

**PREHEARING ORDER OF COMMISSION**

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In the matter of Objection Nos. 006-121 filed by BAC Local Union No. 15 and BAC Administrative District Council of Eastern Missouri (Objectors) on April 8, 2010, to Annual Wage Order No. 17, pertaining to the occupational title of Bricklayer and Stone Mason in the counties of Adair – Section 001, Andrew – Section 002, Atchison – Section 003, Audrain – Section 004, Barry – Section 005, Barton – Section 006, Bates – Section 007, Benton – Section 008, Bollinger – Section 009, Boone – Section 010, Buchanan – Section 011, Butler – Section 012, Caldwell – Section 013, Callaway – Section 014, Camden – Section 015, Cape Girardeau – Section 016, Carroll – Section 017, Carter – Section 018, Cass – Section 019, Cedar – Section 020, Chariton – Section 021, Christian – Section 022, Clark – Section 023, Clay – Section 024, Clinton – Section 025, Cole – Section 026, Cooper – Section 027, Crawford – Section 028, Dade – Section 029, Dallas – Section 030, Daviess – Section 031, Dekalb – Section 032, Dent – Section 033, Douglas – Section 034, Dunklin – Section 035, Franklin – Section 036, Gasconade – Section 037, Gentry – Section 038, Greene – Section 039, Grundy – Section 040, Harrison – Section 041, Henry – Section 042, Hickory – Section 043, Holt – Section 044, Howard – Section 045, Howell – Section 046, Iron – Section 047, Jackson – Section 048, Jasper – Section 049, Jefferson – Section 050, Johnson – Section 051, Knox – Section 052, Laclède – Section 053, Lafayette – Section 054, Lawrence – Section 055, Lewis – Section 056, Lincoln – Section 057, Linn – Section 058, Livingston – Section 059, McDonald – Section 060, Macon – Section 061, Madison – Section 062, Maries – Section 063, Marion – Section 064, Mercer – Section 065, Miller – Section 066, Mississippi – Section 067, Moniteau – Section 068, Monroe – Section 069, Montgomery – Section 070, Morgan – Section 071, New Madrid – Section 072, Newton – Section 073, Nodaway – Section 074, Oregon – Section 075, Osage – Section 076, Ozark – Section 077, Pemiscot – Section 078, Perry – Section 079, Pettis – Section 080, Phelps – Section 081, Pike – Section 082, Platte – Section 083, Polk – Section 084, Pulaski – Section 085, Putnam – Section 086, Ralls – Section 087, Randolph – Section 088, Ray – Section 089, Reynolds – Section 090, Ripley – Section 091, St. Charles – Section 092, St. Clair – Section 093, Ste. Genevieve – Section 094, St. Francois – Section 095, St. Louis City – Section 096, St. Louis County – Section 100, Saline – Section 101, Schuyler – Section 102, Scotland – Section 103, Scott – Section 104, Shannon – Section 105, Shelby – Section 106, Stoddard – Section 107, Stone – Section 108, Sullivan – Section 109, Taney – Section 110, Texas – Section 111, Vernon – Section 112, Warren – Section 113, Washington – Section 114, Wayne – Section 115, Webster – Section 116, Worth – Section 117 and Wright – Section 118; issued by the Division of Labor Standards, Department of Labor and Industrial Relations, filed with the Secretary of State: March 10, 2010.

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**I. Prehearing Conference**

On May 3, 2010, pursuant to 8 CSR 20-5.010(3)(A), a prehearing conference was convened on the above-referenced Objections for the purpose of aiding in the disposition of the hearing.

Present at the prehearing conference were:

General Counsel Michael Pritchett, counsel for the Department of Labor and Industrial Relations  
Assistant Attorney General Sara Dick, counsel for the Division of Labor Standards (Division);  
Carla Buschjost, for the Division;  
James J. Boeckman, for the Division;  
Brenda Hentges, for the Division; and  
Michael G. Newbold, counsel for Objectors, BAC Local Union No. 15 and BAC Administrative District Council of Eastern Missouri

Ross Ball and Susan Venturella are the Commission's designated representatives and presided over the prehearing conference.

## **II. Prefiled Testimony and Exhibits**

In accordance with the procedure to be followed at the hearing, as set out in 8 CSR 20-5.010(4), the following evidence was submitted:

### **For Objectors:**

Affidavit of Don Brown, Director of BAC Administrative District Council of Eastern Missouri, AFL-CIO, and accompanying exhibits.

Affidavit of Craig Hydeman, Business Agent of BAC Local Union No. 15, and accompanying exhibits.

Affidavit of Don Hunt, Training Director for the BAC Local Union 15 Apprenticeship and Training Fund and Local 15 Marble Masons, Tile, Terrazzo and Finishers Joint Apprenticeship and Training Fund, and accompanying exhibits.

Affidavit of William E. Neville, Vice President for Chamberlin Contracting, Inc., and accompanying exhibit.

### **For the Division:**

The prepared direct testimony of Carla Buschjost, Director of the Missouri Division of Labor Standards, and referenced exhibit.

The prepared direct testimony of James J. Boeckman, Assistant Director of the Missouri Division of Labor Standards, Wage and Hour Section, and referenced exhibit.

## **III. Issue for the Hearing**

Objectors specifically object to the failure of Annual Wage Order No. 17 to include in the work description of the occupational title of Bricklayers and Stone Masons the installation of air and/or vapor barriers, materials and/or systems to masonry walls, and waterproofing. 8 CSR 30-3.060(8)(c)(4) and 8 CSR 30-3.060(8)(c)(6).

Objectors make the aforementioned objection because they believe that individuals working under the wage rate and occupational title of "Bricklayers and Stone Masons" typically install air and/or vapor barriers, materials and/or systems to masonry walls, and waterproofing. Objectors contend that the omission of said activities from the work description precludes said activities from being covered under Annual Wage Order No. 17.

Objectors have submitted multiple affidavits and other documentation supporting their position.

The Division asserted it was without sufficient information about the work processes and materials involved in the objectors' proposed change to determine if the objection is well-taken.

**IV. Hearing**

The hearing before the Commission is scheduled for Wednesday, May 19, 2010, at 9:00 a.m., in Jefferson City, Missouri. The location of the hearing is the Department of Labor and Industrial Relations Building, 3315 West Truman Boulevard, in the second floor conference room.

If there are no factual issues in dispute between the parties, the Commission will entertain a joint request to consider the legal issues presented upon written briefs. Such request will be granted provided the request is accompanied by a written stipulation of fact executed by all parties.

"No direct evidence, other than the testimony and documents filed at the prehearing conference, will be allowed at the hearing, except at the discretion of the Commission." 8 CSR 20-5.010(4)(B)4.

This Order is prepared in accordance with 8 CSR 20-5.010(3)(B) and is hereby executed by the Commission's designated representative.

Given at the City of Jefferson, State of Missouri, this 5<sup>th</sup> day of May 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



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Ross C. Ball  
Designated Representative