Seventh Judicial Circuit, County of Sangamon notifying the administrative law judge of such decision.

3. This matter is scheduled for a telephonic status call on February 24, 2011 at 1:00 p.m. At this time the status of 06 MR 99 will be reviewed.

8/18/10
Date

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
V: 312-793-1805
F: 312-793-5257

CERTIFICATE OF SERVICE

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

ORDER

prior to 4:30 p.m. on 8/18, 2010, to the following addresses shown below

via U.S. Mail:

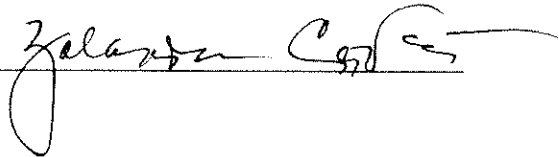
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Via messenger:

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A handwritten signature in black ink, appearing to read "Zolander", is written over a horizontal line. The signature is cursive and includes a large loop at the beginning and a horizontal stroke at the end.