

St Clair, Tina (DOL)

From: LSS-WH, Juneau (DOL sponsored)
Sent: Monday, July 26, 2010 1:51 PM
To: St Clair, Tina (DOL)
Subject: FW: Prevailing wage requirements

From: Philomena King [mailto:crusheen@hotmail.com]
Sent: Fri 7/23/2010 8:28 AM
To: LSS-WH, Juneau (DOL sponsored)
Subject: Prevailing wage requirements

attn: Grey Mitchell

I missed the deadline re the discussion on prevailing wages for truck drivers on off-site hauling for State funded jobs. My comment is to leave the wage the way it currently is; hauling from an established pit to the jobsite is always considered off-site and does not come under the Davis Bacon wage act. This can be the difference between a small business having work or watching the big guys have it all. Most drivers are thru the Teamsters and therefore are paid a set wage anyway, which is an excellent wage compared to some other driving jobs that are available. Our economy is in a struggle to provide jobs at the current rate of pay, we cannot afford to increase. When jobs are bid, the wages are at least 50% of the trucking hourly rate making it very difficult for small business owners to make a living, after you add in the cost of fuel @ 7 gallons/hour, maintenance and insurance. Changing the rules in midstream is not good. In the Fairbanks area I believe all the drivers understand the rules of offsite hauling and are ok with it, its a break for the General Contractor, the small business owner and keeps drivers in steady employment that they may not otherwise have. Lets keep small business healthy and competitive, its what drives this State. The inconvenience of extra paperwork and knowledge of the current rules does not outweigh the advantages for the small business who are trying to make a living and still provide decent wages for its employees. Its a win win situation. Thank You Philomena King

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LITTLE WILLOW EQUIPMENT

HC-89, Box 134

Willow, Alaska 99688-9702

Phone 907-495-6658 - Cell 907-715-6658 - Fax 907-495-6657

July 26, 2010

(E-Mailed to: Juneau.LSS-WH@alaska.gov)

Mr. Grey Mitchell
Director, Labor Standards and Safety
State of Alaska
Post Office Box 21149
Juneau, Alaska 99802

Dear Mr. Mitchell:

We wanted to take the opportunity to thank you for holding the Stakeholder's Meeting held last Tuesday, July 20th. I listened to the entire three-hour session and am in full agreement with everything stated by Mike Littlefield, B.A. with the Fairbanks Teamsters, and Charlotte Emerson and Donna Stark from World Equipment, as well as portions of statements from other truckers. We also believe that the easiest way to alleviate all of the current problems is to simply revert back to the 100% Davis-Bacon rates on all federally-funded, as well as state projects.

With regard to the Quality Asphalt Paving, Inc. v. State of Alaska, Department of Labor, Case No. 3AN-3-2052, I feel that the courts were not fully aware of the total situation (that owner/operators haul the materials versus a materials company having and using their own equipment -- trucks or tractors and trailers) prior to their making their final ruling. However, because of the wording in their ruling, truckers were unfortunately included and subsequently the current problem regarding Davis-Bacon rates occurred. Since truckers are an "integral" part of the construction project, truckers not working as employees of the materials suppliers should be paid Davis-Bacon wages, no matter whether they are on the footprint of the project or off.

Donna Stark and others had mentioned to it all went back to the Quality Asphalt lawsuit in 1993. We are in agreement with her statement that it should have been appealed in 1998, and our hope is that you will contact the Department of Law in this regard. It is unfortunate that the courts were not fully aware of the total ramification of their ruling. We feel that had they known, the ruling would have been quite different.

You had mentioned that on-site regulations had been muddled by several court cases, the main one being the aforementioned 1993 suit. We are in full agreement. This situation must be corrected as soon as possible in order to remedy the injustices which have occurred in our industry. Other than the trucking industry, all other trades are treated fairly and equitably and are paid Davis-Bacon wages accordingly.

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We are also in agreement with the statement, which I believe was made by Kevin Monaghan, wherein he stated that an enforceable "quick" payment regulation must be put in place whereby the General Contractor is responsible for paying the subcontractors, especially the truckers, on a weekly, if not biweekly basis.

As noted in my letter of July 18, 2010, there are instances when owner/operators have to wait from 30-90 days, sometimes longer, to receive payment for their services. Due to the fact that an owner/operator is responsible for all of his own overhead and expenses, it is imperative that they receive payment in a timely manner. Due to the tightening of credit over the past several years, fuel companies and others have restricted the amount of receivables they will carry on their books prior to cutting the trucker off for non-payment. With no payment for their services, these truckers are at risk of shutting down until these funds are received.

To put it in perspective, a laborer or equipment operator working for a firm on a federally-funded project has no overhead or expenses and is paid weekly or bi-weekly for their services, as well as being paid for per diem when appropriate. Why the difference? Same project, same funding, etc. Truckers must also be paid in a timely manner. The majority of truckers are afraid to do anything in this regard because of the retribution they could face - no longer hired directly by a general contractor, by trucking subcontractors, or trucking brokers. I note that this subject was also discussed by several speakers during the meeting, and we had mentioned it in our previous letter.

We are also in agreement with Charlotte Emerson's recommendation that the Department of Transportation be allowed to monitor truckers with regard to "employees" and independent owner/operators. If they find that there is a labor issue (wherein drivers are actually employees and not owner/operators), then they would notify DOL and an investigation would be initiated. Department of Transportation personnel are on the majority of the projects, know the truckers and their equipment, and would be fully aware of any violations. Again, if there is a labor issue (even if it's brought to the attention of DOT by another owner/operator), DOT should be the one monitoring the problem to verify if there is any validity to the complaint. If there is, then DOL should initiate an investigation.

Ms. Emerson and Josh Bennett both mentioned that although "leases" have supposedly been discontinued per DOL regulations, some are still being allowed to continue but under different business forms. In other instances, co-ops have been formed as a "loop hole" to get around the leases, but they are, in fact, the same thing. If the drivers don't own the equipment, don't pay expenses, and don't have any say in the financial decisions or operations of the firm, then you're an employee and subject to payment of Davis-Bacon wages.

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With regard to verifying that an owner/operator has been paid or not, we also agree with Ms. Emerson's statement that the General Contractor or trucking subcontractor should be able to present a copy of the cancelled check showing that the owner/operators or employees were paid for services rendered. There is an obvious depletion of DOL resources to investigate all of the allegations being made and this arrangement would assist DOL.

One speaker mentioned that some trucking companies are changing their names 5-6 times to get out of paying Davis-Bacon wages, DOL fines, taxes, expenses, etc. This should not be allowed to continue. If you are found to be in non-compliance with Department of Labor regulations with regard to payment of unemployment taxes, etc., then you should be disallowed from forming another company until such time as you have paid the fines and/or back wages to the employees or made payment to owner/operators who provided trucking services. To be allowed to close one company and start another and not be held responsible for said payments is not only unfair but ludicrous.

Regarding operating expenses, which we had previously mentioned in our last letter, we agree with Cal Watts of R. L. Trucking. He stated that there is no DOL definition for "operating expenses." Once the cost of Davis-Bacon wages are deducted from an hourly trucking fee, there is currently not enough left for the trucker to cover his expenses and still make a living for himself and his family. Each trucker or trucking company is responsible for their own financial decisions. It should not be up to anyone other than them to set a figure to cover this amount. It should be noted, however, that we're under obligation through FMCSA (Federal Motor Carrier Safety Association) to maintain our equipment in proper working order, as well as maintaining the proper documentation to back up said maintenance. As truckers, if we don't follow the guidelines, our equipment will be "red-lined" (placed out of service), which ultimately means that we would not be able to use that equipment to generate income. It is not within the parameters of the DOL to set an operating expense for truckers.

You had mentioned that it might be worthwhile to have another meeting; however, we feel that the majority of the people speaking brought out all of the major concerns currently on Alaska truckers' minds. The Quality Asphalt lawsuit must be repealed. Truckers are an integral part of a construction project and should receive 100% Davis-Bacon wages.

Barbara Huff with the Teamsters stated that the bottom line is that 100% Davis-Bacon wages for truckers is needed. Once that has been put in place, the majority of the truckers will then set up appropriate fees for the rental of their equipment and operators, which would ensure that they would make enough to cover their expenses as well as making a living.

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One last item I'd like to mention is that of "local hire." One of the speakers briefly touched on this subject. Truckers who reside and work in Alaska year-round should have first choice on bidding and working on Alaska projects. If an adequate number of trucks still cannot be located, then the out-of-state truckers could apply for those positions. The cost of living in Alaska when compared to that of the Lower 48, is much higher. With the falling economy in the Lower 48, many out-of-work truckers have come to Alaska and taken many of the positions on projects, adding to the problems we're already having. At the end of the short construction season, they simply pull out of stakes and return to their home states with Alaska money and lower cost of living expenses. How does that help the local truckers or the Alaskan economy?

In conclusion, we'd like to see something done as soon as possible. We heard the latter part of last week that rates have now fallen even further - \$92/Hour. We appreciate your listening to our complaints and hope that you can now see things a little clearer from our perspective. If you'd like to discuss this matter further or have additional questions, please don't hesitate to contact us. Thanks in advance for your consideration.

Sincerely,

Donna M. Sulkosky
Partner

DMS:dth

RECEIVED

AUG 2 2010

LSS

7-27-10

DEAR MR. Bishop.

I AM WRITING THIS LETTER IN RESPONSE TO YOUR JULY 20 TELE CONFERENCE ABOUT LITTLE DAVIS BACON WAGES.

MY NAME IS PAUL ARTHUR OWNER OF P.A. TRUCKING. I HAVE WORKED IN DIRT & GRAVEL FOR 20 YEARS.

I BELIEVE DRIVERS SHOULD BE GETTING LITTLE DAVIS-BACON ALL THE TIME. I AM 62 YEARS OLD AND HAVE CANCER AND NO WAY TO PAY FOR IT. IF I WAS GETTING DAVIS-BACON WAGES FOR THE LAST TWENTY YEARS I WOULD HAVE BEEN ABLE TO HAVE A MEDICAL PLAN AND A RETIREMENT. NOW I AM GOING TO HAVE TO GO ON WELFARE.

TRUCK DRIVERS ARE THE ONLY ONES ON THE JOB WHO DON'T GET DAVIS-BACON WAGES ON THE JOB. THEY HAUL MATERIAL IN AND OUT YET THEY ARE THE LOWEST PAID OF ALL.

I WOULD LIKE YOU TO LOOK INTO THIS PROBLEM + SEE WHAT YOU CAN DO.

3705 Arctic Blvd. #1121
ANCHORAGE, AK.

99503

REGARDS
Paul Arthur