



Issue Date: 19 October 2012

Case Nos. 1998-DBA-00001
Through 1998-DBA-00006

In the matter of:
Disputes concerning the payment of
Prevailing wage rates and overtime by:

WILLIAM J. LANG LAND CLEARING, INC.¹

DECISION AND ORDER ON REMAND BASED
ON JOINT STIPULATIONS BY THE PARTIES

This matter was assigned to me as a consequence of an Order of Remand from the Administrative Review Board dated November 20, 2008. The procedural history of the matter was set forth in the Board's Order of Remand and will not be repeated here. Suffice it to note, the matter has been thoroughly litigated before this Office, the Board, the United States District Court for the Eastern District of Michigan, and the Sixth Circuit. The latter affirmed the Board's Final Decision and Order in all respects. However, the Acting Administrator filed with the Board a Motion for Remand of Proceedings to an Administrative Law Judge in order that specific findings be made regarding the back wages for three of the Respondent's violations of the Davis-Bacon Act. The remand was specifically limited to the "calculation of back wages for the remaining three violations."

On June 1, 2012, I issued an Order advising the parties that I construed the scope of the Board's Order of Remand as strictly a matter of calculation as all other issues had been finally and fully litigated before the administrative bodies and courts previously identified. Therefore, in the interest of expeditiously resolving the amount of back wages being owed, the parties were ordered to confer and attempt to arrive at amounts mutually agreeable to the parties; to identify the methodology employed in arriving at the amounts, and to prepare and submit a Joint Appendix containing that portion of the record that supports the amounts determined.

Commendably, the parties were able to reach agreement and submitted their "Final Joint Stipulation and Submission on Back Pay Pursuant to the Administrative Review Board's Order of Remand" on October 15, 2012. That document is marked as Administrative Law Judge Exhibit 1 on Remand, and hereby made part of the record in this case.

¹ I have used the short form of the caption of this case adopted by the Board for ease of reference and citation.

ISSUES

In their Final Joint Stipulation, the parties agreed and identified the following three issues for determination:

1. The additional back-wage amounts owed to employees for work performed at the Power Equipment Operators Group 1 Wage Determination Classification rather than at the Power Equipment Operators Group IV Classification under which Respondent paid its employees;

2. The additional back-wage amounts owed to employees based upon Respondent's improperly taking credit for meals and lodging costs that Respondent provided to employees when they worked outside their daily home commuting area toward its fringe benefit requirement; and

3. The additional fringe benefit amounts owed to employees based on Respondent's taking an improper credit toward its fringe benefit requirement by averaging its health-insurance costs on an annual basis.

STIPULATIONS

To resolve these issues, the parties have stipulated that the calculations completed by the Wage and Hour Investigator, Susan Blick, "reflect fully and completely the amounts owed to Respondent's employees by contract and assigned case number...and are consistent with the findings and conclusion reached by the Administrative Review Board." (ALJX 1 on Remand at 4-5).

The parties further stipulated that the calculations by Ms. Blick are correct as they appear in the record at Administrator's Exhibit No. 18, Summary of Back Wages and Wage Transcription and Computation Sheets. Pursuant to my Order, the parties have included in their Appendix to their Final Joint Stipulation a copy of Administrator's Exhibit 18 with inclusive subparts 18(a) through (f).

Further, the parties have stipulated that "Administrator's Exhibit 18, Summary of Back Wages and Wage Transcription and Computation Sheets with inclusive subparts 18(a) through 18(f) "represents the prevailing back wages, fringe benefits and overtime in the amount of \$106,897.78 owed by the Respondent to its 23 employees in this matter."

The parties also stipulated that the Administrator has requested funds be withheld by the contracting agency, the Michigan Department of Transportation (MDOT) from the contracts for which the Respondent performed work as a subcontractor.

The undersigned accepts the stipulation of the parties.

ORDER

Pursuant to the stipulations and terms agreed to by the parties, and to comply with the Board's Order of Remand dated November 20, 2008, **IT IS HEREBY ORDERED** that:

1. The Respondent shall pay the total of \$106,897.78 to 23 employees, which represents the amount of prevailing wages, fringe benefits, and overtime amounts owed by the Respondent in this matter.
2. Any and all such funds withheld by the Michigan Department of Transportation at the request of the Administrator shall be released and credited toward the amount of the prevailing back wages, fringe benefits, and overtime amounts owed by the Respondent, which is \$106,897.78.
3. Once released and credited to the Respondent, the Respondent shall forward to the Administrator a certified or cashier's check for the remaining gross amount due no later than ten (10) days from the date the Respondent is notified by the Administrator's representative of the deficiency amount. The payment shall be sent to the Administrator to the following address:

Office of the Solicitor
United States Department of Labor
230 South Dearborn Street, Suite 844
Chicago, Illinois 60604

4. The Administrator shall distribute and disburse the back wages required to be paid by the Respondent to Respondent's employees in the amount of \$106,897.78, and will deduct from the gross back-wage amounts the employee's share of FICA, Medicare, and federal withholding taxes, while the Respondent shall be responsible for the employer's share of FICA, Medicare, and other required federal and state tax obligations not otherwise named herein.
5. Any amounts of unpaid compensation not so paid within a period of three (3) years from the date of receipt because of inability to locate the proper persons or because of their refusal to accept it, shall be covered into the Treasury of the United States as miscellaneous receipts.
6. Nothing in this Order relieves Respondent or any of the applicable prime contractors identified in the full caption of this matter as it appears on the parties Joint Stipulation (ALJX 1 on Remand) from liability for any prevailing back-wage, fringe-benefit, and

overtime-amount deficiencies in this matter consistent with the requirements of the Davis-Bacon and related acts and the applicable regulations or compliance with the terms and conditions of any Order entered in this matter.

John Paul Sellers, III
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) that is received by the Administrative Review Board (“Board”) within forty (40) days of the date of issuance of the administrative law judge’s decision. *See* 29 C.F.R. § 6.34. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. The Petition must refer to the specific findings of fact, conclusions of law, or order at issue. *See* 29 C.F.R. § 6.34. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

When a Petition is timely filed with the Board, the administrative law judge’s decision is inoperative until the Board either (1) declines to review the administrative law judge’s decision, or (2) issues an order affirming the decision. *See* 29 C.F.R. § 6.33(b)(1).

At the time you file the Petition with the Board, you must serve it on the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. *See* 29 C.F.R. § 6.34.