

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

IN THE MATTER OF:)	
)	
ELGIN SWEEPING SERVICE, INC.)	
)	
Petitioner(s),)	
)	
v.)	STATE FILE NO. 10-H-TW07-00019
)	
CATHERINE M. SHANNON, DIRECTOR OF LABOR and the ILLINOIS DEPARTMENT OF LABOR,)	DATE OF NOTICE: JULY 15, 2009
)	
Respondent.)	CERT.MAIL/RETURN RECEIPT:
)	
)	7002 2410 0002 2829 8429

NOTICE OF HEARING

PLEASE TAKE NOTICE that pursuant to section(s) 4 and 9 of the Illinois Prevailing Wage Act [hereinafter, "PWA" or "Act"], 820 ILCS 130/4 and 820 ILCS 130/9, the Illinois Department of Labor [hereinafter, "Respondent"] has received written objections filed by Elgin Sweeping Service, Inc. ["Petitioner"] 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 12, 2009
TIME: 9:00 A.M.
PLACE: ILLINOIS DEPARTMENT OF LABOR
160 NORTH LASALLE STREET, SUITE C-1300
CHICAGO, ILLINOIS 60601

ADMINISTRATIVE LAW JUDGE:

MARGARET T. FOUST
ILLINOIS DEPARTMENT OF LABOR
160 NORTH LASALLE STREET, SUITE C-1300
CHICAGO, ILLINOIS 60601


The hearing involves the written objections and a hearing request (Exhibit A) filed by Petitioner involving Respondent's determination of the classification(s) and reclassifications of craft(s), or type of laborer(s), worker(s) or mechanic(s), engaging in work on public works projects in traffic safety worker and/or truck driver prevailing wage classifications in the Counties of Cook, DuPage and other counties located within the State of Illinois and the prevailing rate of wages for the classification(s). Petitioner requests establishment of a new classification for street sweepers.

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 120.650, the Director of Labor shall render a decision and issue an order on the objections pursuant to 820 ILCS 130/9, 56 Illinois Administrative Code 120.100 –

120.670. 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.

A handwritten signature in cursive script that reads "Catherine M. Shannon". The signature is written in black ink and is positioned above a horizontal line.

Catherine M. Shannon
Director of Labor

Querrey & Harrow, Ltd.
175 West Jackson Boulevard
Suite 1600
Chicago, IL 60604-2827

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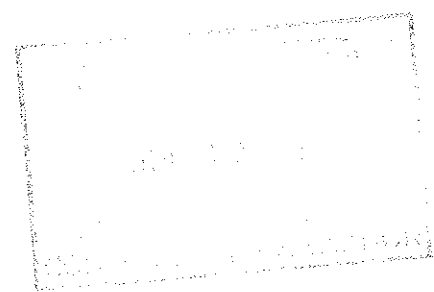
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April R. Walkup
Direct Dial: (312) 540-7506
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June 29, 2009

VIA ELECTRONIC AND U.S. MAIL

Thomas Whalen
Illinois Department of Labor
1 W. Old State Capitol Plaza, Room 300
Springfield, Illinois 62701



Re: **ELGIN SWEEPING SERVICES, INC.'s
820 ILCS 130/9 OBJECTION TO PREVAILING WAGE SCHEDULE**

Dear Mr. Whalen,

This letter is intended to serve as notice of Elgin Sweeping Service, Inc.'s 820 ILCS 130/9 objections to the current prevailing wage schedule and classification for street sweepers in Illinois, including Cook County, DuPage County and any other counties in which Elgin Sweeping either regularly or occasionally does work. Elgin Sweeping Service, Inc. hereby requests a hearing, under Section 9, to pursue a correction in the prevailing rate for Truck Drivers or Traffic Safety Worker and/or seek a separate classification and prevailing wage for street sweepers that would more accurately reflect the local trade's wages and benefit compensation package.

Elgin Sweeping Service, Inc.'s objections follow the commencement of Illinois Department of Labor ("IDOL") Case # 2007-PW-W02-0629, alleging Elgin Sweeping Services, Inc. was in violation of the Illinois Prevailing Wage Act, despite the fact that Elgin Sweeping Services, Inc. was in full compliance with its collective bargaining agreement. Additionally, Elgin Sweeping Service, Inc.'s objections arise out of recent re-negotiations, which have brought to light the discrepancies and injustices in the current classification and prevailing wage of Cook County (and other applicable counties) street sweepers. In investigating these matters, it has come to the attention of Elgin Sweeping Service, Inc. that the existing prevailing wage under the current classification for street sweepers is higher than those rates prevalent within the collective bargaining agreements of street sweepers. In order to correct this inequality and to properly serve the purpose and policy of the Prevailing Wage Act, Elgin Sweeping Service, Inc.'s objections should be heard and addressed.

EXHIBIT A

I. Illinois Department of Labor Suit

Beginning in 2007, the Illinois Department of Labor sought reparation from Elgin Sweeping Service, Inc. for the alleged discrepancy between the prevailing wage and those wages paid pursuant to its collective bargaining agreement with Local 731. While there was no dispute that Elgin Sweeping paid its employees the State Prevailing Wage, a conflict existed regarding the amount of health, welfare, and pension benefits to be paid to employees on public works projects. At the time of the alleged violation Elgin Sweeping was in compliance with its collective bargaining agreement with Local 731. (See Elgin Sweeping Services, Inc. and Teamsters Local Union No. 731 Collective Bargaining Agreement, attached as Exhibit 1).

Moreover, Elgin Sweeping does not control the Health and Welfare or Pension Plan to which its employees belong. The Teamsters hold, control and manage these funds. Elgin Sweeping merely receives monthly invoices from the Union demanding payment based on negotiated rates in the collective bargaining agreement. Even more disconcerting is the fact that Elgin Sweeping's competitors (also signatories with Local 731) have negotiated to pay their employees even less in health, welfare and pension benefits.

It is Elgin Sweeping Service, Inc.'s continued position that there must be a change in the current prevailing wage benefits for street sweepers. Elgin Sweeping asserts that the prevailing wage should reflect those rates negotiated in good faith by Local 731 and Elgin Sweeping, rather than the currently applied prevailing wages of a dissimilar classification.

II. Objection as to Prevailing Wage Act Schedule as it currently applies to Cook County 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).

Moreover, like the Davis-Bacon Act, the Prevailing Wage Act effectively serves to protect local workers by removing the incentive to import less expensive labor from areas outside the locality in which the work is being performed. *People ex rel. Bernardi v. The City of Highland Park*, 121 Ill. 2d 1 (1988). Likewise, the Act is intended to benefit the State by fostering work conditions to assure work will be "completed without interruptions or delay" and

“by workmen of average skill.” *Id.* The Act also aims to simultaneously mitigate an impoverished workforce and “support the integrity of the collective bargaining process”. *Id.*

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.

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)¹.

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 Elgin Sweeping (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 Traffic Safety Workers or Truck drivers (East and West of Barrington). For both June and July 2009, the prevailing wage for Traffic Safety Workers is \$24.30. The prevailing wage for truck drivers is \$30.70 East of Barrington and \$32.70 West of Barrington. The collective Health and Welfare and Pension benefits for Traffic Safety Workers are \$5.65. The collective Health and Welfare and Pension benefits for Truck drivers are \$12.20, if East of Barrington, and \$10.85, if West of Barrington. (See June 2009 and July 2009, attached as Exhibits 4 and 5 respectively).

¹ Elgin Sweeping previously argued to the IDOL chief counsel that the vacation benefits afforded to its employees through its CBA with Local 731 should be included in the calculation to determine compliance with prevailing wage rates. (See May 20, 2008 letter from previous counsel, attached as Exhibit 2). In response, while acknowledging the definition of “prevailing wage” in the Act, the DOL took the position that vacation time is not included in the calculation for determining compliance. (See June 20, 2008 letter from Mr. Haggerty, attached as Exhibit 3).

Nevertheless, a different wage rate and fringe benefits standard is set by M.A.R.B.A.'s Area Construction Agreement. Formed in 1971, M.A.R.B.A is a multi-employer bargaining association focused on construction industry collective bargaining. M.A.R.B.A represents several union contractors by negotiating and administering collective bargaining agreements. M.A.R.B.A. may, through collective bargaining and with the input of Unions, create a "labor management contract covering wages, hours, conditions of work and terms of employment in the relationship between Employer and employee" for and on behalf of its members. (Attached as Exhibit 6; page 1)

M.A.R.B.A. and Teamsters Joint Council No. 25 entered into such an agreement, the Area Construction Agreement, effective June 1, 2004 to May 31, 2009. (Exhibit 6). Teamsters Joint Council No. 25 is made up of several local Teamsters Unions, significantly, Teamsters Local 731. Many Collective Bargaining Agreements simply defer to and adopt the terms set by the M.A.R.B.A./Teamsters Joint Council No. 25 Area Construction Agreement. (For example, see Elgin Sweeping Services, Inc. and Teamsters Local Union No. 731 Collective Bargaining Agreement, attached as Exhibit 1, Page 7). Typically, wages and fringe benefits bargained for in the M.A.R.B.A Agreement become the prevailing wages of the State under the Act.

Beginning on June 1, 2004, the wages established by the M.A.R.B.A./Council No. 25 Agreement were \$28.05, \$28.30, \$28.50, and \$28.70 (depending on the number of axles on the vehicle utilized by the employees). The agreement also allocated \$4.50 per hour per employee for the Health and Welfare Fund and \$3.30 per hour to the Pension fund. On June 1st of each year thereafter, continuing through 2008, an increase was instituted that raised the wages *and/or* fringe benefits (health and welfare or pension fund). In 2005 there was an increase of \$1.60 per hour that was allocated in full to either the fringe benefits or the wages; *or* the \$1.60 increase could be split between the fringe benefits and wages. Likewise, \$1.75 increase was added in 2006; \$1.85 in 2007; and \$2.00 in 2008. By 2008, an overall increase of \$7.20 was to be added to the base pay, *or* added to the fringe benefits, *or* allocated between the base pay and fringe benefits. Allocating between the wages and benefits, M.A.R.B.A.'s current total fringe benefits package is at \$15.00. (Exhibit 6, Page 9).

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. By way of comparison, the slightly varied agreements shed light on standard fringe benefit packages offered in the local area. The following are the most recently provided combined Health and Welfare and Pension packages offered in each of the representative Teamster Local Union No. 731 Collective Bargaining Agreements:

Elgin Sweeping Services	\$ 9.55 (See Exhibit 1)
Diamond Sweeping, Inc.	\$ 9.55 (See Exhibit 5)
Illinois Central	\$ 7.38 (See Exhibit 8)
Waste Management	\$ 8.33 (See Exhibit 9)

Again, the prevailing wage fringe benefits are set at \$5.65, \$12.20, and \$10.85. And, the M.A.R.B.A fringe benefits offer about \$15.00.

What becomes clear is that the rates for fringe benefits negotiated by and between Local 731 and Elgin Sweeping (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. The attached table and exhibits demonstrates that the Union has negotiated different rates with Elgin Sweeping and its competitors than what is required by the State, thus making compliance with the Prevailing Wage Act difficult to impossible, while at the same time apparently ensuring a windfall for either the Union or its members. (See Pension and Benefits Table, attached as Exhibit 10).

IDOL has failed to exercise its duty to ascertain and establish the proper prevailing wage for the sweeping industry. In Cook County and other applicable counties in which Elgin Sweeping does business, 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, Elgin Sweeping objects to the prevailing wage schedule for Traffic Safety Workers or Truck drivers (East and West of Barrington) 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 Cook County 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. Dep. 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 does contemplate 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...”. <http://www.state.il.us/agency/idol/RATES/EVENMO/COOK9999.htm>.

b. Current Classification are Unsuitable

Elgin Sweeping has contracted with Teamsters 731 to employ street sweepers. The street sweepers are required to remove large and small debris from the road way. Cook County does not have a specific classification for street sweepers. In most instances street sweepers have been included in the classification for Truck Driver or Traffic Safety Worker.² Also, neighboring counties do not provide a street sweeper classification. (The closest county that

² On information and belief street sweepers were “forgotten” as a classification when the current classification categories were formulated by the Department of Labor. In hindsight they were “thrown” into the Truck Driver classification.

expressly places street sweepers into a category is DeWitt). 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 a January 13, 2009, teleconference between Counsel for Elgin Sweeping, Counsel for IDOL and the President of Local 731, the President of Local 731 explained that Elgin Sweeping and all street sweeping companies are considered scavenger contracts. (See Affidavit of John Venetch, attached as Exhibit 11). As a scavenger contract, the benefit rates were negotiated at lower rates than those in construction contracts (of which M.A.R.B.A is a construction contract). *See*, Exhibit 11. The President of Local 731 further explained that the benefit rates are negotiated differently between these two types of contracts because the Union presumed that scavenger contract employees were employed throughout year, where construction contract employees were not. *See*, Exhibit 11. (See Affidavit of John Venetch, attached as Exhibit 11).

His comments further cement Elgin Sweeping's assertion that IDOL has failed to ascertain the true prevailing wage or proper classification for the sweeping industry. Moreover, the fact that a Truck Driver's prevailing wage does not equate with the local contracted rates of several street sweepers unions (*supra* Section II. b.) 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.

This contention is especially true in light of the actual rates negotiated in local contracts. Here, Elgin Sweeping Services, Inc. has contracted at a rate, particularly for Health and Welfare and Pension benefits that 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 Elgin Sweeping has set the prevailing wage and benefits for street sweepers.

Therefore, Elgin Sweeping objects to the classification of street sweepers as "Traffic Safety Workers" or "Truck Drivers" and requests a separate classification for street sweepers.

V. Conclusion

At all times, Elgin Sweeping, 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

Thomas Whalen
Illinois Department of Labor
June 29, 2009
Page 8

IDOL as being the prevailing rates. A review of the collective bargaining agreements between Local 731 and similarly situated Employers, reveals that the prevailing wage and fringe benefits rates are not being paid (nor required via the agreements) by any other employer in the "sweeping industry" who 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 the M.A.R.B.A rates when negotiating with Employers, the current collective bargaining agreement by and between Elgin Sweeping (and those with similarly situated Employers) demonstrates that this is not true. The prevailing wages for the industry in which Elgin Sweeping operates appears to be lower than those set by the M.A.R.B.A Agreement. Local 731 arguably agrees with this as it negotiated the current health and welfare and pension rates in the relevant agreements.

Elgin Sweeping respectfully requests a hearing on its objections within 45 days of the receipt of this notice. Further, Elgin Sweeping seeks a final written determination undertaking a correction of its prevailing rates street sweepers for Cook County, DuPage County and other counties in which it does work, based on the evidence and documentation provided. In the alternative, this Company requests IDOL create a new classification for street sweepers and set the prevailing wage consistent with the wages and benefits bargained for with Teamsters 731.

Very truly yours,

April R. Walkup

April R. Walkup

WAL/MOK

cc: John Venetch, Elgin Sweeping


Document #: 1422521

SWORN AFFADIVIT OF JOHN VENETCH

I, **John Venetch**, having personal knowledge of the facts set forth below, and being first duly sworn on oath certify that the foregoing statements are true and correct:

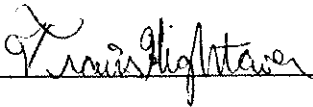
1. I am the Chief Operating Officer of Elgin Sweeping Services, Inc., 1015 West Pershing Road, Chicago, IL 60609.
2. In my capacity as Chief Operating Officer of Elgin Sweeping Services, Inc., I was party to a teleconference call on January 13, 2009.
3. Counsel for Elgin Sweeping Services Inc., Counsel for the Illinois Department of Labor and the President of Teamsters Local Union No. 731, also participated in the January 13, 2009 teleconference call.
4. During the teleconference, the parties discussed and addressed issues relating to the prevailing wage, benefits, classifications, bargaining and alleged violations of The Prevailing Wage Act.
5. During the discussion, the President of the Teamsters Local Union No. 731 explained that Elgin Sweeping and all other street sweeping companies were part of a scavenger contract. By the nature of these scavenger contracts, benefits were negotiated at a lower rate than construction contracts. He further explained that the distinction in benefit rates between a scavenger contract and construction contract was based on the fact that it was presumed by the Union that employees under a scavenger contract worked throughout the year, whereas those under a construction contract did not.

FURTHER AFFIANT SAYETH NAUGHT.



John Venetch, Affiant

Subscribed and sworn to before me this
24th day of June, 2009.



Notary Public



CERTIFICATE OF SERVICE

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

1: NOTICE OF HEARING

prior to 4:30 p.m. on JULY 15, 2009, to the following addresses shown below

via certified U.S. Mail:

April Walkup
Querrey & Harrow
175 W. Jackson Blvd., Ste. 1600
Chicago, IL 60605-2827

Via messenger:

Michael Haggerty
Illinois Department of Labor
160 N. LaSalle St., Ste. C-1300
Chicago, IL 60601

Zelanda Carter

Subscribed and sworn to before me this 15 day of July, 2009.

Ann Harrison
Notary Public
My Commission Expires 04-05-2012

