

U.S. Department of Labor

Office of Administrative Law Judges
5100 Village Walk, Suite 200
Covington, LA 70433



(985) 809-5173
(985) 893-7351 (Fax)

Issue Date: 30 March 2018

CASE NO.: 2016-DBA-16

In the Matter of

**Disputes concerning the payment of
Prevailing wage rates by**

**NEUWAVE ELECTRIC COMPANY
Subcontractor**

**With respect to laborers and mechanics
employed by NEUWAVE ELECTRIC COMPANY
on Project No. ALCJC10a, Davis County
Library/Administration Building and
Children's Justice Center Construction
Project in Farmington, Utah**

DECISION AND ORDER

This proceeding arises under Reorganization Plan No. 14 of 1950, 64 Stat. 1267, 40 U.S.C. § 3145; the Davis-Bacon Act ("DBA"), 40 U.S.C. § 3141 et seq.; the Contract Work Hours and Safety Standards Act ("CWHSSA"), 40 U.S.C. § 3701 et seq.; and the applicable regulations issued at 29 C.F.R. Parts 5 and 6.

I. PROCEDURAL BACKGROUND

The U.S. Department of Health and Human Services contracted with Wadman Corporation ("Prime Contractor" or "Wadman")¹ to perform work on the Davis County Library/Administration Building and Children's Justice Center Construction Project in Farmington, Utah ("Project"). Prime Contractor then subcontracted with NeuWave Electric Company ("Respondent" or "NeuWave") to install an electrical package for the Project. The Wage and Hour Division, U.S. Department of Labor, in Chicago, Illinois ("Division") subsequently initiated a labor standards investigation of the Project.

¹Project No. ALCJC10a

After completing the investigation, the Division Administrator ("Administrator" or "Plaintiff") issued a Notice of Determination to the Prime Contract and NeuWave. The Notice of Determination alleged that Respondent violated the DBA for failure to pay prevailing wage rates and fringe benefits to 20 electricians, as a result of misclassification of these workers, NeuWave's employees, while performing certain electrical work on the Project.

On August 12, 2015, the Division Administrator issued a Notice of Determination to the Prime Contractor and to NeuWave. The Notice of Determination alleged that NeuWave misclassified 37.5% of the work that NeuWave employees performed on the Project resulting in \$62,301.35² in back wages owed to 20 employees for underpayment of wages and fringe benefits. The Administrator also alleged that NeuWave failed to keep records of the work performed in each classification as required. By letter dated September 11, 2015, Respondent requested a hearing challenging the Administrator's determination.

On May 20, 2016, the matter was referred to the Office of Administrative Law Judges ("OALJ") via *Order of Reference* by the Administrator. Shortly thereafter, on May 23, 2016, the OALJ issued a Notice of Docketing ordering the Department of Labor to furnish the OALJ with specific information regarding the matter. Respondent was thereafter given time to file an answer. The parties timely filed their respective response and answer. On August 9, 2016, the undersigned scheduled this matter for hearing set to commence on January 24, 2017, which was subsequently advanced to January 23, 2017.

On December 27, 2016, the Administrator filed the Department of Labor's Motion for Summary Decision with supportive exhibits seeking a decision finding: (1) NeuWave's challenge to the prevailing wage determination is untimely and cannot be raised in an enforcement proceeding; (2) NeuWave misclassified work performed by its employees as "Electricians - Low-Voltage Wiring and Installation of HVAC Temperature Controls Only" when NeuWave should have classified such work as

² As a result of its investigation, the Administrator found that Respondent failed to pay prevailing wages and fringe benefits; misclassified non-low voltage electricians as low voltage electricians; and provided incomplete records. The Administrator found violations resulting in total back wages of \$62,302.25, but indicates that it is not pursuing violations of the CWHSSA (totaling \$0.90). In this action, the Administrator alleges only \$62,301.35 is owed to 20 employees.

"Electricians - Excluding Low-Voltage Wiring and Installation of HVAC Temperature Controls"; and (3) as such, NeuWave owes back wages to the 20 NeuWave employees identified by the Administrator in amounts totaling \$62,301.35.

On January 6, 2017, Respondent filed its Memorandum in Opposition to Department of Labor's Motion for Summary Decision ("Opposition"). In the Opposition, Respondent generally agreed with how the Division has framed the issues: (1) whether NeuWave may challenge one Division determination (as to the prevailing wage rates for classes of workers in the local area similar to the work performed on the contract) in a proceeding by the Division to enforce another Division determination as to the classification of such workers; (2) if so, whether the Division's determination that part of the work which NeuWave electricians performed on the project at issue was dealing with other than low-voltage wiring is correct; and (3) if so (and the Division's determination as to classification of such workers stands), whether NeuWave is obligated to pay back wages in the way and in the amount which the Division has calculated them.

On January 13, 2017, the undersigned issued an Order Denying Motion for Summary Decision finding a factual issue existed regarding the appropriate classification of certain work performed by NeuWave's employees and thus summary decision was improper.

Thereafter, on January 16, 2017, the Administrator filed "Secretary's Unopposed Motion for Continuance of Hearing Currently Scheduled for January 23, 2017 through January 27, 2017." Consequently, the undersigned issued an Order rescheduling the hearing to July 17, 2017.

A de novo hearing was held in Salt Lake City, Utah on July 17, 2017 and July 18, 2017. The Administrator/Plaintiff offered twenty-two (22) exhibits, numbers 1-17 and 20-25. Respondent offered ten (10) exhibits, 2, 4 (page 2), 12-13, 15-17, 19, 20 (pages 41-43), and 21, which were admitted into evidence, along with ten administrative law judge exhibits. This decision is based upon a full consideration of the entire record.³

The Administrator and Respondent were given a post-hearing brief deadline of October 31, 2017. On September 12, 2017, the

³ References to the transcript and exhibits are as follows: Transcript: Tr.____; Plaintiff's Exhibits: PX-____; Respondent's Exhibits: RX-____; and Administrative Law Judge Exhibits: ALJX-____.

Administrator filed "Secretary's Unopposed Motion for Continuance of Post-Hearing Brief Deadline Scheduled for October 31, 2017" seeking to have the brief deadline extended to November 30, 2017. The undersigned granted the motion and issued an Order extending the post-hearing brief deadline to November 30, 2017. Post-hearing briefs were timely received by the parties. Based upon the evidence introduced, my observations of the demeanor of the witnesses, and having considered the arguments presented, I make the following Findings of Fact, Conclusions of Law and Order.

II. JOINT STIPULATIONS

1. The American Recovery and Reinvestment Act of 2009 ("ARRA") and the Davis Bacon Related Acts ("DBRA"), as denoted in 29 C.F.R. Part 5 and the applicable regulations issued thereunder at 29 C.F.R. Part 5 § 5.11(b), apply in this case. (PX-24).
2. David Hogan, President of Wadman Corporation ("Wadman"), entered into a contract with Davis County (Contract No. ALCJC10a) on or about December 28, 2010 for construction services on the Davis County Library/Administration Building and Children's Justice Center in Farmington, Utah. Wadman served as the prime contractor on this project. (PX-24).
3. David Hogan entered into a contract with Curtis Champneys, President of NeuWave Electrical Company ("NeuWave"), on or about January 19, 2011, for construction services on the Davis County Library/Administration Building and Children's Justice Center in Farmington, Utah. NeuWave served as the electrical subcontractor on this project. (PX-24).
4. The Wage and Hour Division investigation of Respondent NeuWave covered the period from November 10, 2011 through August 30, 2012. (PX-24).
5. Mr. Champneys employed 20 electricians on this project during the investigation period. (PX-24).
6. NeuWave paid its electricians a prevailing wage rate of \$21.00 per hour and a fringe benefit rate of \$4.61, for a total rate of \$25.61 per hour. This

prevailing wage rate and fringe benefit rate are the rates listed for the Electrician (Low-Voltage Wiring and Installation of HVAC Temperature Controls Only) classification on General Decision No. UT 100037, dated November 19, 2010, the general wage determination published by the Secretary of Labor that is applicable to this project. (PX-24).

7. Wadman and Respondent NeuWave were notified via certified mail of the Administrator's findings on August 12, 2015. The Administrator referenced the relevant labor standards provisions of the ARRA, DBRA, and the Department of Labor regulations that the Administrator found had been violated. (PX-24).
8. As a result of this notification, Wadman issued a check to the Wage and Hour Division for \$62,302.25 the total amount of back wages the Administrator alleged were due to 20 NeuWave employees. The Wage and Hour Division deposited the check but did not disburse the funds to the alleged affected employees. (PX-24).
9. Respondent NeuWave filed a timely request for a hearing. Upon receipt of the request for a hearing, the Administrator referred the case to the Chief Administrative Law Judge. (PX-24).

III. SUMMARY OF THE EVIDENCE

Testimonial Evidence

Tonya Jarrett (previously Tonya Labish)⁴

Ms. Jarrett testified she is a Wage and Hour Investigator for the U.S. Department of Labor (DOL). (Tr. 15-16). Ms. Jarrett began with DOL in July 2007 after serving 20 years in the U.S. Air Force working in Supply and Personnel. When Ms. Jarrett first began working for the Wage and Hour Division, she had on-the-job training for the first year, shadowing senior investigators. After her first year, she completed the Basic One course focusing on the Fair Labor Standards Act, including minimum wage, overtime, and child labor. After her second year, she attended the Basic Two Training Course, which focused on

⁴ (Tr. 15).

more complicated cases dealing with government contracts and foreign worker visas. (Tr. 16-17).

Ms. Jarrett is familiar with Davis-Bacon Act cases through on-the-job training and through handling sixty Davis-Bacon Act cases during her tenure at the Department of Labor. According to Ms. Jarrett, the Davis-Bacon Act covers work conducted in federal buildings and the "Related Acts" cover projects such as Housing and Urban Development (HUD) projects which are federally funded. (Tr. 17-18).

The Wage and Hour Division conducts investigations of employer-compliance with the Davis-Bacon Act for a variety of reasons. Sometimes the investigations are agency-directed and sometimes they are based upon complaints made to the DOL. (Tr. 17-19). In conducting her investigations, Ms. Jarrett typically interviews workers, "look[s] at what prevailed on that particular job," and contacts the union. Once she gathers that information, Ms. Jarrett works with the employer to discuss her position, but ultimately bases her opinion on the investigative facts. (Tr. 19-20).

Ms. Jarrett was assigned the NeuWave case in August 2012 following a complaint of misclassification by a NeuWave employee. Initially, she spoke with her manager, Joe Doolin, regarding the investigation and the complaint and reviewed the information taken with the complaint. In this case, Ms. Jarrett conducted a follow-up interview and spoke to the actual complainant about his claim. Based upon the interview, Ms. Jarrett understood the complaint to involve workers on the project being paid low-voltage wages when it was alleged they should be paid a higher rate. Since the matter involved a question of wage determination classification, Ms. Jarrett spoke with the union representative. She also conducted a search of the history of the company (NeuWave) to determine whether there were any prior investigations and an internet search to gather general information about the company. (Tr. 20-22).

Ms. Jarrett also reviewed the wage determination which was in effect and governed the contract in this matter. (PX-2). According to Ms. Jarrett, the Wage and Hour Division of the Department of Labor publishes the wage determinations. They are available online at www.dol.gov. A prevailing wage determination contains "the numbers, when it was put into effect, the state, the type of wage determination, the county that those wages apply to, the classifications, whether they are

union or non-union, and the rates and the fringe benefits." (Tr. 22-24; PX-2).

The wage determination in this case governs building construction - anything over four stories - and excludes residential housing and heavy construction. The wage determination contained (1) an Electrician, Excluding Low-Voltage Wiring and Installation of HVAC Temperature controls classification, (2) an Electrician, Low-Voltage Wiring and Installation of HVAC temperature controls only classification, and (3) an Electrician Communication Technician classification. (Tr. 24-25).

The "Electrician, Excluding Low-Voltage Wiring and HVAC Temperature Controls Installation" classification is governed by a union wage. The fact that the classification is subject to a union wage is evident by the "ELEC 0354" marker. The "ELEC 0354" marker shows that the Local 354 union prevailed on that wage. The Electrician Communications Technician classification was also subject to the union wage as indicated by the "ELEC 0354" marker. However, the "Electrician, Low-Voltage Wiring and Installation of HVAC Temperature Controls Only" classification is based upon survey data. The fact that the position is governed by survey data is evident by the "SU" marker. The "SU" marker indicates the rate is a non-union wage rate. (Tr. 25-26).

Ms. Jarrett testified that the issue in this matter arose because a worker alleged he was being paid the survey data rate - the lower rate - when he should have been paid the union rate. At issue were the Electrician, Excluding Low-Voltage Wiring classification and the Electrician, Low-Voltage Wiring classification. (Tr. 27). Ms. Jarrett testified that the prevailing wage determination does not define the term "low voltage." Thus, prior to meeting with Respondent, Ms. Jarrett attempted to define the term "low voltage" by speaking with the complainant, a union representative, and the employer. (Tr. 27-29).

Ms. Jarrett identified PX-3 as an email chain between herself and Mr. Terry Tremea, the "contracting officer" for the Davis County project at issue. Ms. Jarrett reached out to Mr. Tremea, according to agency policy, in order to notify the contracting officer that the Wage and Hour Division was involved and investigating a subcontractor. During her communications with Mr. Tremea, Ms. Jarrett sought copies of the prime contract, wage determinations, and all certified payrolls. Mr. Tremea forward Ms. Jarrett's request for information on to Phil

Clawson. Mr. Clawson was serving as the project manager for Wadman - the prime contractor on the project at issue and prime contractor to NeuWave. In her request to Wadman and NeuWave, Ms. Jarret sought several categories of information including: (1) Apprenticeship Agreements (a non-issue); (2) Davis Bacon Certification Form; (3) Job Duties of Employees Hired; and (4) Minimum Fringe Benefits (resolved by Wadman). In their communications, Mr. Tremea opined that NeuWave's employees were performing union-claimed work and should have been paid the union wage. Ms. Jarrett denied relying upon Mr. Tremea's conclusion in rendering her own opinion. (Tr. 30-34).

During her investigation, Ms. Jarrett also communicated with the union Representative, Mr. Kim Barraclough, the business manager for Local 345 of the International Brotherhood of Electrical Workers (IBEW). (PX-4). Ms. Jarrett gave Mr. Barraclough information pertaining to the wage determination and the two classifications. She asked Mr. Barraclough for information relating to work that the union claimed. In return, Mr. Barraclough provided Ms. Jarrett with information out of the union agreement and information from the "NEC" or the "IEEE." Based on her discussions with Mr. Barraclough, Ms. Jarrett determined that the NeuWave employees were performing work which should have fallen under the union rate. Based upon the information gathered from the complainant, Ms. Jarrett understood NeuWave employees to be performing the "277, 480 and [] the 122 low-voltage" work. In comparing the information she received from the complainant, NeuWave's employees, and Mr. Barraclough, Ms. Jarrett believed some of the work performed by NeuWave employees was covered by the union classification. (Tr. 34-37).

During her investigation, Ms. Jarrett also asked Mr. Barraclough to define the term "low voltage." According to Mr. Barraclough, low voltage includes things like "telephone wires, computer wires, and smoke detectors." Mr. Barraclough's definition was based on "projects" rather than "voltage." (Tr. 38-39). Once Ms. Jarrett reached the conclusion that some of the work should be classified as "high voltage" work, she spoke with the president of NeuWave, Mr. Champneys, regarding her decision. During their discussion, Mr. Champneys expressed that his understanding of low voltage was "600 or less." Mr. Champneys' opinion was based upon a job advertisement in California and the National Electrical Code book. (Tr. 40-41).

As part of her investigation, Ms. Jarrett typically conducts a visit to the worksite. When she visited the worksite

in this case, she observed the employees "pulling wires [and] installing boxes." She also conducted interviews of five or six NeuWave employees. During the interviews, Ms. Jarrett asked the employees about their jobs, job duties, their tools, time spent on the project, the wages paid, whether the employees were paid for all their hours, and whether the employees believe they were classified correctly. Ms. Jarrett records the information taken from an interview on an interview sheet. (Tr 42-45; PX-7). In her review of the information taken during these interviews, Ms. Jarrett found the employees' definitions of "low voltage" ranged from 50V to 480V, but never 600 volts. Ms. Jarrett found this information to be consistent with the union's claims, but inconsistent with Mr. Champneys' assessment that 600 volts is low voltage. (Tr. 47-48). Specifically, Ms. Jarrett found, based on Mr. Barraclough's statement, the voltage under which the NeuWave employees were working was not low voltage. (Tr. 48).

With regards to the issue of misclassification, Ms. Jarrett concluded that the employees were misclassified as to a certain portion of the work that they performed. Ms. Jarrett discussed the percentage of the work performed with Mr. Champneys and the employees. Based upon her discussions, Ms. Jarrett believed that roughly 67.5% of the work performed was low-voltage work. However, Ms. Jarrett found the remaining 37.5% of the work considered should have been paid under the higher, union rate. (Tr. 48-49, PX-7).

Following her decision, Ms. Jarrett met with Mrs. Champneys and his payroll manager, Ms. Sandra Ross. During that meeting, Ms. Ross transcribed all the certified payroll data into a spreadsheet for Mr. Jarrett. The transcriptions reflect hours worked and amounts paid. (Tr. 56-58; PX-9). Based upon that information, Ms. Jarrett computed the back wages owed by NeuWave. (PX-8). PX-8 is a "WH-56" a back wage summary which lists the individuals that worked in violation of the Davis-Bacon Act and are thus owed back wages. The WH-56 reveals 20 of NeuWave's employees were entitled to back wages. The WH-56 lays out the employees' names, the first date/week and the last date/week during which Ms. Jarrett found a violation, and then the gross amount due. Ultimately, Ms. Jarrett found \$62,301.35 due in back wages based on "fringe benefit[s] and prevailing wage[s]." (Tr. 50-56).

PX-1 consists of letters sent to the president of Wadman and NeuWave from the Regional Administrator of the Wage and Hour Division. The letter indicated that the Division's investigation revealed prevailing wage rate violations, misclassifications,

and a record-keeping violation. The letter also indicated the amount of back wages owed. (Tr. 65-66).

On cross-examination, Ms. Jarrett confirmed that she spoke with the union representative - Mr. Kim Barraclough, Mr. Tremea, Mr. Champneys, and the complainant at the commencement of her investigation. Ms. Jarrett did not contact any other electrical contractor or subcontractor in the area. (Tr. 73-74). When Ms. Jarrett reached out to Mr. Barraclough, Mr. Barraclough indicated that the union's scope of work was defined "by the State of Utah's Electrical Licensing Law." Ms. Jarrett then sought to give Mr. Barraclough the voltages at which NeuWave's employees reported working and to question Mr. Barraclough whether such work was claimed by the union. In response, Mr. Barraclough indicated that "inside wiremen, linemen, engineers, all have a little different terminology of what each considers high, medium, or low voltage. The work you describe falls under our jurisdiction as described in the Utah State Law and the Davis Bacon classification." Ms. Jarrett did not try to determine the parameters of the Utah State Law. Ms. Jarrett went on to ask whether the work being performed by NeuWave employees is work that should be paid at the union rate, according to the wage determination. Mr. Barraclough indicated to Ms. Jarrett that the work being performed by NeuWave employees should be paid at the union rate. (Tr. 75-79).

In September 2012, Ms. Jarrett reached out to her manager, Joseph Doolin, regarding the issues in this case. Ms. Jarrett asked "when the surveys were completed, [] was there any information submitted with the surveys that would distinguish where the low-voltage threshold is, that is 50 volts, 120 volts and lower, et cetera?" (Tr. 80-82; PX-5). Mr. Doolin forwarded Ms. Jarrett's question on to Ms. Deborah Hollins at the Regional Office. In response, Ms. Hollins indicated "when the survey was conducted, there was not a distinction regarding threshold of low-voltage work. The wage determination had one of the electrician classifications listed as union and the scope of the work excludes any low-voltage work as the other electrician is open shop and only for low-voltage wiring and installation of HVAC temperature controls." Ms. Hollins went on to express "in our surveys, low-voltage wiring is considered as wiring for alarms, telephones, computers, sound and communication systems." (Tr. 82-84). Ms. Jarrett could not explain how Ms. Hollins came up with such an answer, nor did she look at the surveys to determine whether the surveys defined low-voltage wiring as wiring for alarms, telephones, computers, sound and communications systems. (Tr. 84-85; PX-5). According to Ms.

Jarrett, the information from Ms. Hollins assisted her in determining that if the employees were wiring for alarms, telephones, computers, sound and communication systems, she would consider such work low-voltage wiring. Any other type of work she would not consider to be low-voltage wiring. (Tr. 85).

Then, Ms. Jarrett had to determine how much of the work performed by NeuWave employees would be considered low-voltage work under this definition. Based upon the information she gathered from Mr. Champneys and NeuWave's employees, Ms. Jarrett decided on a "happy medium" between the employees' opinions that 50 percent of the work was properly classified and Mr. Champneys' opinion that 75 percent of the work was properly classified. (Tr. 86-89).

On re-direct examination, Ms. Jarrett confirmed that she reached out to Mr. Barraclough during her investigation. Ms. Jarrett explained she was put in touch with Mr. Barraclough, because she called the union and requested to speak to "the person who could answer any questions regarding the wages they claim, the work that they claim." (Tr. 89-90). With regards to her prior testimony regarding the calculation of back wages owed, Mr. Jarrett explained that in the event of a "face of the record violation" computation of back wages is simple and can be computed directly from the record. However, in a case such as the present case, where the record must be reconstructed, the wage and hour division attempts to calculate back wages in a manner that is fair and equitable. Thus, Ms. Jarrett listens to both sides and develops a certain reconstructive method which is approved by her manager. The method Ms. Jarrett used in the present matter was approved in this case by her manager, Mr. Doolin. (Tr. 93-94).

Ms. Jarrett confirmed that her response from Ms. Hollins indicated, low-voltage wiring is wiring for alarms, telephones, computers, sound and communication systems. Ms. Hollins' definition excluded work such as wiring for outlets or light fixtures. Ms. Jarrett then compared the employee interview statements with this understanding of low-voltage work. Ms. Jarrett confirmed that some of the employees referenced the type of work described by Ms. Hollins, but some did not. Moreover, though some employees did not believe they ever conducted low-voltage work, Ms. Jarrett credited NeuWave with performing low-voltage work. Thus, Ms. Jarrett testified that her back wages calculations under-report all the higher voltage work performed. (Tr. 94-97).

On re-cross examination, Ms. Jarrett testified that the low-voltage definition provided by Ms. Hollins was not set forth in the wage determination. Ms. Jarrett expressed that it was the responsibility of the contractor electrician to determine what "low-voltage wiring and installation of HVAC temperature controls only" means. (Tr. 97-98). When Ms. Jarrett reached out to Mr. Barraclough she inquired as to the work which the union claimed and provided him with the voltage with which the NeuWave employees were working. In her e-mail to Mr. Barraclough she specifically explained the work being performed - with regards to the voltage - and Mr. Barraclough indicated that such work was claimed by the union. (Tr. 98-100).

Terry Tremea

Mr. Tremea testified that he currently works as an auditor for Zions Bancorp, a holding company for seven different banks. In 2012, Mr. Tremea was working for Davis County in the Clerk Auditor's Office. He worked for the Clerk Auditor's Office for seven years. (Tr. 107).

During his time in the Clerk Auditor's Office, Mr. Tremea became involved with the instant Project due to his past experience working with the Davis-Bacon Act. Mr. Tremea's prior experience came from ensuring adherence to the federal regulations with regards to the construction of a training facility for weatherization. With regards to the Administration Building and the Children's Justice Center Project, Mr. Tremea's responsibilities involved determining the appropriate wage determination and managing the certified payroll sheets from all the different subcontractors. (Tr. 108-109). Primarily, Mr. Tremea was involved with the project on an ongoing basis with determining the appropriate wage determination and the actual construction of the project. (Tr. 109-111).

For the Project, Mr. Tremea was responsible for figuring out the correct wage determination. PX-2 contains the wage determination sheet which was utilized for the project. The wage determination was dated November 19, 2010, which is significant because the project went to bid at the end of 2010, after the wage determination was issued. (Tr. 111-113; PX-2). Mr. Tremea's job duties did not involve reviewing the classifications in the wage determination. Prior to the bidding process, Mr. Tremea did not know exactly which classifications would be used and which would not. Mr. Tremea was also not responsible for reviewing the bids made by NeuWave or Wadman. (Tr. 113-114).

Included in Mr. Tremea's responsibilities for the project was the reviewing of certified payrolls and classifications for workers involved in the project. PX-3 contains an e-mail exchange between Mr. Tremea and Mr. Phil Clawson. At the time, Mr. Tremea reached out to Mr. Clawson due to a request for information prompted by Ms. Tonya Labish. Based upon these discussions, Mr. Tremea indicated that he would "turn over the issue of what classification should be paid to the Department of Labor." Mr. Tremea indicated that his "investigation lead[] [him] to believe that most, if not all, work completed at the Davis Admin Library should be the electrician excluding low-voltage wiring and installation of HVAC temperature controls [classification]." Mr. Tremea indicated his use of the word "investigation" was better described as a summary of information he obtained through discussions with Mr. Clawson and Ms. Labish. (Tr. 114-118). Beyond his discussions with Mr. Clawson and Ms. Labish, Mr. Tremea conducted no further investigation or inquiry into the classification issue. (Tr. 119-120).

Apart from the e-mail chain evidenced in PX-3, Mr. Tremea was not involved in any other efforts on behalf of the Wage and Hour Division to investigate the classification issue. Mr. Tremea did review information provided by Mr. Champneys to Mr. Clawson regarding Mr. Champneys' understanding of the low-voltage electrician classification. Based upon his lack of electrical experience, Mr. Tremea relied upon the opinion of Mr. Clawson. According to Mr. Tremea, Mr. Clawson disagreed with Mr. Champneys' interpretation of the low-voltage classification in advance of the e-mail contained in PX-3. (Tr. 120-121).

On cross-examination, Mr. Tremea confirmed his background in auditing and finance and denied any experience in contracting or the electrical industry. Mr. Tremea testified that he became involved in the project at issue by virtue of his responsibilities for Davis County. Specifically, Mr. Tremea was responsible for auditing the project. (Tr. 121).

With regards to Mr. Tremea's statement regarding his "investigation," Mr. Tremea confirmed he did not engage in any research outside his discussions with Ms. Labish and Mr. Clawson. (Tr. 125-127). With regards to the percentage of work which was misclassified, Mr. Tremea confirmed that HVAC temperature controls were installed within the building and thus at least some of the work performed was properly classified. (Tr.127-129).

Russell Lamoreaux

Mr. Lamoreaux testified he is the business manager for the International Brotherhood of Electrical Workers Local Union 354. The Local Union 354 is the electrical workers union in the State of Utah. Mr. Lamoreaux is in charge of and represents the "inside construction as well as low-voltage technicians in the voice data video and telecom field." Mr. Lamoreaux has served as the business manager for the Local Union 354 for just over three years. His responsibilities include being the lead negotiator for all contracts pertaining to his membership and to enforce all aspects of the Collective Bargaining Agreement. (Tr. 132-133). Ms. Lamoreaux became involved in the present matter when he was asked to give a description of the Local Union 354's Collective Bargaining Agreement. Specifically, he was asked to describe the work covered by the Collective Bargaining Agreement. (Tr. 131-133).

Mr. Lamoreaux testified he is a licensed electrician. He began his apprenticeship in 1991 and has held a journeyman's electrician license since 1996. He is licensed in the State of Utah. In order to obtain an electrician's license in the State of Utah, one must complete 8,000 hours and four years of schooling. Moreover, the State of Utah also requires an electrician to pass an exam. The exam covers AC/DC electrical theory, and knowledge of the National Electrical Code. The examinee is also required to undergo a practical exam hooking up motor controls, transformer, three-way, four-way lighting/switching, as well as basic conduit bending skills. (Tr. 134-135).

Mr. Lamoreaux is familiar with the licensing requirements and applicable laws for the State of Utah. As a holder of a State of Utah electrical license, he is required - every two years - to complete 16 hours of continuing education. Currently and for the past three years, he has sat on the State Electrical License Board. The Board monitors, regulates, and oversees the State licensing requirements, applicants, ensures that the schooling requirements are being adhered to, and ensures applicants are fit to provide public service. (Tr. 135-136).

Mr. Lamoreaux is familiar with the Davis-Bacon Act and has worked on several jobs which involved the Davis-Bacon Act. Mr. Lamoreaux has also been to seminars regarding the Davis-Bacon Act. Mr. Lamoreaux also submits information regarding changes to the Collective Bargaining Agreement to the Department of Labor, in areas where the union prevails. (Tr. 136).

Mr. Lamoreaux is familiar with the process of participating in wage surveys for the prevailing wage determination. The wage determination applicable to the Project covers building construction projects in Davis County, Utah. (PX-2). The wage determination also reveals the classifications upon which the union prevailed and those upon which it did not. The marker "ELEC 0354" next to a classification recognizes the Local 354 and its Collective Bargaining Agreement prevails for that classification. (Tr. 137-138).

Mr. Lamoreaux testified that the "Inside Collective Bargaining Agreement" applied to the electrician excluding low-voltage wiring and installation of HVAC temperature controls classification. In explaining the term "inside" agreement, Mr. Lamoreaux expressed "[t]here are two basic types of electric work pertaining strictly to electricity or the higher voltages inside and outside." According to Mr. Lamoreaux, outside electrical work, coming from the power generator and distribution line, would be "outside work" performed by linemen. Inside work is everything from where the utility turns the power over to the customer - the demarcation location - at a transformer or a meter. (Tr. 139-140). The Local 354 represents inside work. Outside work, to the extent it is represented by a union, falls under the jurisdiction of the Local 57. Inside work falls to the Local 354. (Tr. 140-141).

The purpose of the inside agreement is to set the terms and conditions for all job sites. It determines wages, benefits, required tools, and governs safety. The parties to the Inside Agreement include the members of the Local 354, the Intermountain Chapter of the National Electrical Contractors Association, and various other contractors. Wadman Corporation is not a party to the Inside Agreement. (Tr. 141-144; PX-11). Mr. Lamoreaux believed, in the context of the Davis-Bacon Act, the union prevails when the majority of the work being performed is done so under a Collective Bargaining Agreement. The determination as to whether the majority of the work is being performed under a Collective Bargaining Agreement is determined by the surveys. According to Mr. Lamoreaux, the wage determination sets the wages for everyone in the industry; the wages do not change depending upon whether or not an employer is a member of the union. (Tr. 145-146).

The scope of the Inside Agreement is not defined or specifically listed; however, the agreement "agree[s] to work under what is required by the State of Utah" specifically the

State Electrical Licensing Law. According to Mr. Lamoreaux, the agreement covers "the demarc point or the point where the utility turns the power over to the customer, from that point inside everything is covered by the Inside Collective Bargaining Agreement." (Tr. 146-147; PX-11).

The Electrician's License Act Rule for the State of Utah sets forth the common practices for everyone in the State. (PX-13). The State Electrical Licensing Law defines electrical work as "means installation, fabrication, or assembly of electrical equipment or systems included in premises wiring, as defined in the edition of the National Electrical Code, as adopted in the State Construction Code Adoption Act and State Construction Code. Electrical work includes installation of raceway systems used for any electrical purpose and installation of field-assembled systems such as ice and snow melting, pipe tracing, manufactured wiring systems and the like." The Rules also set forth that "[e]lectrical work does not include installation of factory assembled appliances or machinery that are not part of the premises wiring, unless wiring interconnections external to the equipment are required in the field, and does not include cable type wiring that does not pose a hazard from a shock or fire initiation standpoint, as defined in the National Electrical Code." According to Mr. Lamoreaux, "premises wiring" is the correct "description for what [the union's] Collective Bargaining Agreement would cover." The union adopts both the Utah Electrical Licensing Act Rule and sections of the National Electrical Code to determine its scope of work. (Tr. 148-150).

According to Mr. Lamoreaux, the term "premises wiring," as defined in the National Electrical Code, is everything inside a building, from the service point that is involved in the electrical wiring. Work which is excluded from the definition of electrical work includes lesser and lower voltage wiring systems. These systems do not pose the same type of fire hazard or shock hazard to people that may come in contact with them. The Act does not delineate the wiring systems, but according to Mr. Lamoreaux "50 volts and less" have different applications, different wiring methods, and different types of insulation. Mr. Lamoreaux explained the major example of low-voltage wiring would be a fire alarm system, which is typically 24 volts and has its own set of guidelines for installation. (Tr. 150-151).

Based upon Mr. Lamoreaux's experience on the State Electrical Licensing Board, an electrician's license is not required for lower voltages due to safety aspects. Specifically,

lower voltages do not present or possess the same type of energy produced by other systems. (Tr. 151-152).

PX-14, p. 70-31, provides the National Electrical Code's definition of premises wiring which informs the union's scope of work under the Inside Agreement. The definition includes "interior and exterior wiring." Mr. Lamoreaux believes "exterior wiring" would also be covered by the Inside Agreement, because the outside lighting - parking lot wiring or lighting on the outside of a building - would be fed from distribution panels inside the premises of the building. (Tr. 154-155).

The National Electrical Code's definition of premises wiring also states that it "includes wiring from the service points or power source to the outlets or wiring from and including the power source to the outlets where there is no service point." Mr. Lamoreaux explains that a service point is usually the meter, but the separation can also come at the transformer, "where it's coming off the grid, the power grid, from distribution onto the premises." In this context of premises wiring, the term "power source" means sub-panels - panel boards. (Tr. 157-158).

According to Mr. Lamoreaux, the National Electrical Code does not have a single definition for "low voltage," because "there are many different systems, many different uses come into play." The National Electrical Code does not provide a definition for low voltage in the context of premises wiring. Article 411 of the National Electrical Code references lighting systems operating at 30 volts or less. According to Mr. Lamoreaux, lighting systems operating at 30 volts or less includes energy saving low-voltage lighting such as LED lighting. The union would "not necessarily" consider work related to the installation of "lighting systems operating at 30 volts or less" to be low-voltage work. According to Mr. Lamoreaux, under the two Collective Bargaining Agreements the union possesses, the union would determine that "lighting as a whole" is covered by the Inside Agreement." (Tr. 158-160; PX-14).

The union's Collective Bargaining Agreements cover the period of January 1, 2011 through December 31, 2012. The Communications Agreement governs the Electrician Communications Technician position noted in the Wage Determination in PX-2. (Tr. 160-162; PX-12). The bid, in the case at issue, was submitted in December 2010. Thus, PX-12 would not have been effective at that time. Mr. Lamoreaux testified that there would

not have been any differences in the scope of work between the Agreement effective during the bid period and the Agreement represented in PX-12. (Tr. 162-164; PX-12).

The Communications Agreement contains a section defining the scope of work which falls under the agreement. The determination as to whether a system would fall under the scope of the Communications Agreement depends upon the specifications of the job. If the job requires the system to be installed in conduit, then the work falls under the Inside Agreement and electricians would install the entire system. However, if there is cabling which does not need to be installed in conduits, the system would fall under the jurisdiction of the union's "lower voltage stakes in the agreement." (Tr. 164-165).

Given that the union prevailed as to two wage classifications for electricians, but not to a third classification, Mr. Lamoreaux was asked to describe his understanding as to what work is reserved by the third non-union classification. According to Mr. Lamoreaux, the non-union classification primarily involves HVAC installers, the control of heating, ventilation and air conditioning as well as thermostats. (Tr. 165-166).

Mr. Lamoreaux confirmed his understanding of low voltage, in the context of the work being performed under the prevailing wage determination, was 50 volts or less. Mr. Lamoreaux came to the determination that low voltage means 50 volts or less based upon the definitions found in the National Electrical Code and the Inside Agreement which refers to safety requirements being different for any volt higher than 50 volts. Mr. Lamoreaux's understanding of low voltage was "a little bit of both" his personal understanding and his understanding on behalf of the union. Mr. Lamoreaux explained, a typical low voltage would be 24 volts, which would include fire alarm systems, security systems, which do not pose the same type of inherent fire risk or risk to people coming into contact with such voltages. (Tr. 166-168).

Mr. Lamoreaux is familiar with Mr. Kim Barraclough. Mr. Barraclough was the assistant business manager for the union, a career electrician, and a 30 to 40 year member of the IBEW Local 354. An assistant business manager serves as the right-hand to the business manager and is able to speak on behalf of the union in negotiations. (Tr. 168-169). PX-4, p. 246 contains an e-mail from Mr. Barraclough indicating that the union's "scope of work is defined by the State of Utah's Electrical Licensing work,

since an electrical contractor and those doing electrical installation is defined by that law, the Utah Electrical Statutes governs the type of work covered by our agreement." Mr. Lamoreaux agreed with Mr. Barraclough's statement. (Tr. 169-171).

On cross-examination, Mr. Lamoreaux confirmed that the union prevails over anything which does not fall into the Electrician excluding low-voltage wiring and installation of HVAC temperature controls classification. Mr. Lamoreaux confirmed that there is no specific contract or agreement between Davis County and the IBEW Local 354 pertaining to this project. There is also no agreement in place between Wadman and IBEW Local 354. The IBEW Local 354 has an agreement with some electrical contractors, but none of those contractors were working on the Davis County Administration Building Project. Nevertheless, the union believes that the union wage rate prevails as to the work inside the building - the premises wiring. (Tr. 173-175).

Mr. Lamoreaux agreed that linemen doing electrical work - bringing electrical current from the generator to the service point - are not doing low-voltage work. Such work would be considered high voltage or medium voltage work. The controversy exists once the electrical current gets to the service points and then goes into the building. Mr. Lamoreaux defined premises wiring as everything inside the building, but noted that there were different systems and that those different systems could have different voltages. (Tr. 175-177).

The union's Inside Agreement and Communications Agreement and the State Electrician's License Act Rule do not define low voltage. Moreover, Mr. Lamoreaux did not believe that the National Electrical Code's definitions section defined "low voltage." The National Electrical Code provides a definition for the term "voltage, nominal." That National Electrical Code provides, "a nominal value assigned to a circuit or system for the purpose of conveniently designating its voltage class." The Code also provides "the actual voltage, which a circuit operates, can vary from the nominal within a range that permits satisfactory operation of the equipment." The definition then provides a reference "Informational note: See ANSI 84.1-2006." The ANSI document referenced in the National Electrical Code provides various ratings for voltages. (Tr. 177-179).

According to Mr. Lamoreaux, ANSI is a national standard, it serves as an umbrella. ANSI works in conjunction with the

National Fire Protection Act and collaborates on creating the National Electrical Code. Mr. Lamoreaux indicated that ANSI speaks in "generalities" because it breaks up the voltages coming from the generator all the way through the distribution system, to the end user and equipment utilization. (Tr. 179-180).

The definition of low voltage provided by ANSI involves "120, 240, 208 and up to 480 and 277." Based upon ANSI's standard voltage chart, any voltage that is 600 volts and below, is considered to be low voltage. Mr. Lamoreaux's definition of low voltage would differ from ANSI's definition. Mr. Lamoreaux's definition of low voltage is based - to some extent - on the fact that the lower the voltage the less the risk it poses to electricians and others. (Tr. 180-182).

The Institute of Electrical and Electronics Engineers or "IEEE," defines low voltage as any voltage of 600 volts and below. Mr. Lamoreaux had no reason to question that IEEE would define low voltage as 600 voltages and below "in the [context] that they're presenting it here." (Tr. 182-184).

Mr. Lamoreaux believed that NeuWave or any other bidder was on notice the Inside Agreement that the union had with other electrical contractors was controlling. In addition, Mr. Lamoreaux would assume electrical contractors are aware and know how to read the wage determination. When posed a hypothetical, Mr. Lamoreaux agreed that a fire alarm system operating at 24 volts is low-voltage wiring. (Tr. 184-186).

Mr. Lamoreaux testified that the Electrician Excluding Low Voltage Wiring rate is not necessarily voltage specific. (Tr. 186-187). According to Mr. Lamoreaux, the definitions of low voltage provided by ANSI and IEEE are for the service wiring itself, the initial supply to a building. (Tr. 187-189).

Mr. Lamoreaux's understanding of low voltage is based upon the definition of the different systems and the different installation requirements, the insulation requirements, the safety or protection requirements of the different systems. The union's definition of low voltage is 50 volts or less. According to Mr. Lamoreaux, the union's definition is based on the National Electrical Code. (Tr. 190-191).

On re-direct examination, Mr. Lamoreaux was asked to compare RX-4, page 2 and PX-20. RX-4 contained the recommended practice for electrical power distribution for industrial

plants. According to Mr. Lamoreaux, the type of construction considered in building construction is not necessarily the same type of construction for industrial plants. (Tr. 192-195).

The chart found at RX-4 which provides for medium voltage, high voltage, and ultra-high voltage. The range for medium voltage, according to the chart, starts at 2,400 volts. According to Mr. Lamoreaux, 2,400 volts is considered "outside line work that would be performed by linemen" and would be unusual for building construction. Mr. Lamoreaux believed that electrification project - working on utilities - would fall under a different Davis Bacon classification like heavy construction. Mr. Lamoreaux testified that the definitions in the charts in RX-2, and RX-4 do not necessarily apply to building construction. (Tr. 198-201).

Mr. Lamoreaux testified that the Communications Agreement delineates the scope of work. Fire alarm systems are a type of electrical system specifically defined in the Communications Agreement. Other electrical systems that Mr. Lamoreaux would consider to be low-voltage wiring might include other data and voice systems and HVAC control systems as well as other classifications of low-voltage wiring. When asked whether Mr. Lamoreaux would expect fire alarm systems to fall under the Electrician Communications Technician classification, Mr. Lamoreaux expressed that the determination depended upon the type of wiring used to install the system. Other types of low-voltage wiring, not defined by either the Inside Agreement or the Communications agreement, could fall outside of one of the two union wage rates. (Tr. 201-203).

On re-cross examination, Mr. Lamoreaux testified that he did not believe ANSI's definition of low voltage being 600 volts and below would apply to the inside work on the project at issue. Mr. Lamoreaux believed the statement from ANSI was "generalized" and that no electrician in the State of Utah would recognize 480 volts as low-voltage wiring. (Tr. 203-205). According to Mr. Lamoreaux, the National Electrical Code has various sections dealing with various types of systems defining premises wiring. The National Electrical Code will "decide the distinct and specific parameters that [a type of system] needs to be installed in." (Tr. 205-206).

Todd Shaffer

Mr. Shafer testified that he is an electrical contractor and a master electrician in Utah and Wyoming. He is also a

"qualifier" in Nevada which is the equivalent to a master's electrician's license in Nevada. Mr. Shaffer is also a majority shareholder and CEO of Skyline Electrical Company, an electrical contracting company that is part of the electrical union in Utah. Mr. Shafer became involved in the present matter, when he was asked by Mr. Lamoreaux to be a witness. Mr. Shafer knows Mr. Lamoreaux as the business agent for Local 354. (Tr. 207-208).

In order to obtain his master electrician's license, Mr. Shafer went through 4 years of school and 8,000 hours of on-the-job training to get his journeyman's license. After 2 years as a journeyman, Mr. Shafer was able to apply for his master's license and take the necessary test. The master's license test involves a hands-on practice portion and two written portions. One half of the written portion of the master's license test is on the National Electrical Code; the other half of the written test is on electrical theory. Mr. Shafer was also required to take a test in order to obtain his journeyman's license. The theory portion of the written exam covers electrical theory, insuring an understanding of how to calculate voltages and voltage drop in amperages, and also how to calculate services. The written portion regarding the National Electrical Code ensures an understanding of how to use and follow the National Electrical Code. Mr. Shafer must also complete 16 hours of continuing education every 2 years. At least 8 hours must cover the National Electrical Code. (Tr. 208-209).

As a principle of Skyline Electric, Mr. Shafer is generally involved in overseeing the financial business side of the Company. Skyline Electric is a large company with 120 employees. Mr. Shafer was the president of Skyline Electric from 2001 until 2 years ago, at which time Mr. Shafer believed the company needed a president with a master's degree in business to run the company. Skyline Electric does inside electrical work, commercial work, industrial work, airport work, and high-voltage work. Skyline Electric also has a line division, which does power-line work, and a low-voltage division which does tele-data, fire alarms, security systems, and other control work. Skyline Electric does not do any residential work. (Tr. 209-210).

Skyline Electric is "signatory" to the union's collective bargaining agreement (CBA). When a company is signatory to the union CBA, the Company has an agreement with the union to obtain its labor through the union. It also means that the Company abides by the union's collective-bargaining agreements. Skyline Electric is signatory to other unions, two in Nevada, two in

Wyoming, and one in Idaho. Skyline Electric is also a member of the Local Union 57 in Utah. The Local 57 is the "lineman's" local. According to Mr. Shaffer, linemen do the high-voltage work - the powerlines and big substations. On the other hand, the Local 354 is the inside wiremen's local, which typically works with 600 volts and less. (Tr. 210-212).

Mr. Shafer is familiar with the Local 354's Inside Agreement, because he has been on the negotiating committee for the last 3 agreements. Mr. Shaffer also revisits the agreement "as needed" when issues and conflicts arise with Skyline Electric Employees. According to Mr. Shafer, the Inside Agreement covers everything 50 volts and above. Skyline Electric is also part of the Communications Agreement. The Communications Agreement covers anything that is low voltage, less than 50 volts. The Communications Agreement includes tele-data work, fire alarm work, security systems, and control work. As long as the technician is not performing any work over 49 volts, then he falls under the lower rate. (Tr. 212-214).

Mr. Shafer is familiar with the Davis-Bacon Act. He has bid hundreds of jobs that are governed by the Davis-Bacon Act and has been awarded dozens of jobs governed by the Davis-Bacon Act. Mr. Shafer is also familiar with prevailing wage determinations under the Davis-Bacon Act. Mr. Shafer is familiar with the wage determinations, because when a contractor bids a job - and the job is federally funded - the contractor must look at the wage determination, in order to bid the job accurately. (Tr. 214).

Mr. Shafer was asked to review PX-2, which contains the prevailing wage determination at issue in this matter. With regards to the Electrician Low-Voltage Wiring classification, Mr. Shafer expressed that "low-voltage" would include anything 49 volts and less. Mr. Shafer believed that this nonunion wage classification governed HVAC temperature controls, fire alarm work, and security work, et cetera, but nothing above 49 volts. Thus, building wiring and building voltages would not be included in the classification of voltage. (Tr. 214-217).

Mr. Shafer could not express exactly where his definition of 49 volts or less originated. According to Mr. Shafer when electricians talk amongst each other within the company and when Mr. Shafer talks with other contractors, they generally talk about low-voltage technicians working with less than 50 volts. According to Mr. Shafer, the National Electrical Code contains certain sections which talk about low-voltage or voltages under 50 volts. (Tr. 217).

Article 110 of the National Electrical Code contains the requirements for electrical installations. (PX-14). Electrical installation deals with working space and how far apart electrical components need to be from other conductive materials. Article 110 also provides, "patient low-voltage, by special permission, smaller working spaces shall be permitted where all exposed light parts operate at not greater than 30 volts RMS, 42 volts peak or 60 volts DC." According to Mr. Shafer the higher the voltage, the more voltage can leak from one conductive surface to another. Thus the lower the voltage, the smaller the gap can be. The purpose of this article is to ensure that electricians do not put something which is conductive, like a metal plate, too close to a live electrical component. (Tr. 217-220; PX-14, p. 70-38).

PX-14 page 70-42, provides "separation from low-voltage equipment or switches, cutouts or other equipment operating at 600 volts nominal, or less, or installed in a vault room or enclosure where there are exposed light parts or exposed wiring operating at over 600 volts nominal, the high-voltage equipment shall be effectively separated from the space occupied by the low-voltage equipment, by suitable partition fence or sunscreen." (Tr. 220-221; PX-14, p. 70-42). Based on this section of the National Electrical Code, the demarcation point from high-voltage to low-voltage is 600 volts nominal or less. When asked to explain the difference between these two definitions of low voltage, Mr. Shaffer expressed that the definition was conditioned upon the comparison. The definition that low voltage was not greater than 42 volts was compared to "regular voltage." The definition that low voltage is not greater than 600 volts is compared to high voltage - 12,470 or 7,200 volts. Thus, the definition is based upon contrasting one type of voltage to another. (Tr. 221-222).

According to Mr. Shafer, 50 volts to 600 volts is the typical voltage range Mr. Shafer works with. Thus, Mr. Shafer explained that anything below 50 volts is going to be called "low voltage." When dealing with high voltage, things that linemen work with, anything below that is going to be called low-voltage. (Tr. 222).

The definitions section of the National Electrical Code contains the definition for "Voltage, Nominal." The definition provides "a nominal value assigned to a circuit or system for purpose of conveniently designating its voltage class, the actual voltage at which a circuit operates can vary from the

nominal within a range that permits satisfactory operation of equipment." According to Mr. Shafer, nominal is a "based" voltage, there is a range within which the voltage can go away from the "base" voltage and still operate the equipment satisfactorily. For instance, a motor might be a 230 volts motor and coming from the utility you might see 225 volts up to even 245 volts and the motor will still operate satisfactorily within those ranges. (Tr. 222-224; PX-14).

With regard to the Local 354's inside wiremen agreement, Mr. Shafer believes that the agreement covers any work for which an electrician's license is required. According to Mr. Shafer, an electrician's license is not required to do low-voltage work in the State of Utah, but you do need a license to do the electrical work. According to Mr. Shafer, electrical work is defined by the State as anything over 50 volts. An electrician's license is not required to do control work or alarm work, but an electrician's license is required to install outlets and lights. There is no license required for linemen and there is no license required for low-voltage work. (Tr. 224-226).

On cross-examination, Mr. Shafer testified that wage determinations are typically part of the specifications of the job and included in the bid documents. Based upon a wage determination a contractor submitting a bid would know that certain wage rates, union rates and non-union rates, are going to apply depending on the type of work that is being performed. Mr. Shafer was certain that Davis County was not a signatory to the union's inside agreement. The inside agreement only applies between the union and certain signatories who agree to be bound by the union's wage scale. To Mr. Shafer's knowledge, Wadman Corporation was not a signatory to the inside agreement or the telecommunications agreement, because only electrical contractors are signatory contractors. (Tr. 227-230).

With regards to the inside agreement, Mr. Shaffer did not dispute the presence or absence of a definition defining low voltage as 50 volts or 49 volts or below. According to Mr. Shafer, the inside agreement is intended to cover the same body of work that the journeyman's license is intended to cover. Mr. Shafer explained that anything above 600 volts is not covered by the electrician's license and anything below 50 volts is not covered by an electrician's license. Thus, a person can work above 600 volts or below 50 volts, but is not covered by an electrician's license. (Tr. 230-231).

During his testimony, Mr. Shafer was asked to review PX-14, page 70-33. Page 70-33, contains a definition for "voltage, nominal." Below the definition for "voltage, nominal" is an informational note which refers to "ANSI C84.1-2006." The informational note refers to a document, worth standard entitled "voltage ratings for electrical power systems and equipment." Mr. Shafer was unfamiliar with this ANSI standard. RX-2 contains an ANSI's chart which breaks down the voltages into low voltage, medium voltage, high voltage, extra high voltage, and ultra-high voltage. Mr. Shafer was unfamiliar with ANSI's breakdown of voltage, but confirmed that ANSI's chart defined low voltage as 600 volts and below. (Tr. 231-234).

Nevertheless, Mr. Shafer confirmed his opinion that low voltage means 50 volts or below. According to Mr. Shafer, low-voltage is voltage work that does not require a license, and the State does not require a license to work on less than 50 volts. Mr. Shafer explained in a job that includes fire alarm work, as a contractor he attempts to put in a lower wage for employees to do the fire alarm work, because it is lower voltage work. For the regular work, as a contractor, Mr. Shafer is required to pay higher wage - the full rate of a full electrician. (Tr. 234-235).

On re-direct examination, Mr. Shafer confirmed that there was no particular source to which he could point to define the term "low voltage," as it is used in the wage classification. Nevertheless, it is Mr. Shafer's understanding - as a master electrician in the State of Utah - that the scope of work subject to the inside wiremen agreement is the same as the scope of work governed by the State of Utah's electrician's license. Based upon Mr. Shafer's understanding of the State licensure requirements, the National Electrical Code, his experience of practicing according to the provisions, and his interactions with the 120 electrical employees of Skyline Electric, Mr. Shafer's understanding of low voltage is 50 volts or less. (Tr. 238-240).

On re-cross examination, Mr. Shafer testified that he was not aware of which specific State statutes define low voltage. (Tr. 240-241).

Craig Jackson

Craig Jackson testified that he currently works as the Regional Wage Specialist for the Southwest Regional Office of the Department of Labor's Wage and Hour Division and has done so

since August 2015. As a regional wage specialist, Mr. Jackson is responsible for conducting data inspection surveys for the 11 states which fall within his jurisdiction. Mr. Jackson is responsible for roughly forty-four surveys. As part of his job, Mr. Jackson manages a team of four analysts. (Tr. 252-253).

Prior to being a regional wage specialist, Mr. Jackson worked as a Wage and Hour investigator from 2008 through January 2011. Then, from January 2011 until he began working in data inspection surveys, Mr. Jackson worked on government contract enforcement cases. In working with government contract enforcement, Mr. Jackson provided guidance to managers - specific to Davis Bacon Service Contract Act investigations. He reviewed case files - investigative case files - for coverage. He also constructed "charging letters" from the Regional Office. If a contractor was to be debarred, Mr. Jackson was also involved in the action and submitting the files to the Solicitor's Office. (Tr. 253-254).

Through Mr. Jackson's experience, he is familiar with the Davis-Bacon Act. Mr. Jackson has undergone basic team training, investigative training, and working as an investigator in the field for Davis-Bacon Act cases. As a regional wage specialist, Mr. Jackson has gone through on-the-job training with the previous regional wage specialist and training provided by the National Office coordinators for all analysts. (Tr. 254-255).

According to Mr. Jackson, the process of establishing a prevailing wage determination starts with conducting pre-survey briefings. During the pre-survey briefings the investigators will go out and talk to interested parties and discuss the survey parameters and provide information about the survey process. Mr. Jackson discusses the location of the survey, the type of construction, the time frame, and a cut-off date for submission of the WD-10s for the particular survey. The WD-10 is a form the contractors fill out and submit data to the Wage and Hour Division. (Tr. 255-256).

In conducting a survey, Mr. Jackson addresses sufficiency in two ways: survey sufficiency and data sufficiency. Once Mr. Jackson has determined that there is both survey sufficiency and data sufficiency for a particular classification, Mr. Jackson determines whether a union rate or non-union rate prevails for a particular classification. In a wage classification there may be either a majority rate or an average rate. If a majority rate - more than 50 percent of the employees paid a particular rate - and a union classification is paid the same rate, then the union

rate will prevail. If, however, there is no majority rate, then Mr. Jackson takes an "average rate." The rates for all employees are added together and divided by the total number of employees. The resulting average will be the prevailing wage. (Tr. 256-259).

PX-22, page 1, is a letter from Ms. Deborah Hollins to Mr. Curtis Champneys. Ms. Hollins was the previous regional wage specialist prior to Mr. Jackson. PX-22, page 2, contains a WD-22 which shows those classifications which did and did not make the survey. Those classifications with an asterisk had insufficient data, so no rates were recommended. The WD-22 also lists classifications which made the survey and the recommended rates for those classifications. Those classifications with "zeros" in the place of an actual rate reveal where the union rates prevailed. (Tr. 259-262; PX-22).

In reviewing page 2, Mr. Jackson indicated that the asterisk next to the "electrician data voice and cabling only classification" indicates that there was insufficient data to recommend the wage rates. Thus, in conducting the survey they did not collect data of at least three employees reported by two employers. With regards to the "electrician HVAC electrical temperature controls and wiring installation" classification, the lack of "zeros" across the recommended rate indicates that there is an "open shop" rate or an average rate. The far right-hand column holds the letter "M" followed by a cross and a number "1." According to Mr. Jackson, the letter "M" indicates that the rate is a majority rate - more than 50 percent of the employees in this particular classification are paid in the same rate. Moreover, Mr. Jackson could glean that the data was supplemented with federal data. Thus, Mr. Jackson concluded, "because the rate went to a group, there was insufficient data at the county level, we included the certified payroll information that was received from the agency, [but] we still couldn't get sufficiency until we got to the group." (Tr. 262-263; PX-22).

In attempting to explain the term "group," Mr. Jackson expressed that in conducting a survey, Mr. Jackson relies upon census data. The census data identifies the metropolitan and rural counties. Every metropolitan and rural county is incorporated into a group. According to Mr. Jackson, Davis County is in a group with two additional counties. So, if Mr. Jackson is unable to get sufficiency at the county level, he is forced to go to the group. And, if Mr. Jackson is unable to get

sufficiency at the group level, he must go to the next step - the super group. (Tr. 263-264).

The third electrician classification on the WD-22 reveals that the union prevailed on that particular classification. Thus, when the rates will be published by the National Office, the office will publish the most current union rates. To determine the most current union rates, Mr. Jackson's analysts will reach out to the union that prevailed and ask for the most current copy of the Collective Bargaining Agreement. Mr. Jackson's team then provides the Collective Bargaining Agreement to the National Office. (Tr. 264-265; PX-22).

A WD-22(a) is a document provided to the public to inform the public of the classifications which were reported on any given project. The form excludes contractor's names but reports which and how many classifications or crafts were reported. The "electrician data and voice" craft listed on the WD-22(a) corresponds with the W-22. (Tr. 265-266; PX-22, p. 376).

The WD-22(a) form contained in PX-22 lists two electricians and one laborer. The first craft is identified as "electrician excludes low voltage." By looking at the document, it would appear that the information from the WD-22(a) is the data used for the recommended craft on the W-22. In looking at the WD-22(a), Mr. Jackson can tell that the union prevailed due to the mark of "yes" for union. The mark of "Y" for "yes" indicates that those employees reported working under a Collective Bargaining Agreement. The WD-22(a) reveals that six employees were reported as working for the union. The WD-22(a) also provides that a different contractor working on the same project had one employee working at a non-union rate. Based upon these reported employees, Mr. Jackson found there to be data sufficiency. Moreover, the union prevailed because the union employed more than 50 percent of the workers - six. The WD-22(a) also contains a craft listed as "Electrician HVAC Electric." According to Mr. Jackson that position was an "open shop" position and had four employees reported. None of the employees reportedly worked for the union. (Tr. 266-268; PX-22, p. 382).

In reviewing the three WD-22(a)s found in PX-22, Mr. Jackson noted that only two electrician classifications were recommended for this particular survey: (1) electrician HVAC electrical temperature controls and wiring installation, and (2) electrician excludes low-voltage wiring and installation of HVAC temperature controls. (Tr. 268-270).

PX-2 contains modification 6. The wage determination - modification 6 - contains three classifications for electricians and indicates it has been modified 6 times. PX-21 contains modifications 4, 5, and 7. According to Mr. Jackson, his review of the WD-22 and the recommended classifications caused him to look back at the WDOL.gov website to confirm whether the particular classification was on previous modifications published by the National Office. (Tr. 270-273). Modification 4 is from September 3, 2010. Modification 4 contains two electrician classifications - a union classification and an electrician low-voltage wiring under the survey rate. Modification 5 was published on October 29, 2010. Modification five also contains the same two electrician classifications found in Modification 4. Mr. Jackson confirmed that Modifications 4 and 5 preceded Modification 6 found in PX-2. Modification 7 was published on December 17, 2010, following Modification 6. Modification 7 contains the same two electrician classifications - electrician excluding low voltage under the union rate and electrician low-voltage wiring under the survey rate. Mr. Jackson's review of Modifications 4, 5, and 7, lead him to the conclusion that the National Office made an error when it issued Modification 6 and included a classification which was never recommended by the Southwest Regional Office. (Tr. 273-275; PX-22; PX-2).

Mr. Jackson was then asked to review PX-5, correspondence between Mr. Joseph Doolin and Ms. Deborah Hollins. The correspondence reflects that Ms. Hollins wrote to Mr. Doolin, "[i]n our surveys, low-voltage wiring is considered as wiring for alarms, telephones, computers, sound and communications systems." According to Mr. Jackson, Ms. Hollins's conclusion regarding the definition of low voltage would have come from information published in a resource book provided to all analysts. (Tr. 275-276).

The Wage and Hour Division has a three-step process for verifying information provided in the wage surveys. According to Mr. Jackson, the analysts clarify, analyze and test every "10" form which comes to the Wage and Hour Division. The analysts ensure that the data on the form is "useable," whether it falls within the survey time period and is regarding the appropriate construction type, etc. Then the analysts conducts a "called contractor verification" to clarify the information with the contractor in order to determine the "10" form's usability. In the event that a WD-10 form is submitted by a third-party - a non-payroll holder - the analysts clarify 100% of the WD-10

forms with the third parties. With contractor verification, the analysts reach out to roughly five percent of the WD-10 submitters and may request additional information to verify reported rates and classifications. (Tr. 276-277).

When conducting these verifications, analysts consider the reported classification and seek information regarding the specifics of the work performed by the classified employees. The analyst documents all information received from the contractor for Mr. Jackson's review. Thus, it is likely that Ms. Hollins would have reviewed such data collected by the analysts to see what information was gathered regarding the work performed by the classified employees. The analysts did not attempt to define voltage, they merely sought to determine the type of work that the employer's workers were actually performing. (Tr. 277-278).

If there is a particular classification required on a project and there are no other workers/classifications on the current wage determination that can do the work, a contractor must take part of the conformance process. The contractor must fill out the Standard Form 1444, submit the form to the contracting agency who, in turn, submits it to the National Office of the Department of Labor for a conform rate. The National Office may instruct the contractor that the work should be performed under a pre-existing classification. (Tr. 278-281). According to Mr. Jackson, when the agencies reach out to the Wage and Hour Division, the Division advises the agencies to contact the electricians that prevailed in the wage decision to determine whether they do the particular work for which a conformed rate is sought. (Tr. 281-282).

On cross-examination, Mr. Jackson reviewed the WD-22 found at PX-22, bates number 369. Mr. Jackson confirmed that, based upon the WD-22, an electrician who is performing low-voltage wiring and installation of HVAC temperature controls would fall under the open-shop rate rather than the union rate. Mr. Jackson testified that the WD-22 does not define low-voltage wiring. Mr. Jackson confirmed, for the carpenter craft, the WD-22 reflects several different classifications for carpenters. For electrician classifications there were no specific delineation of the types of work being performed by the workers. According to Mr. Jackson, this disparity is due to "survey participation." (Tr. 282-285).

Mr. Jackson was also asked to review the e-mails contained in PX-5, pages 212-215. The e-mails reflect that Ms. Tonya

Labish reached out to Ms. Hollins regarding information submitted with the surveys that would assist in defining "low-voltage wiring." In response, Ms. Hollins indicated, "[w]hen the survey was conducted there was not a distinction regarding threshold of low-voltage work." Mr. Jackson confirmed Ms. Hollins's response was consistent with his understanding of the surveys used to generate the WD-22 at issue. Then, Mr. Jackson was asked to review Ms. Hollins's e-mail indicating "[i]n our surveys, low-voltage wiring is considered as wiring for alarms, telephones, computers, sound and communication systems." Mr. Jackson confirmed that "when contractors are asked various questions about what they're doing, whether the contractors who are doing the work deem the work to be low voltage [is] based on the type of system that is being wired." (Tr. 285-288).

According to Mr. Jackson, the underlying data for the WD-22 is coming from contractors in the field performing work. For a specific type of work, Mr. Jackson's analysts clarify with the contractor and ask for a description of the type of work performed by the contractor's employees if a clear picture is not gleaned from the WD-10. Mr. Jackson explained that the defining characteristics of a classification will vary from survey to survey, depending upon the information and how it is clarified by the analyst. In Mr. Jackson's experience, electrician classifications have not listed voltage, rather a "system" is listed. The crafts and classifications are based upon the reports of those who participated in the survey and the selected work they describe to the analyst. (Tr. 288-290).

Curtis Champneys

Mr. Champneys is the president of NeuWave Electric Company, a corporation in the State of Utah. Mr. Champneys began his apprenticeship in 1978, registered with the Department of Professional Licensing in the State of Utah and then received his first year apprentice license. Mr. Champneys thereafter completed four years of apprenticeship and 8,000 hours of industry practice in the field. Mr. Champneys took and passed his journeyman's test in 1982. He practiced as a journeyman electrician until 1999 when he took his master electrician's test. He passed the master electrician's test and received his master's license. His license has been in good standing since 1999. (Tr. 292-294).

Mr. Champneys established NeuWave Electric Company in 2003. NeuWave specializes in commercial buildings, but also does some industrial and residential work. Mr. Champneys and NeuWave

became involved in the Davis Administration Building Library project in the same manner he becomes involved with any other project. Mr. Champneys was invited by the general contractors to bid on projects throughout the State of Utah. For this project, Wadman Corporation was awarded the contract as general contractor. Wadman invited NeuWave to bid the contract. NeuWave has worked with Wadman on "quite a few" projects prior to the Davis Administration building and continues to work with Wadman. (Tr. 294-296).

With regards to the Davis Administration Building, NeuWave put forth a bid. In constructing a bid, NeuWave acquires a full set of plans for the projects and the specification documents. The specification documents or specification manual has a section for every trade, including electricians. Mr. Champneys went to the electrical specifications which provides "general provisions." The general provisions provide the industry standards and lists "NEMA, the National Electrical Code, ANSI, UL, Military Specs," and all authorities by which the contractors must abide in performing the work for the project. Mr. Champneys reviewed the specifications for the project which provides for everything from panel boards, motor control devices, lighting, lighting control, etc. According to Mr. Champneys, he then goes to the plans and does a "take-off of raceways, conductors, through devices, [and] the lighting." (Tr. 296-297).

Mr. Champneys looked at the plans and specifications and estimated a cost for the work. The method of calculating the cost of labor depends upon the project. The Davis Administration Building project was a Davis-Bacon Act project. Mr. Champneys was notified by the "Notice to Contractors" that the Administration Building project was a Davis-Bacon Act project and required the contractors to conform to the Davis Bacon wage requirements. (Tr. 297-299; RX-12).

According to Mr. Champneys, if a contractor has a question regarding the bid documents, the contractor will send in a Request For Information "RFI" prior to the bid. The architect will review the FRI and respond through an addendum such as the one found in RX-13. (Tr. 299; RX-13). In RX-13, question number five asked "will you be providing a document that has the current Davis Bacon wage rates for commercial buildings in Davis County?" The addendum expressed, "[t]he current Davis Bacon wage rates for commercial buildings in this region are openly published for the public and attached to this document for

reference." The wage determination was attached to RX-13. (Tr. 299-303; RX-13).

During the bidding process, NeuWave was aware of the wage determination that must be complied with for the Davis Administration Building Project. The wage determination which applied to the Davis Administration Building Project contained three classifications of electricians. Most relevantly, the wage determination contained an Electrician Excluding Low-Voltage Wiring and HVAC Controls classification with a union rate and an Electrician Low-Voltage Wiring and Installation of HVAC Temperature Controls classification with a survey rate. (Tr. 303-304).

Mr. Champneys testified that he made efforts to determine the definition of the term "low-voltage wiring." According to Mr. Champneys, he turned to the electrical provisions in the bid specifications which listed several industry standards, including the National Electrical Code, American National Standards Institute, National Electrical Manufacturing Association, and Underwriter's Laboratory. Mr. Champneys' searched the Underwriter's Laboratory website for a definition of low voltage. The Underwriter's Laboratory standards cover everything that is installed on a project. Everything that is installed must have a UL listing label applied to the device. Mr. Champneys' research regarding UL standards assisted him in defining low voltage. According to Mr. Champneys, UL defined low voltage as 1,000 volts or less. (Tr. 304-308).

Mr. Champneys also referred to ANSI to help develop his understanding of low voltage. RX-2 contained ANSI's nominal voltage chart which indicates that low voltage is considered between 120 volts and 600 volts. Based upon his review of ANSI's voltage chart, Mr. Champneys believed low-voltage wiring meant 600 volts and less. (Tr. 308-312; RX-2). Mr. Champneys felt no need to research beyond the bid specifications. He believed he picked out the most relevant sources and found some sources defined low voltage as less than 1,000 volts and some stated less than 600 volts. Based upon his research and the labor suggested in the bid, Mr. Champneys based his estimate upon the surveyed electrician rate with fringes, burden, and overhead. In his estimate, Mr. Champneys only calculated labor under the electrician low-voltage wiring and installation of HVAC temperature controls rate. Mr. Champneys only used the electrician low-voltage wiring rate, because NeuWave considered all of its work to fall within the low-voltage wiring classification. (Tr. 313-314).

Mr. Champneys testified that NeuWave did some work to get the power to the service point; however, such work was raceways and conduit only. NeuWave's employees put in the backbone for all the systems and brought in all the utilities. The work, however has no conductors and no voltage rating. Rocky Mountain Power is responsible for pulling the conductors to the transformer and from the transformer pull conductors to the main point. (Tr. 314).

Mr. Champneys explained that the entire project encompassed the whole tract of land, including site lighting. NeuWave does concrete work for light pole foundations, installs parking lot lighting and conduits, raceways for security cameras, etc. Throughout the work on the Project, NeuWave's employees never worked with more than 480 volts. The 480 volts is routed to a transformer which takes the voltage to a "1-22-03-4 phase." From the transformer, a 120 volt circuit may be brought to a fire alarm panel which has a transformer inside. The transformer will transform the volts to 24 volts. According to Mr. Champneys, the voltage begins at the point of service at 480 volts and trickles down to 0-10 volt lighting controls. In putting his bid together, NeuWave believed all the work it was going to perform was low-voltage work, because it was 600 volts and less. (Tr. 314-316).

In his initial efforts to determine the definition of "low-voltage wiring," Mr. Champneys did not contact Wadman - the general contractor. He believed the general contractor would not know the definition and would instruct Mr. Champneys that figuring out the definition was NeuWave's job. He also did not reach out to the union, because the union was not listed as an authority in the job specifications. (Tr. 316-317).

Mr. Champneys testified that NeuWave is non-union, a non-signatory to the Inside Agreement. He has no knowledge as to the union's Inside Agreements, because he is not involved with the union. Moreover, NeuWave was not subject to any Collective Bargaining Agreement. (Tr. 317). Ultimately, Wadman was awarded the contract from Davis County. Wadman, in turn, awarded the electrical contract to NeuWave. RX-15 contains Section 260001 - the General Provisions - found in the bid documents relied upon by NeuWave in preparing its bid for the general contractor. RX-16 contains the subcontract between Wadman Corporation, the prime contractor, and NeuWave Electric Company, the electrical subcontractor. (Tr. 317-324).

Mr. Champneys was the project manager for the Administration Building Project. He conducted site visits, to ensure smooth operation and safety. He attended weekly meetings with the architect, owner, prime contractor, and other subcontractors to ensure the project was on schedule. The entire project took approximately two years. NeuWave was doing electrical work for approximately the entire two-year period. In August 2011, eight months into the project, NeuWave was informed that it was going to be subjected to an audit. Mr. Kevin Hunt, from the Wage and Hour Division, provided NeuWave with a list of things the Division would be reviewing and instructed NeuWave to have any documentation prepared for his arrival. Mr. Hunt found an issue regarding minimum fringe benefits and overtime violations during his audit which were eventually resolved. It was a year later before the classification issue arose. (Tr. 324-329).

RX-15 contains Sections 1.6(a) and (b) which set forth the standards by which NeuWave was expected to perform its work on the Davis Administration Building. Mr. Champneys confirmed that he referred to Underwriter's Laboratories and ANSI in preparing his bid documents. He also referred to the IEEE in order to determine how the IEEE defined low-voltage wiring. RX-4 contains the nominal system voltages as defined by IEEE. IEEE defines low voltage as 600 to 120 volts and ANSI was 1,000 to 0 volts. (Tr. 329-336).

In preparing NeuWave's bid, Mr. Champneys examined Section 26, the specifications, very carefully. Section 26 contains various subsections, including subsections dealing with various types of electrical equipment. According to Mr. Champneys, various locations throughout the specifications refer to low voltage and even specific voltage levels. Section 260289 provides for "Type 2 Surge Protective Devices." Subsection 1.5(b) states "[c]omply with ANSI, IEE, C-62.41.1-2002, IEEE Guide for Surge Environment in Low Voltage 1,000 Volt and Less AC Power Circuits, IEE, C-62.41.2-2002, IEEE Recommended Practice on Characterization of Surges in Low Voltage AC Power Circuit and test devices according to IEE, C-62.45-2002, IEEE Recommended Practice on Surge Testing for Equipment Connected to Low Voltage AC Power Circuits." According to Mr. Champneys, surge protection devices protected everything that it is attached to and protects against surges from outside sources. The subsection expresses that surge protection devices are 1,000 volts and less. Section 250560-1 discusses "Lighting Control Systems." Subsection 1.29(a) of that section provides "[i]nstall a low-voltage switching system consisting of relay

panels and intelligent switches and/or photo cells connected together by a data line, as well as all associated wiring." (Tr. 336-340).

When Mr. Champneys conducted his research into defining "low-voltage wiring" for his bid, he already possessed over 30 years of experience as an electrician. Nevertheless, Mr. Champneys felt the need to determine the definition of low voltage, because he was unfamiliar with Davis Bacon projects and prevailing wage documents. He wanted to make sure he was relying upon the appropriate electrician classification. (Tr. 340-341).

On August 16, 2012, Mr. Champneys e-mailed Mr. Clawson - the project manager for Wadman Corporation - after receiving notice that NeuWave would be under investigation for improperly paying its employees. Mr. Clawson was unaware of the appropriate way to classify the work and forwarded Mr. Champneys' email onto Mr. Tremea. He also had discussions regarding the classifications with Ms. Labish. Ultimately, the Wage and Hour Division disagreed with NeuWave's definition of low-voltage wiring and classification of the work performed by NeuWave's employees. Moreover, the Wage and Hour Division reached a conclusion and made an assessment as to how much additional wages were due to NeuWave's employees. In assessing the amount of wages due to NeuWave's employees, Ms. Labish questioned Mr. Champneys regarding what percent of work was spent on fire alarms, access controls, close circuit TVs, security, burglar alarms, and audio/visual systems. Mr. Champneys guesstimated that 75% of the work performed was spent on the foregoing systems. Though the remaining 25% of the work did not involve work on the systems identified by Ms. Labish, NeuWave believed such work was still considered low-voltage work. (Tr. 341-344).

Mr. Champneys came up with his guesstimate of 75% based upon the cost of the labor, not the actual labor hours. Mr. Champneys compiled information from quotes he received from subcontractors for audio/visual work. Mr. Champneys extrapolated from the equipment cost to determine his estimate as to the corresponding labor cost. Mr. Champneys testified that it would be impossible to go through, hour by hour, to determine the amount of work done by NeuWave employees on the specific systems identified by Ms. Labish. Ultimately, the Department of labor assessed that \$62,300.00 in wages were due to NeuWave employees. The Wage and Hour Division conducted a deductive change order and held the money. Mr. Champneys's challenge of the Wage and Hour Division's actions resulted in the present matter. (Tr. 344-348).

In Mr. Champneys' experience, low voltage is not limited to 50 volts and less. Mr. Champneys believes low voltage is considered 600 volts and less and he believes that his view is consistent with the specifications, standards, and codes. (Tr. 348).

On cross-examination, Mr. Champneys confirmed that RX-16, Section 1.6(a) and (b) contains the industry codes and sources for the project specifications. Mr. Champneys testified that he picked the most relevant and prevalent sources - the National Electrical Code, ANSI, IEEE, and Underwriter's Laboratory. Underwriter's Laboratories is an organization - a testing laboratory - which tests commercial and consumer products. In testing the products, UL rates the maximum voltage that the products can withstand. When UL lists that a particular wire or cable is rated for 600 volts or less, it means the wire or cable is rated to carry up to 600 volts. (Tr. 349-351).

Mr. Champneys confirmed that the table of nominal voltages put forth by the IEEE declares 120 volts to be the lowest end of the low-voltage spectrum. (RX-15). Mr. Champneys confirmed that the IEEE table is from a book of standards for industrial plants. Mr. Champneys confirmed that NeuWave's work on the Davis County Administrative Building was building construction, which differs from an industrial plant. (RX-4, p. 2; PX-20). Mr. Champneys also confirmed that ANSI considers low voltage to be zero to 600 volts. (Tr. 351-354; PX-2).

RX-16 contains the subcontract agreement between Wadman and NeuWave for the Davis County Project. RX-16, bates numbered 220, contains a section of the agreement which tests out the scope of work for NeuWave to perform on the project. The sections named on bates number 220 correspond with portions of the project specifications found in RX-15. RX-16, bates numbers 220 and 221, define the scope of electrical work to be performed by NeuWave on the Davis Administration building project. Based upon Mr. Champneys' review of the scope of electrical work, he believed all the work to be performed by NeuWave to be "low-voltage wiring." (Tr. 356-361).

Both Wadman and NeuWave were informed of their right to request a hearing regarding the back wages calculated by the Wage and Hour Division. Wadman did not exercise its rights to request a hearing. NeuWave did. (Tr. 361-364).

Mr. Champneys' confirmed that he has been a licensed electrician in the State of Utah for more than 30 years and has been a master electrician for 18 of those 30 years. Throughout that time, Mr. Champneys understood "low voltage" to mean 600 volts or less. As part of his continuing education requirements and to renew his license, he is required to familiarize himself with the updated National Electrical Code. Moreover, as part of his licensing requirements, Mr. Champneys was tested on his understanding of the National Electrical Code. (Tr. 364-365).

PX-14, page 70-38 contains Article 110.26(1b), which identifies "low voltage" for purposes of smaller working spaces, as live parts operating not greater than 30 volts RMS, 42 volts peak, or 60 volts DC. This particular section of the National Electrical Code defines low voltage as "not greater than 42 volts AC." PX-14, page 70-455, contains article 517.64 dealing with low-voltage equipment and instruments for health care facilities. According to Mr. Champneys, this section does not define, but identifies this healthcare system as 10 volts. PX-14, page 70-491 contains a "definitions" section. This section governs RVs and RV parks, it defines low voltage as an electro-motor force rated 24 volts nominal or less. (Tr. 365-368).

In evaluating the wage determination and putting together his bid, Mr. Champneys noted the electrician in the union wage rate excluded low-voltage work. Then, he turned to the non-union rate which included low-voltage work. Mr. Champneys decided, since NeuWave is a non-union company, to conduct more research on the electrician including low-voltage classification rather than the electrician excluding low-voltage classification. (Tr. 368-370). Mr. Champneys confirmed that his understanding of low voltage includes 0 volts to 600 volts. He agreed that some voltages may pose more hazards than others. He confirmed that, in the State of Utah, an electrician's license is required to perform premises wiring work. (Tr. 370-372).

Mr. Champneys agreed certain types of wiring are defined by the NEC as not posing a shock hazard or a fire hazard. Moreover, the types of wiring that do not pose a shock hazard or fire hazard are considered to fall outside of the State's definition of electrical work. Thus, there is certain work which does not require an electrician's license, because the work does not pose a shock or fire hazard. (Tr. 372-376).

During Mr. Champneys' research into what was considered low voltage, for the purposes of determining the correct classification on the prevailing wage determination, he was

limited to his review of industry resources listed in the project specifications. He did not make an effort to ask Wadman Corporation or Mr. Clawson about his definition of low voltage. Mr. Champneys did not contact the contracting agency, Mr. Tremea, the Wage and Hour Division, or the union regarding their definition of low voltage. Mr. Champneys believed he had no reason to contact the union, because he had a prevailing wage document to bid accordingly as a non-union electrical contractor. (Tr. 376-377).

Mr. Champneys confirmed his understanding that the contracting agency, the prime contractor, and the subcontractors all have obligations to comply with Davis-Bacon Act requirements. The architect is not bound by the Davis-Bacon Act requirements and would not have referenced the prevailing wage determination as part of putting together project specifications. (Tr. 377-379).

PX-3, bates number 241, contains communications between Mr. Champneys, Mr. Clawson, and Mr. Tremea. In the communications, Mr. Champneys included an excerpt stating "the phrase 'low voltage' has no meaning unless it is used in some context that describes the equipment under consideration. In my type of work, power systems engineering, I've used the term 'high voltage' to mean over 25,000 volts and 'medium voltage' to mean more than 600 volts and less than 25,000 volts, and finally, 'low voltage' to mean 600 volts or below." Mr. Champneys testified that the author of that excerpt gave a context to high, medium and low voltage for power systems electrical engineering work. The excerpt goes on to state "[o]n the other hand, people who work on security, fire alarm and communications systems, the phrase 'low voltage' would certainly mean less than 120 volts, but can mean different numbers to different people." (Tr. 380-383). Thus, for the author's style of work as a systems engineer, low voltage means 600 volts or less. Mr. Champneys also believes low voltage means 600 volts and less. (Tr. 383-384).

PX-16 contains Mr. Champneys' letter sent to the Department of Labor as a response, requesting a hearing in the present matter. (PX-16). In his letter, Mr. Champneys expressed "[f]rom the main point of service - interested project - the voltage was 470 volts, well below the definition of low-voltage electrician, from this point it's to power the main switch and your panels transfer, providing lighting control, convenience receptacle systems - fire alarm, telephone data, audio and video, closed circuit TV security systems, all aspects of an electrician that's being classified as low voltage." Mr. Champneys confirmed

that this statement accurately describes the type of electrical work NeuWave performed on the Administration Building Project. (Tr. 384-387).

NeuWave's work at the Administration Building Project included fire alarm wiring and security systems. NeuWave's employees did not work on communications systems, but did install raceways for such work. (Tr. 384-387).

Mr. Champneys confirmed his prior testimony that the Project was subject to the Davis-Bacon Act. PX-17 contains the contract between Wadman and Davis County. Mr. Champneys understood that the Davis-Bacon Act applied to the Administration Building project due to the Notice to Contractors for Bid. The Notice to Contractors provides notice that the project is subject to the Davis Bacon Act requirements. (Tr. 387-391).

Mr. Champneys wrote an appeal letter to the Division regarding the Division's decision concerning NeuWave's violations of the DBA. Mr. Champneys expressed "I do not know of any other electrical contractor along the Wasatch front, or anywhere in the State of Utah, who pay their journeymen and apprentices any different dollars in benefits than we do, union or non-union." Mr. Champneys confirmed that for the Davis-Bacon Act project he was paying his electricians \$25.61. Moreover, he believed such a wage was consistent with his understanding of the proper wages for other electricians in the market. Mr. Champneys confirmed his statement that he did not know of any contractors, union or non-union, which were paying wages significantly different from \$25.61. Mr. Champneys' only inquired into wages other contractors were paying their employees after submitting his bid for the Davis Bacon project. Mr. Champneys did not make a specific inquiry as to what others were paying their employees in Davis County at the time he submitted his bid, because he believed it would not make any difference. Mr. Champneys had the prevailing wage document, it did not matter what other employers were paying employees. (Tr. 391-393; PX-15).

On re-direct examination, Mr. Champneys was asked to review PX-14, containing excerpts from the National Electrical Code. The "definition" section of the code provides a definition for "voltage, nominal." The National Electrical Code does not use the term "low voltage" but indicates that the definition "depends upon the class of voltage." Moreover, the code refers to the ANSI standard C-8.41-2006. ANSI standard C-84.1 defines low voltage, nominal voltage as 1,000 volts and less. Mr.

Champneys believed ANSI's definition of low voltage includes everything below 1,000 volts. (Tr. 393-395; PX-23).

Mr. Champneys confirmed his familiarity with the IEEE standard for electrical power distribution for commercial buildings. Mr. Champneys indicated that "[i]t is all the same. It does not matter, industrial client, commercial building, a residence; Rocky Mountain Power handles the utility voltage. We handle everything from the power company, what they deliver on their secondary side of the transformer, low voltage." Mr. Champneys testified that IEEE would define low voltage as 600 volts and below in a commercial building. (Tr. 395-396).

Mr. Champneys confirmed that certain sections of the National Electrical Code deal with different applications of electricity. However, according to Mr. Champneys, the NEC does not define low voltage, it refers to system voltages - voltages for movie theatres, x-ray machines, fire alarms, power-limited circuits. The NEC refers to all the systems that an electrician would work with in the industry. However, the NEC does not actually define low voltage like ANSI. For example, the NEC provides a definition of high voltage which states "for the purposes of this article more than 600 volts nominal is deemed high voltage." (Tr. 396-398).

According to Mr. Champneys, NeuWave's employees required their electrician's license for all of the work they performed on the Administration Building project. (Tr. 398).

With regards to PX-15, Mr. Champneys confirmed that he requested the surveys underlying the wage determination at issue from the Wage and Hour Division. In his discussions with Ms. Hollins, voltage levels and definitions of voltages were not discussed. The conversations revolved around survey data and Mr. Champneys' request for such data. (Tr. 398-400). Specifically, Mr. Champneys requested the surveys, the questions asked in the surveys, the persons interviewed during the surveys, and the analysis employed to complete the prevailing wage determination. (Tr. 400-401). Though Ms. Hollins concluded that low-voltage wiring was limited to specific systems, Mr. Champneys believed he did his due diligence to find out the proper definition of low voltage and bid the project accordingly. (Tr. 401).

On re-cross examination, Mr. Champneys was asked to review the March 27, 2013 letter from Ms. Hollins. (PX-23). Mr. Champneys confirmed that he received certain documents from Ms. Hollins regarding the surveys. Mr. Champneys confirmed that as a

licensed electrician he has continuing education requirements which revolve around the NEC. He was also required to undergo testing which pertains to the NEC. However, Mr. Champneys' testing was never particularly related to ANSI or the IEEE, (Tr. 401-409).

On re-direct examination, Mr. Champneys testified that if low-voltage wiring is considered wiring for particular systems, it would include all wiring from that system from the service point to the end point. All of the wiring required for a fire alarm system to be operational includes wiring from the service point throughout the entire building. The same concept applies to power for computers, and sound and communication systems. All of the wiring from the service point throughout the entire building to ensure those systems are fully operational was within NeuWave's scope of work. (Tr. 409-411).

Other Evidence

Wage and Hour Division ("WHD") Wage Determination, General Decision No. UT100037, 11/19/2010

General Decision Number: UT100037 11/19/2010 UT 37

Superseded General Decision Number: UT20080037

State: Utah

Construction Type: Building

County: Davis County in Utah

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories)

Modification Number	Publication Date
0	03/12/2010
1	04/09/2010
2	07/16/2010
3	08/20/2010
4	09/03/2010
5	10/29/2010
6	11/19/2010

The General Decision Number UT100037 11/19/2010 contains three electricians classifications.

	Rates	Fringes

ELEC0354 - 008 06/01/2010		
ELECTRICIAN, Excluding Low		
Voltage Wiring and		
Installation of HVAC		
Temperature Controls.....	\$28.09	4.3%+\$8.00

 *ELEC0354 - 011 01/01/2010

ELECTRICIAN		
Communications Technician.....	\$20.94	7.25

 SUUT 2008 - 002 07/14/2008

ELECTRICIAN (Low-Voltage		
Wiring and Installation of		
HVAC Temperature Controls		
Only).....	\$21.00	4.61

(PX-2).

2010-2011 Inside Agreement between Intermountain Chapter, National Electrical Contractors Association, Inc. and Other Electrical Contractors and International Brotherhood of Electrical Workers Local Union 354

Article I, Section 1.01 of the Inside Agreement indicates "[t]his Agreement shall take effect June 1, 2010, and shall remain in effect until May 31, 2011, unless otherwise provided for herein. It shall continue in effect from year to year thereafter, from June 1 through May 31 of each year, unless changed or terminated in the way later provided herein." (PX-11, p. 6).

The undersigned's review of the Inside Agreement contains neither reference to the scope of the Inside Agreement nor reference to particular voltages or definitions of voltages. The agreement does contain a wage rate schedule. (PX-11).

Project Contract between Davis County and Wadman Corporation for County Project No.: ALCJC10a

A Notice to Contractors for Bid was issued on November 3, 2010, providing notice that sealed bids would be received from contractors licensed in the State of Utah for County Project

No.: ALCJC10a. The Notice to Contractors included a Notice of Davis-Bacon Act Wage Requirements which provided that the project incorporated federal funding. As such, general contractors were notified of the requirement to conform to Davis-Bacon Act Wage Requirements for all applicable trades. (PX-17, pp. 269-270; RX-12).

On December 8, 2010, an addendum was issued regarding the Davis County Library/Administration Building and Children's Justice Center known as project number: ALCJC10a. The addendum indicated that the current Davis Bacon Act Wage Rates for commercial buildings in this region are openly published for the public. General Decision Number: UT100037 11/19/2010 was attached to the addendum. (RX-13).

On December 28, 2010, Davis County, a political subdivision of the State of Utah, entered into an agreement with Wadman Corporation for Country Project No.: ALCJC10a for the contract price in the total amount of sixteen million seven hundred eighty eight thousand dollars (\$16,788,000.00) including all Davis-Bacon Act wages and benefits. (PX-17, pp. 149, 154-155).

Subcontract Agreement between Wadman Corporation and NeuWave Electric Company

On January 19, 2011, Wadman Corporation entered into a subcontract agreement with NeuWave Electric Company for work to be performed by the subcontractor in strict accordance with the plan specifications and Contract Documents for the construction of the Davis County Library/Administration Building and Children's Justice Center, together with all accepted alternates, addenda, and changes issued prior to the date of execution of the agreement. The scope of work contemplated by the agreement included all applicable portions of the Specifications Requirements contained in the Project Manual "General Contract Conditions and Supplementary Conditions," Division 1 Entitled "General Requirements," all addenda thereto, and various subsections enunciated within the agreement. (RX-16).

January 1, 2011 - December 31, 2012 International Brotherhood of Electrical Workers Local 354 Intermountain Chapter, NECA and Other Signatory Contractors Communications Agreement

The Communications Agreement defines the scope of work covered by the agreement. The agreement covers the installation, testing, service, and maintenance of systems utilizing the

transmission and/or transference of voice, sound, vision or digital for commercial, education, security, and entertainment purposes for the following: TV monitoring and surveillance, background-foreground music, intercom and telephone interconnect, inventory control systems, microwave transmission, multi-media, multiplex, nurse call system, radio page, school intercom and sound, burglar alarms and low-voltage master clock systems. Moreover, the agreement specifically includes all work intrinsic to the systems listed in the scope, including: voice transmission/transference systems; data systems that transmit or receive information; control energy management; safety and security systems; and video systems. (PX-12).

The Agreement also provides that fire alarm systems which incorporate open wiring or MC Cable to distribute the alarm circuits shall be performed under this agreement. All device terminations and installations intrinsic to the before-mentioned systems shall also be performed under the Inside Wireman Agreement. Fire Alarm systems that incorporate continuous raceways and wireways shall be performed by Inside Wireman under the Local Inside Agreement. All device terminations and installations intrinsic to the before-mentioned system shall also be performed under the Inside Wireman Agreement. (PX-12).

Raceway systems are not covered under the terms of this Agreement. Chases and/or nipples (not to exceed 100 feet) may be installed on open wiring systems. (PX-12).

Communication systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems are included in the scope of work. Existing and emerging systems and subsystems, which are for that purpose of sending, receiving, and/or transmitting voice or data, are included. (PX-12).

Design, configuration, and programming of the above systems are not expressly included within the labor contract. This includes all active components. This function will be performed by personnel assigned by the contractor, management, subcontractor, or labor. (PX-12).

Disputes regarding scope of work not specifically addressed in the Agreement or the Addendum are referred to the Labor Management Committee for resolution. (PX-12).

The line voltage portions of energy management systems shall be excluded from the Scope of Work, but not the data gathering subsystem. (PX-12).

Installation of Communication ladder rack and cable tray shall be recognized as within the Communications Scope of Work when used solely for Communications cabling. (PX-12).

E-mails between Wage and Hour Investigator Tonya Labish and Davis County Auditor Terry Tremea, 08/16/2012-08/27/2012

On August 18, 2012, Mr. Champneys drafted an e-mail to Mr. Clawson with carbon copies to Casey Hales and Dan Winger. In his e-mail, Mr. Champneys expressed to Mr. Clawson that NeuWave went through the audit on the Project at issue by the U.S. Department of Wage and Salaries Commission, Fair Wages and Salaries Commission for a Davis Bacon project in Davis County. The investigation revealed a few issues; however, he noted that the wages NeuWave was paying its employees was not one of the issues. According to Mr. Champneys, the Commission agreed that the definition of a Low-Voltage Electrician as defined on Local, County, State, and Federal Davis Bacon Wage Act projects as 600 volts and below is LV, MV is 600V - 12,000V; and HV is Transmission voltages above 120,000 volts; there is even a classification of Extra High Voltage and Ultra High Voltage. Mr. Champneys expressed that he understood and appreciated Mr. Clawson's concern, but believed he had "proven this over and over." Mr. Champneys explained that he was paying his apprentices the same rate as journeymen low-voltage electricians. Mr. Champneys' apprentices were registered as state apprentices. Mr. Champneys could have registered them as federal apprentices, and paid them like the state apprentice wage scale: 1st year 60%; 2nd year 70%; 3rd year 80%; 4th year 90% of the low-voltage scale, but opted not to. According to Mr. Champneys, the employees were all of journeyman caliber, and when the opportunity arises, they deserve the higher wage with fringes at \$25.61. (PX-3).

Mr. Champneys went on to express that he attached information including the IEEE Standard for nominal system voltages. According to Mr. Champneys, his voltage on the project at the main switch is 277/480V feeding transformers with an output of 120/208V. Mr. Champneys expressed that these voltages were definitely "low voltage" as per the attached information. (PX-3).

Mr. Champneys included in his e-mail a job posting for an Electrician (High Voltage) with the Department of the Interior Agency: National Park Service. The job announcement indicated that the position was located in the Division of Facilities Management, Utilities Branch, High-Voltage Electric Shop at Yosemite National Park. It also stated "HIGH VOLTAGE is defined as greater than 1000 volts in the context of a utility distribution system." (PX-3).

Mr. Champneys also included a passage from "The AUTHORITATIVE DICTIONARY of IEEE Standards Terms 7th edition." The authoritative dictionary expressed: "Low-Voltage System (electric power) - an electric system having a maximum root-mean-square alternating-current voltage of 1000 volts or less." (PX-3).

Mr. Champneys also included from his research the following excerpt: "[t]he phrase 'low voltage' has no meaning, unless it is used in some context that describes the equipment under consideration. In my type of work (power systems engineering), I used the terms 'High Voltage' to mean 'over 25,000 volts' and 'Medium Voltage' to mean 'more than 600 volts and less than 25,000 volts,' and finally 'Low Voltage' to mean '600 volts or below.' On the other hand, to people who work on security, fire alarm, and communications systems, the phrase 'Low Voltage' would certainly mean less than 120 volts, but can mean different numbers to different people." (PX-3).

According to Mr. Champneys, utility and industrial electricians consider anything under 600 to be low voltage. (PX-3).

Moreover, Mr. Champneys expressed "Low Voltage - per the NEC, this applies to equipment rated and operating at 600 volts or less with some exceptions. Examples of the exceptions in the NEC include the wire ampacity tables in 310.16 to 310.19 which address conductors rated 0-2000 volts, and Article 250 Part X which addresses systems over 1000 volts. The IEEE standards defined low voltage as equipment rated and operating at voltages 1000 volts or less. Because there was very little equipment operating at voltages between 600 volts and 100 volts, this discrepancy between the NEC and IEEE definitions of low voltage had not caused any real issues until a few years ago. Recently there have been large numbers of installations of traction power systems that operate between 750 and 850 volts dc. In many jurisdictions, these systems are subject to approval by the local authority. When applying the NEC to these systems, the installer and inspector may be confused as to whether these are

low-voltage or high-voltage systems. There may also be similar confusion regarding equipment from overseas manufacturers which is rated and operated at 690 volts." (PX-3).

Lastly, Mr. Champneys noted: The following additional voltage terms and definitions are taken from the IEEE standards: Medium Voltage means greater than 1000 volts and up to 72,500 volts, High Voltage means greater than 72,500 and up to 230,000 volts, Extra High Voltage means greater than 230,000 volts and up to 765,000 volts, and Ultra High Voltage means greater than 765,000 volts. (PX-3).

On August 17, 2012, Mr. Clawson forwarded the e-mail sent to him by Mr. Champneys on August 16, 2012, to Mr. Terry Tremea and carbon copied Barry Burton, Casey Hales, and Dan Winger. Mr. Clawson asked Mr. Tremea to review the information and report back. Mr. Clawson noted, "from what this states [Mr. Champneys] is covered and has done things correctly." (PX-3).

On August 23, 2012, Mr. Tremea e-mailed Mr. Clawson regarding the foregoing e-mails. Mr. Tremea expressed, based upon the information received in the foregoing e-mails, an investigation has begun with NeuWave. Accordingly, Mr. Tremea requested: (1) a copy of NeuWave's apprenticeship agreement with the office of apprenticeship; (2) a copy of the Davis Bacon certification form stating names of employees in the project; (3) the job duties of all employees hired by NeuWave for the project; (4) evidence that NeuWave paid the back wages of \$5,418.17 by 12/18/2011 for 15 violations of minimum fringe benefits; and (5) proof of repayment for overtime violations. (PX-3).

Mr. Tremea also expressed that he would turn over the issue as to classifications to the Department of Labor. He noted "my investigation leads me to believe that most, if not all work completed at the Davis Admin/Library, should be the Electrician, Excluding Low-Voltage Wiring and Installation of HVAC Temperature Controls." Mr. Tremea indicated that he spoke with the investigator who had visited the project previously. The prior investigator expressed that no determination as to classification was made during his visit. (PX-3).

E-mails between Ms. Tonya Labish and IBEW Local 354 Assistant Business Manager Kim Barraclough, 08/27/2012-08/28/2012

On August 27, 2012, Kim Barraclough e-mailed Tonya Labish to indicate that the union's scope of work was defined by the State of Utah's electrical licensing law. Since an electrical contractor and those persons doing electrical installation is

defined by that law, the Utah Electrical Statute governs the type of work covered by the union's Agreement. Mr. Barraclough expressed his understanding that in Davis County, the union's Agreement prevailed such that all electric work as defined by the Utah law is covered by the union's Agreement. (PX-4).

On August 28, 2012, Ms. Labish responded to Mr. Barraclough's e-mail and explained that the firm in question is performing work with voltages at a main switch 277/480 volts feeding transformers with an output of 120/208 volts. Based upon the Davis County Wage determination, Ms. Labish asked whether such work would be considered "Electrical Work - Low Voltage" or "Electrical Work - High Voltage." Ms. Labish indicated that she sought Mr. Barraclough's guidance since the Local 354 prevailed on the wage determination. (PX-4).

On August 28, 2012, Mr. Barraclough responded to this email and expressed "it seems that inside wireman, lineman, [and] engineers all have a little different terminology of what each considers high, medium, or low voltage." Nevertheless, according to Mr. Barraclough, the work described by Ms. Labish falls within the union's jurisdiction as described in Utah State Law and the Davis-Bacon classification. (PX-4).

On August 29, 2012, Ms. Labish responded to Mr. Barraclough's e-mail and asked whether he would classify the work performed (based upon the Wage Determination) as Electrician excluding low-voltage wiring and installation of HVAC temperature controls. (PX-4).

On August 28, 2012, Mr. Barraclough responded "[t]hat is correct." (PX-4).

NeuWave Employee Interview Statements

As part of her investigation of NeuWave Electric, Ms. Labish interviewed a number of NeuWave employees and drafted personal interview statements based upon those interviews.

Interviewee "A's" statement is represented in PX-7, pages 135-136. Interviewee "A" reported having performed "all types of electrical work" such as running pipe and conduit, pulling wire, setting panels, lighting, and outlets, etc. Interviewee A stated that the lighting is 277/480 volts - high voltage - and the outlets are 120 volts. Interviewee A also noted that "there are some that is [sic] 208v." According to Interviewee A, the code provides that anything over 50 volts is considered high voltage. Moreover, he believed that he spent about ½ of his time with

electrical outlets (120v) and the other ½ of his time at 277v. (PX-7, pp. 135-136).

Interviewee B's statement is represented in PX-7, pages 137-138. Interviewee "B" reported that the work he performed on the project includes "rough-in, layout, finish installation, and troubleshooting." He expressed "employees working at this job site are performing all aspects of electrical work." Specifically, he noted employees were performing rough-in, wiring via framing, lights, fire alarms, raceway, conduit, etc. According to Interviewee B, the main power is 480/277 y-system and the secondary is 10/208 voltage. Interviewee B believed 50% of his time was spent on 480/277 and 50% was spent on 120/208 voltage. (PX-7, pp. 137-138).

Interviewee C's statement is represented in PX-7, pages 139-140. Interviewee C reported performing electrical work which included wire pulling, conduit, light fixtures, and "main panel." Interviewee C works with voltage as high as 480 volts. Interviewee C reported "from what [he] was told, low voltage was up to 90 volts; medium up to 600 and anything over that is high." Based upon this, Interviewee C estimated working 50% of his time on 120v and 50% on 277/480 volts. (PX-7, pp. 139-140).

Interviewee D's statement is represented in PX-7, page 141. Interviewee D reported that his job entailed wiring lighting fixtures and outlets. He did not perform any work on break boxes except for turning them on or off. Interviewee D reported working on voltage higher than 120 volts. Interviewee D worked with 277 volt lighting and "when combining two legs it was equivalent to 480 volts." Interviewee D report that 120 volts in residential work is above low-voltage standards. He reported that "the voltage [he] was working with was 277 because it would decrease the amount of amps being used and more things could be hooked up to it." According to Interviewee D, "this type of wiring is usually found in commercial type facilities [and] all workers employed by NeuWave Electric were performing high voltage work."

On December 28, 2012, Ms. Labish unsuccessfully attempted to contact one of the interviewees to discuss hours worked on the project and acquire permission to disclose his name. On January 8, 2013, Ms. Labish was able to make contact with the interviewee. The interviewee indicated that his statement was

inaccurate and that he only worked on the project...."⁵ (PX-7, p. 142).

Interviewee E's statement is represented in PX-7, pages 143-144. Interviewee E reported his primary job to be running conduit, pulling wire, setting panels, hanging lights, trimming lights, etc. Interviewee E reported that the majority of his time was spent performing 277/480 voltage lighting work, 25% of his time was spent working on outlets at 120 volts. In his experience, Interviewee E believed 24 volts and higher to be "high voltage." He would not agree with a classification of 480 volts as low voltage. (PX-7, pp. 143-144).

E-mails between ADD Kevin Hunt, WHI Tonya Labish, and RWS Deborah Hollins, 09/05/2012 to 09/06/2012

On September 5, 2012, Ms. Labish asked a question directed to Ms. Debra Hollins at the Regional Office regarding the NeuWave Electric investigation. Ms. Labish asked, "when the surveys were completed (SUU) Electrician (Low-Voltage Wiring and Installation of HVAC Temperature Controls Only) and when the union submitted their information reflecting they prevailed (ELEC0354-008; 06/01/2010), Excluding Low-Voltage Wiring and Installation of HVAC Temperature Controls, was there any information submitted with the surveys that would distinguish where the low-voltage threshold is (i.e. 50v and lower; 120v and lower) etc.?" (PX-5).

On September 6, 2012, Ms. Hollins responded to Ms. Labish's question and stated that when the survey was conducted there was not a distinction regarding threshold of low-voltage work. The wage determination has one of the electrician classifications listed as union and the scope of the work excludes any low-voltage work; as the other electrician is open shop and only for low-voltage wiring and installation of HVAC temperature controls. Later in the day, Ms. Hollins expressed if the workers were performing low-voltage work, the open shop wage rate would apply. However, all other work would be under the union electrician wage rate. Finally, Ms. Hollins expressed, "[i]n our surveys low-voltage wiring is considered as wiring for alarms, telephones, computers, sound and communication systems." (PX-5).

⁵ The conclusion of this sentence was marked as privileged and was redacted from the record.

E-Mails between Ms. Tonya Labish, Mr. Phil Clawson, Ms. Sandra Ross, and Mr. Curtis Champneys, 09/06/2012 - 12/14/2012

On September 6, 2012, Ms. Tonya Labish e-mailed Ms. Sandra Ross regarding "Wage Determination Questions." On that date, Ms. Labish indicated "Per Curtis request: the below information is the data received from our Wage Determination Specialist based upon the survey conducted for the SUU classifications. In our surveys low-voltage wiring is considered as wiring for alarms, telephones, computers, sound and communication systems. If the workers are performing low-voltage work the open shop wage rate would apply. All other work would be under the union electrician wage rate." (PX-6).

On November 27, 2012, Mr. Champneys emailed Ms. Labish and carbon copied Mr. Clawson and Ms. Ross regarding "Reply to wage request." Mr. Champneys stated "Tonya, we, as in NeuWave Electric, have not heard [sic] back from you until [sic] 11/15/12. We have that information, and will get it forwarded onto Phil. It is our understanding that under your definition of Low Voltage there would also be along with the Fire Alarm, the Access Control, CCTV, Intrusion Detection, Voice and Data, Audio Video, site work trenching; concrete light pole bases, and all electrical installations 120 Volts and below. Based on the total contract amount with the labor being on the high end at 25% of that total, since the last audit in November of 2011, just over the halfway point of the jobs duration, any electrical installations labor over 120 volts, meaning lighting circuitry, generator install, 480V-180/208V transformer make-up, mechanical equipment, only one rooftop unit, our estimate is around 5% of that which leaves an underpayment to employees of \$13,563.75." Mr. Champneys went on to state "I am still quite convinced we are considered low-voltage electricians by all standards; NEC, IEE, ANSI, NFPA, UL, etc. under 1000V installations. Please consider this in your evaluation, and let us know your final decision." (PX-6).

On November 30, 2012, Ms. Labish e-mailed Mr. Champneys and carbon copied Mr. Clawson and Ms. Ross regarding "reply to wage request." Ms. Labish forwarded the e-mail she received from Ms. Hollins on September 6, 2012. In her email, Ms. Labish stated "Curtis/Phil: Below is an email from our Regional Office regarding the survey data received for low voltage. Anything other than this falls under the higher wage since the union prevailed on the wage determination. Please let me know if you have any other questions." (PX-6).

On December 3, 2012, Mr. Champneys emailed Ms. Labish and carbon copied Mr. Clawson and Ms. Ross. Ms. Champneys stated "Tonya, being naïve to, and a little gun-shy to bid another DB project, where in the bid documents would I find whether it is a union prevailing wage, or a SUUT non-union prevailing wage as it lists both on the wage determination document for this specific project. Also you mentioned the union representative would consider 120V and below as the low voltage cut off. If this is not the case I will need a little more time to recalculate as best I can the hours spent between the two. Let me know if you are OK with that." (PX-6).

On December 4, 2012, Ms. Labish e-mailed Mr. Champneys and carbon copied Mr. Clawson and Ms. Ross regarding "reply to wage request." Ms. Labish stated "[i]f classification has something like ELE0278 (it is a classification where the labor union prevailed). If it is under the entry SUU...it is a wage based upon surveys submitted. After speaking with Kim Barraclaugh (union) on a couple occasions, 120 V did (not) fall under low-voltage work. It is work the union claims and therefore would fall under the high wage." (PX-6).

On December 14, 2012, Ms. Labish e-mailed a response to Mr. Champneys and carbon copied Mr. Clawson and Ms. Ross. Ms. Labish stated, "Curtis - were you able to add the 120 v hours to the latest hours/amounts computed? I would like to get the investigation completed by the first/second week of January. I will need the information on all subs performing the same work for you while on the project. When computing the back wages I will need the prevailing wage and fringe benefit information separated. For example, PW rate due - PW rate paid = PW due & FB due. Please let me know if you have any questions. (PX-6).

Form WH-56, Summary of Unpaid Wages, 02/21/2013

Form WH-56 contains a list of employees, a column containing "the period covered by work week ending dates," a column containing the federal act under which a violation was found, and a column containing the gross amounts due in back wages to each employee. The form also indicates that NeuWave Electric Company owed 20 employees a total of \$62,301.35 in back wages. (PX-8).

PX-9 contains the transcripts for the 20 employees owed back wages. The transcripts contain the hours worked by the employees multiplied by the wage determination rate. It also reveals the wage rate paid by NeuWave to its employees for those hours and calculates the difference between the rate paid and

the rate owed under the wage determination. The transcripts also account for the differential between the benefits dictated by the wage determination and the benefits paid by NeuWave. According to Ms. Labish's testimony, these transcripts were used to calculate back wages owed to NeuWave employees. (PX-9).

PX-10 contains fringe benefit calculations owed to NeuWave employees. (PX-10).

Letter from NeuWave President Curtis Champneys re: Appeal for the Decision made by the WHD of Failure to Pay the Correct Prevailing Wage, 03/12/2013

On March 12, 2013, Mr. Champneys submitted a letter regarding NeuWave's appeal of the decision made by the WHD of NeuWave's failure to pay the correct prevailing wage. In this letter, Mr. Champneys expressed that the prevailing wage determination he relied upon in drafting his bid contained a non-union SU classification for Electrician, Low-Voltage **and** HVAC Control Work. Mr. Champneys alleged, in all "due diligence," all authorities defined low voltages as 1000 or 600 volts and below. As all the work to be performed on the project was at or below 480 volts and regularly involved 277 volt, 120 volt, and 12 volts, Mr. Champneys believed all the work fell within the Electrician, Low Voltage classification. (PX-15; RX-20).

Moreover Mr. Champneys alleged that the wages for the Electrician, Low Voltage classification was "very fair" at \$25.61. His research into prevailing wages for electricians in other counties yielded evidence of electricians being paid rates comparable to the Electrician, Low Voltage rate and not the Electrician, Excluding Low Voltage rate. Moreover, Mr. Champneys alleged his employees were typically paid between \$24.00 to \$26.00 plus benefits on any and all projects. Thus, Mr. Champneys did not believe the higher, union-rate to be applicable. (PX-15; RX-20).

Though Mr. Champneys acknowledged the existence of a union electrician rate with fringes of \$37.30, Mr. Champneys alleged that NeuWave is a non-union contractor, low-voltage installers, licensed in the State of Utah. Thus, Mr. Champneys "bid the project accordingly." (PX-15; RX-20).

Mr. Champneys went on to express that the prevailing wage document contained a non-union wage rate for a low-voltage electrician. As Mr. Champneys believed his employees to be non-union low-voltage electricians, he had no reason to look

elsewhere for any other prevailing wage determination or documentation by any other entity. (PX-15; RX-20).

Based upon the foregoing, Mr. Champneys requested reconsideration of the determination made by the WHD to reimburse NeuWave employees, as of February 14, 2013, nearly \$70,000.00. (PX-15; RX-20).

Letter from Ms. Deborah F. Hollins, Regional Wage Specialist, to Mr. Champneys, President of NeuWave Electric Company

On March 27, 2013, Ms. Hollins drafted a letter to Mr. Champneys in response to a March 25, 2013 telephone conversation regarding survey results for a wage determination which was used on work performed by NeuWave employees. Ms. Hollins expressed that the wage rates in the wage determination were the results of a survey conducted in 2004. The survey was on building construction projects which were active from January 1, 2003 to December 31, 2003. The survey started on May 15, 2014, with a cutoff date for receiving wage data of October 31, 2004. Ms. Hollins attached the WD-22s (survey results) and WD-22a's (projects used in survey) for the building construction survey. (PX-22).

PX-22 also contains a WD-22 and associated WD-22(a) forms. The WD-22 provides for three Electrician Classifications: (1) Electrician (data and voice cabling only) no wiring; (2) Electrician (HVAC Electrical/Temperature Controls and Wiring Installation; (3) Electrician, Excludes Low-Voltage Wiring and Installation of HVAC/Temperature Controls. Of the three classifications, the Electrician (Data and Voice Cabling only) classification was omitted due to insufficient data. Moreover, the WD-22 reveals that the union rate prevailed for the Electrician, Excludes Low-Voltage classification. (PX-22, pp. 369,376,382).

Authorization for Transfer and Disbursement of Contract Funds

On or about April 2, 2013, Mr. Champneys gave authorization to Mr. Clawson to transfer funds in the amount of \$62,302.25 from the contract payments otherwise due NeuWave Electric to the Wage and Hour Division of the U.S. Department of Labor. Mr. Champneys noted, on April 1, 2013, Wadman Corporation submitted payment in full of the balance due 20 employees to the U.S. Department of Labor, Wage and Hour Division.

Lastly, Mr. Champneys authorized the Wage and Hour Division to disburse the transferred funds to the employees to satisfy

alleged wage underpayments under the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act. (RX-17).

Letter from Joseph Doolin, District Director of the Salt Lake City District Office of the Wage and Hour Division of the U.S. Department of Labor, to Mr. Champneys

On February 22, 2013, Mr. Doolin drafted a letter to Mr. Champneys regarding Contract Number ALCJC10a. Mr. Doolin indicated, as a result of a final conference NeuWave Electric was advised of investigation results which revealed twenty (20) NeuWave employees were underpaid in the amount of \$62,302.25 as a result of DBRA prevailing wage and fringe benefit and CWHSSA overtime violations. According to Mr. Doolin, such violations were a result of NeuWave's failure to pay the correct wage determination rates of pay for electricians. During the final conference, NeuWave was provided with a Summary of Unpaid Wages and an opportunity to discuss the violations. The record indicated that NeuWave refused to pay the back wage findings in this matter. (RX-19).

As such, in accordance with the established procedure, Mr. Doolin forwarded the investigation report to Mr. Jason Helme - Government Contracts Enforcement Coordinator - for review and a determination as to whether action should be taken to request the withholding of contract funds necessary to satisfy the back wage findings. Accordingly, Mr. Doolin directed Mr. Champneys to submit any views on whether wage violations occurred to Mr. Helme within fifteen (15) days of the date of his letter. (RX-19).

Mr. Doolin also advised Mr. Champneys that any determination regarding the withholding of contract funds will not result in the distribution of these funds to the underpaid workers until such time as the administrative remedies available to NeuWave have been completed. Nevertheless, NeuWave was offered the option of forwarding a certified check in the amount of \$62,302.25 to the Wage and Hour Division in the event NeuWave wished to satisfy the back wage findings. (RX-19).

Determination Letter the Wage and Hour Division issued to NeuWave Electric Company, 08/12/2015

On August 12, 2015, the Wage and Hour division drafted a letter to Wadman Corporation and its subcontractor NewWave Electric Company of the Division's determination regarding the Administration Building Project. It was the Department of Labor's position that the prime contractor is responsible for "compliance by any subcontractor...with all the contract clauses

in 29 C.F.R. Part 5.5" which includes the requirement to pay all laborers and mechanics in accordance with the applicable prevailing wage and overtime standards. Moreover, it was the Department's position that the prime contractor is responsible for the payment of the back wages when a subcontractor fails to do so. (PX-1).

The Department went on to state "in this case, the subcontractor did not agree to pay the back wages computed under our investigation, but restitution has been made by your firm. Accordingly, we are advising your firm and your subcontractor by copy of the enclosed letter, of the investigation findings and of the opportunity to request a hearing pursuant to section 5.11(b) of the regulations, Part 5, to resolve the disputes of fact concerning the back wages. (PX-1).

The Wage and Hour Division also drafted a letter specifically to Mr. Champneys, NeuWave's president on August 12, 2015. The Division stated "by virtue of the labor standards provisions American Recovery and Reinvestment Act of 2009 (ARRA), Contract Work Hours and Safety Standards Act (CWHSAA) and Department of Labor Regulations, 29 C.F.R. part 5, your firm was required to pay the laborers and mechanics employed on the construction of this project no less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, and as further reflected in the applicable contract stipulations. In addition, under the Contract Work Hours and Safety Standards Act, your firm was required to pay its laborers and mechanics overtime compensation of not less than one and one-half times their basic rate of pay for all hours worked on the project in excess of eight in a day or forty in a week. These requirements were included in the specifications of the prime contract and the subcontract." (PX-1).

Moreover, the Division indicated that it conducted an investigation of Mr. Champneys firm during its performance on the cited contract. As a result of the investigation, \$62,302.25 in back wages was found due to twenty (20) employees. Enclosed was a summary of the investigation findings based on the record as presently constituted. According to the record, the prime contractor has issued a check to the Wage and Hour Division for the total amount of back wages due. The monies paid for by the prime contractor have been deposited into the Wage and Hour Division's account, but will not be disbursed to the affected employees until all appeal rights have been exhausted. (PX-1).

As Mr. Champneys' firm had not agreed to make full restitution, the Division advised Mr. Champneys and the prime contractor over the project - Wadman Corporation - of the Division's investigation findings and of the opportunity to request a hearing pursuant to section 5.11(b)(1) of Regulations, Part 5, to resolve the disputes of fact concerning back wages. (PX-1).

The Division also drafted a letter to Mr. Champneys notifying him of the nature of NeuWave's violations under the Davis-Bacon and Related Acts as a result of its investigation. Specifically, the Division's investigation disclosed DBRA recordkeeping, DBRA prevailing wage, DBRA fringe benefits, and CWHSSA overtime violations due to the misclassification of "electricians - excluding low-voltage wiring and installation of HVAC temperature controls" as "electricians - low-voltage wiring and installation of HVAC temperature controls only." As a result of these findings, the Division concluded that NeuWave underpaid 20 employees a total of \$62,302.25 in back wages for the foregoing violations. (PX-1).

Letter from NeuWave President Curtis Champneys re: Request for Hearing, 09/11/2015

On September 11, 2015 Mr. Champneys issued a letter regarding NeuWave Electric Company's request for a hearing. (PX-16).

Mr. Champneys continued to insist that all of NeuWave's employees are "low-voltage electricians." Mr. Champneys expressed that the prevailing wage determination for the project contained a non-union classification for Electrician, Low Voltage and HVAC Control work. Mr. Champneys alleged his due diligence and research into "every authority dictionary" including IEEE, ANSI, NEMA, NFPA, NED, IBC, and many other documents indicated the definition of low-voltage electrician was 1000 or 600 volts and below. (PX-16).

Mr. Champneys explained, from the main point of service entrance to the project the voltage was 480 volts, well below the definition of a low-voltage electrician. From this point it supplied power to main switchgear, panels, transformers, lighting, lighting control, convenience receptacles, systems furniture, fire alarm, telephone and data, audio and video, close circuit TV, security systems, all aspects of an electrician, all being classified as low voltage. (PX-16).

Mr. Champneys also expressed, despite being audited in November 2011 by the WHD, he was never cited for paying the wrong prevailing wage during the audit. (PX-16).

Utah Administrative Code, Rule 156-55b

Rule 156-55b is also known as the Electricians Licensing Act Rule. Rule 156-55b-102 provides a Definitions section for the Electricians Licensing Act Rule. Specifically, the Rule provides a definition for "electrical work." The definition provides:

"Electrical work" as used in Subsection 58-55-102(13)(a) and in this rule means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined in the edition of the National Electrical Code, as adopted in the State Construction Code Adoption Act and State Construction Code. Electrical Work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factor-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined in the National Electrical Code. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. All other wiring is subject to licensing requirements.

(PX-13).

National Fire Protection Association 70: National Electrical Code (Edition 2011)

National Electrical Code Article 100 contains a definitions section containing the definition for: Premises Wiring (System) and Voltage, Nominal.

Premises Wiring (System). Interior and exterior wiring, including power, lighting, controls, and signal circuit wiring

together with all their associated hardware, fittings, and wiring devices, both permanently and temporarily installed. This includes (a) wiring from the service point or power source to the outlets or (b) wiring from and including the power source to the outlets where there is no service point.

Such wiring does not include wiring internal to appliances, luminaries, motors, controllers, motor control centers, and similar equipment. (PX-14, p. 70-31).

Voltage, Nominal. A nominal value assigned to a circuit or system for the purpose of conveniently designating its voltage class (e.g. 120/240 volts, 480Y/277 volts, 600 volts). The actual volts at which a circuit operates can vary from the nominal within a range that permits satisfactory operation of equipment.

Informational Note: See ANSI C84.1-2006, Voltage Ratings for Electric Power Systems and Equipment (60Hz). (PX-14, p. 70-33).

Article 110 of the National Electrical Code governs the requirements for electrical installations. Article 110.26(A)(1) governs the Depth of Working Space and provides, "[t]he depth of working space in the direction of live parts shall not be less than that specified in Table 110.26(A)(1) unless the requirements of 110.26(A)(1)(a), (A)(1)(v), or (A)(1)(c) are met. Distances shall be measured from the exposed live parts or from the enclosure or opening if the live parts are enclosed." Article 110.26(A)(1)(b) provides, "Low Voltage. By special permission, smaller working spaces shall be permitted where all exposed live parts operate at not greater than 30 volts rms, 42 volts peak, or 60 volts dc." (PX-14, p. 70-38).

Article 110.34 governs Work Space and Guarding. Specifically, Article 110.34(B) states "Separation from Low-Voltage Equipment. Where switches, cutouts, or other equipment operating at 600 volts, nominal, or less are installed in a vault, room, or enclosure where there are exposed live parts or exposed wiring operating at over 600 volts, nominal, the higher-voltage equipment shall be effectively separated from the space occupied by the low-voltage equipment by a suitable partition, fence, or screen. (PX-14, p. 70-42).

Article 490 governs "equipment, over 600 volts, nominal." Article 490.2 provides "high voltage. For purposes of this article, more than 600 volts, nominal." (PX-14, p. 70-360).

Article 517.64 - governing health care facilities - provides, "Low-voltage equipment and instruments. (A) Equipment Requirements. Low-voltage equipment that is frequently in contact with the bodies of persons or has exposed current carrying elements shall comply with one of the following: (1) operate on an electrical potential of 10 volts or less; (2) be approved as intrinsically safe or double-insulated equipment; and (3) be moisture resistant. (PX-14, p. 70-455).

Article 511 governs Recreational vehicles and Recreational Vehicle Parks. Article 551 provides "Low Voltage. An electromotive force rated 24 volts, nominal, or less." (PX-14, p. 70-941).

Article 720 governs installations operating at less than 50 volts, direct current or alternating current. Article 725 covers remote-control, signaling, and power-limited circuits that are not an integral part of a device or appliance. (PX-14, pp. 70-640 - 70-641).

Article 760 governs Fire Alarm Systems and the installation of wiring and equipment of fire alarm systems including all circuits controlled and powered by the fire alarm system.

Article 760.1 Informational Note No. 1: Fire alarm systems include fire detection and alarm notification, guard's tour, sprinkler, waterflow, and sprinkler supervisory systems. Circuits controlled and powered by the fire alarm system include circuits for the control of building systems safety functions, elevator capture, elevator shutdown, door release, smoke doors and damper control, fire doors and damper control and fan shutdown, but only where these circuits are powered by and controlled by the fire alarm system. For further information on the installation and monitoring for integrity required for fire alarm systems, refer to the NFPA 72-2010, National Fire Alarm and Signaling Code. (PX-14, p. 70-651).

Article 800 governs communications circuits and equipment. (PX-14, p. 70-669).

ANSI C84.1: Electric Power Systems and Equipment - Voltage Ratings (60 Hz)

ANSI C84.1 establishes the nominal voltage ratings and operating tolerances for 60 Hz electric power systems above 100 volts (steady states voltage levels only). ANSI C84.1 divides

standard nominal system voltages into classes: Low-voltage classification includes 120 volts to 600 volts; medium voltage includes 2400 to 69,000 volts; High voltage includes 115,000 to 230,000 volts, extra-high voltage includes 345,000 to 765,000 volts, and ultra-high voltage includes 1,100,000. (PX-22; RX-2).

IEEE Std 141-1993

IEEE Std. 141-1993 governs the IEEE Recommended Practice for Electrical Power Distribution for Industrial Plants. Table 3-3 of the IEEE Std. 141-1993 contains a chart of standard nominal system voltages. Table 3-3 indicates low voltages range from 120 to 600 volts and medium voltages range from 2400 volts and above. (PX-20; RX-4, p. 2).

IV. CONTENTIONS OF THE PARTIES

As a preliminary matter, the Administrator asserted that the parties have stipulated that the American Recovery and Reinvestment Act of 2009 ("ARRA") and the DBRA as denoted in 29 C.F.R. Part 5, apply in this case. The Administrator further adds the parties also stipulated that General Decision No. UT100037, Modification 6 (issued Nov. 19, 2010) ("Wage Decision") was integrated into Contract No. ALCJC10a between Davis County, Utah and Wadman, and into the subcontract between Wadman and NeuWave.

Thereafter, the Administrator turned to the central issue in this case, the proper classification of NeuWave's employees when performing certain work, for purposes of determining the appropriate prevailing wage. According to the Administrator, the rate to be paid for particular tasks is the rate found to be prevailing in the locality for that work, without regard to the level of skill required. Moreover, where the applicable wage determination reflects a collectively bargained wage rate, the Administrator asserts that "the classifications of work used by contractors who are signatories to collective bargaining agreements are to be followed under the wage determination." Abhe v. Svoboda, Inc., *infra* at *12; Fry Brothers, *infra* at 15-16; Security Equipment Inc., ALJ Case No. 92-DBA-56, at *7 (May 25, 1994).

The Administrator contends the testimony of Mr. Russell Lamoreaux establishes the controlling union practice for the Electrician, Excluding Low Voltage classification and that the testimony of Mr. Todd Shaffer supports the controlling union practice. According to the Administrator, Mr. Lamoreaux

testified that IBEW Local 354 claims all work requiring an electrician's license, issued by the State of Utah, as within the scope of the union's Inside Agreement. The Administrator reiterated the argument it set forth in its Motion for Summary Decision: the Utah State Electricians Licensing Act Rule and the definition of "premises wiring" in the National Electrical Code, read together, define the covered scope of work:

- (1) Installation, fabrication or assembly of electrical equipment of systems; and
- (2) For interior and exterior wiring that extends from the service point or source of power
 - a. Which includes:
 - i. Both permanently and temporarily installed
 1. Power, lighting, control, and signal circuit wiring; and
 2. All associated hardware, fittings, and wiring devices;
 - b. But excludes:
 - i. Wiring internal to appliances, luminaries, motors, controllers, motor control centers, and similar equipment; as well as
 - ii. Remote-control, signaling, and power-limited circuits that are not an integral part of a device or appliance;
 - iii. Wiring and equipment of fire alarm systems, including all circuit controlled and powered by the fire alarm system; and
 - iv. Communications circuits and equipment

According to the Administrator, Mr. Lamoreaux testified that the IBEW Local 354 adopted both the Licensing Act Rule and the NEC definition of "premises wiring" to define its scope. However, Mr. Lamoreaux went on to explain that certain low-voltage electrical systems are excluded from the Licensing Act Rule because they do not present the same fire or shock hazards as other electrical systems, and therefore do not require regulation in the interest of public safety. According to Mr. Lamoreaux, these low-voltage electrical systems generally involve 50 volts or less and include fire alarm, security, communications, and lighting control systems.

In brief, the Administrator also relied upon the testimony of Mr. Todd Shaffer, owner of Skyline Electric Company, an electrical contract signatory to the Inside Agreement with IBEW Local 354. Mr. Shaffer testified that members of the IBEW Local 354 perform inside electrical work, which typically involves 600

volts or less. Specifically, Mr. Shaffer explained that the union's Inside Agreement "covers everything 50 volts and above," and the union's Communications Agreement "is essentially anything that's low voltage, so...less than 50 volts. It includes tele data work, fire alarm work, security systems, [and] control work."

Mr. Shaffer testified that his definition of low voltage comes from, "[w]hen we talk among each other in the company and I talk with other contractors...about low-voltage technicians, we're talking about people who work on [] less than 50 volts. Now in the [National Electrical] Code there are certain sections that talk about low voltage or voltages under 50 volts, and I think that's where we get the idea. I think it's Section 720 and 725 that talk about how under 50 volts is not building wiring, wire for power and lights. And then there's another section that specifically talks about low voltages being 30 or 45 volts, something like that - I think it's 110." According to the Administrator, these sections of the National Electrical Code concern low-voltage control work and express the fire hazards and risks of working with larger voltages as compared to low-voltage wiring. According to Mr. Shaffer, inside wiremen licensed by the State of Utah work with voltages between 50 and 600 volts, and defining "low voltage" as 600 volts or less would be inconsistent with the union's practice (and consequently that of himself, his 120 employees, and his competitors in the industry) of regarding "low voltage" as less than 50 volts.

The Administrator also argued that NeuWave failed to consider the area practice in determining the proper wage classification, and that NeuWave's reliance upon industry standards is misplaced. First, the Administrator argues Respondent failed to investigate the local area practice, including the prevailing union practice, regarding work that includes or excludes "low-voltage wiring." Second, the Administrator alleged Respondent's use of general industry standards to define "low voltage" was selective, unpersuasive, and failed to demonstrate a consensus that "low voltage" means 0 to 600 volts. Third, the Administrator contended Mr. Champneys did not credibly rebut the testimony of Mr. Lamoreaux and Mr. Shaffer that these general industry standards had no application in the context of the type of electrician work found in building construction. And Fourth, the Administrator alleges that Mr. Champneys' testimony demonstrated that Respondent's position does not allow for any work under the Electrician, Excluding Low Voltage classification in the Wage Decision. According to the Administrator, the survey produced results sufficient to support

two electrician classifications: one excluding low-voltage wiring and HVAC temperature controls, and one limited to low-voltage wiring and HVAC temperature controls only. Respondent's asserted definition of "low voltage" not only renders the separate classifications meaningless and essentially removes the Electrician Excluding Low-voltage classification, but is also tantamount to Respondent "unilaterally establish[ing] a classification based on its own perception of the work to be performed."

The Administrator went on to express that Tesco Builders and Brunetti Construction are not applicable to the present matter. Rather, the Administrator contends the present case is a classic misclassification case, in line with Fry Brothers and its progeny and any review subject to Tesco and Brunetti would provide little insight. According to the Administrator, the IBEW Local 354 prevailed as to the Electrician, Excluding Low Voltage Wiring classification in the building construction wage survey for Davis County, Utah. The union's negotiated wage rate, as set forth in the Inside Agreement, is based on the fact that an inside wireman electrician performs "premises wiring" as stated in the Licensing Act Rule and defined in the NEC. Thus, according to the Administrator, any of Respondent's employees who performed "premises wiring" on the project must be classified and paid the Electrician, Excluding Low Voltage Wiring classification rate for that work.

According to the Administrator, the evidence reveals that electrical work in building construction that falls outside of "premises wiring" is considered low voltage and preserved for the Electrician, Low Voltage classification. The Administrator asserts - the wage survey results, the relevant portions of the NEC, and the testimony of Mr. Lamoreaux and Mr. Shaffer all demonstrate that such work includes fire alarm and smoke detector systems, telephone and computer wiring, sound and communication systems, LED lighting systems, circuit control systems, and security systems. The Administrator points out that its list is not exhausting, but asserts the undersigned need not reach the issue of identifying the voltage for all electrical systems, because the evidence demonstrates that the Division calculated back wages in a way that over-included work for the Electrician, Low Voltage classification.

Lastly, the Administrator contends its back wage calculations are reasonable under the circumstances. The Administrator based its back wages calculation upon an average of the percentages of work reported by Mr. Champneys and

NeuWave's employees (25% and 50% respectively) involving electrical systems other than those identified as low voltage. Based upon the calculations, the Administrator computed back wages owed to 20 employees in the amount of \$62,301.35 for misclassification of 37.5% of the total hours worked on the project.

In Respondent's post-hearing brief, Respondent's attempted to focus its response on whether the actual contract documents and the construction specifications defined the term "low voltage" and, if so, how such specifications defined the term "low voltage" with respect to the electrical work on the project. In essence, NeuWave asserted that all applicable national codes and private regulatory bodies define "low-voltage" as meaning 1000 volts and below (and frequently 600 volts or 480 volts or below). Moreover, NeuWave alleged that all of the electrical work its electricians did on the Project was with 600 volts or less and involved wiring of some sort or another, and thus, was "low-voltage wiring." Thus, NeuWave contends that all of its electricians fell within the Electrician, Low-voltage Wiring classification for all the work they performed on the project. Thus, NeuWave asserts it classified and paid its employees appropriately and correctly.

Respondent painstakingly went through the construction specifications for the Project at issue to identify which sections contained low-voltage wiring work. In conclusion, NeuWave alleged "[t]o an electrician, the specifications for the project clearly differentiate between voltage levels which are low voltage and which are higher than "low voltage." NeuWave alleges that references to voltage levels, other than "low voltage," refer to the voltage levels of electrical power coming from the power company to the building site; whereas "low voltage" refers to the electrical power coming from the company's transformer on the building site into the building, where that "low voltage" is further broken down into lower voltages for particular applications, such as lights, closed-circuit televisions, power outlets, fire alarm systems, etc.

Respondent went on to conclude that many sections or subsections in Division 26 of the specifications refer to "low-voltage" together with references to an exact level of voltage, such as 480 volts, 277 volts, or 120 volts. Other sections or subsections just refer to the level of voltage, such as "low voltage," without referring to the specific number of volts. Nevertheless, Respondent believes "the take away seems to be consistent with the ANSI and IEEE definitions which the

specifications incorporate. Voltage higher than 600 volts is 'high voltage' or 'medium voltage.' Voltage at 600 volts and below is 'low voltage'." Thus, as far as NeuWave "can tell, all of the electrical work inside the building was at the 600 volt level or well below the level of 600 volts."

Accordingly, Respondent contends "if the Department of Labor can point to anywhere in the specifications for this project where NeuWave electricians were to perform wiring inside the building with "high voltage" power or "medium voltage" power or voltage levels above 600V, NeuWave is willing to concede as to that particular part of the work on this project." However, if all the Department of Labor can do is point to testimony of witnesses who did not work on this project or who were not familiar with what the specifications for this project required, NeuWave will continue to stand by its position that all of its electricians performed only low-voltage wiring on this project and that it classified its electricians properly and paid them properly.

V. DISCUSSION

A. Credibility

I have considered and evaluated the rationality and internal consistencies of the testimony of the witnesses, including the manner in which the testimony supports or detracts from the other record evidence. In so doing, I have taken into account all relevant, probative and available evidence, while analyzing and assessing its cumulative impact on the record. Holt and Holt, Inc., 2014 DBA 00005 at 9 (ALJ, Apr. 21, 2015) (citing Indiana Metal Products v. National Labor Relations Board, 442 F.2d 46, 52 (7th Cir. 1971)). An administrative law judge is not bound to believe or disbelieve the entirety of a witness's testimony, but may choose to believe only certain portions of the testimony. Id. (citing Mijangos v. Avondale Shipyards, Inc., 948 F.2d 941 (5th Cir. 1991)).

In arriving at a decision, it is well settled that the fact finder is entitled to determine the credibility of witnesses, weigh the evidence and draw its own inferences therefrom. Pasack Builders, Inc., Tristate Building Co., and Franklin Petty, Jr., 2015-DBA-00017 at 12 (ALJ, Feb. 2, 2016) (citing Duhagon v. Metropolitan Stevedore Co., 31 BRBS 98, 101 (1997)); Administrator v. Groberg Trucking, Inc., ALJ No., 01-SCA-22, ARB No. 03-137 (ARB, Nov. 30, 2004) (citing Sundex, LTD., ARB No. 98-130 (ARB, Dec. 30, 1999)).

In applying the above applicable law to this case, I found the testimony of all the witnesses put forth at trial to be generally credible. Their demeanor was straightforward and forthright. I found no glaring or apparent inconsistencies in the testimony put forth by any witness.

Notably, however, I found the testimony of Mr. Shafer to be especially credible and convincing. Mr. Shafer is a master electrician in the State of Utah and Wyoming. He is the majority shareholder and CEO of Skyline Electrical Company, an electrical contracting company which is signatory to the collective bargaining agreement of Local Union 354 in Utah. Mr. Shafer's testimony reflected his extensive knowledge not only of the electrical profession in Utah, but also the Local 354 and its collective-bargaining agreements. Thus, I found Mr. Shafer's testimony to be credible, convincing, and indispensable in rendering the following opinion.

B. Davis-Bacon Act Violations

The Davis-Bacon Act is designed to give local laborers and contractors a fair opportunity to participate in federal building programs, to protect the employees of government contractors from substandard wages, and to promote the hiring of local labor rather than cheap labor from distant sources. United States v. Binghamton Constr. Co., 347 U.S. 171, reh'g. denied, 347 U.S. 940 (1954); see also L.P. Cavett Co. v. U.S. Dep't of Labor, 101 F.3d 1111 (6th Cir. 1996). The Davis-Bacon Act dictates, "the advertised specifications **for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party**, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics." 40 U.S.C. § 3142(a). Such "minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding class of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed...." 40 U.S.C. § 3142(b).

The Department of Labor publishes general wage determinations under the Davis-Bacon Act on the WDOL Internet

Web Site. In the event that a prevailing wage determination is applicable to a project, "a government agency may use the wage determination without notifying the Department of Labor, *provided*, that all questions concerning its use shall be referred to the Department of Labor..." 29 C.F.R. §§ 1.5(a); 1.6(b). If, however, a general wage determination is not available, the federal agency shall request a wage determination from the Department of Labor in accordance with 29 C.F.R. § 1.5(b). See 29 C.F.R. § 1.5(b). The wage determination is ultimately incorporated into the contracting agency's solicitation for contract bids. 29 C.F.R. § 1.6(b). At this stage - prior to the award of contract - any interested person "may seek reconsideration of a wage determination [] or of a decision of the Administrator regarding the application of a wage determination." 29 C.F.R. § 1.8; 29 C.F.R. § 5.13. In the event such reconsideration by the Administrator has been denied, any interested person may appeal to the Administrative Review Board for review of the wage determination or its application." 29 C.F.R. § 1.9.

The contracting Agency then includes the wage determination in the request for contract bids. In forming the contracts, the Agency head⁶ is responsible for causing or requiring the government contractors and subcontractors performing federally funded or assisted contracts of more than \$2,000.00 to set forth provisions in the covered contracts governing: minimum wages; withholding; payrolls and basic records; apprentices and trainees; Compliance with Copeland Act Requirements; Subcontracts; Contract termination; debarment, Compliance with Davis-Bacon and Related Act Requirements; disputes concerning labor standards; and certification of eligibility [to be awarded Government contracts]. 29 C.F.R. § 5.5(a).

Most relevantly, the regulations require such contracts contain clauses providing that all laborers and mechanics working upon the site are to be compensated at rates **not less than those contained in the wage determination.** 29 C.F.R. § 5.5(a)(1). Moreover, the regulations require contractual stipulations that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which

⁶ The principal official of the federal agency, which enters into the contract or provides assistance to the project subject to a statute listed in § 5.1, who is authorized to act on the behalf of the Agency Head. 29 C.F.R. § 5.2(c), (d).

is to be employed under the contract shall be classified in conformance with the wage determination.⁷ 29 C.F.R. § 5.5(a)(1).

The regulations also require the contractor to maintain payrolls and basic records relating thereto during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. § 5.5 (A)(3)(i). The regulations dictate, each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent, "certifying: (1) that the payroll for the payroll period contains the information required under the regulations, and that such information is correct and complete; (2) that each laborer or mechanic employed on the contract during the payroll has been paid the full weekly wages earned; and (3) that **each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits** or cash equivalents for the classification of work performed, **as specified in the applicable wage determination** incorporated into the contract." § 5.5 (A)(3)(ii)(B).

It is the responsibility of the federal agency to ascertain whether the clauses required by § 5.5 have been inserted into the contract subject to the labor standards provisions of the Davis Bacon and Related Acts. Moreover, the federal agency and the Administrator are imbued with the power and responsibility to make such investigations as deemed necessary, in order to obtain compliance with the labor standard provisions of the Acts. Complaints of alleged violations are given priority. 29 C.F.R. § 5.6.

In the event of a dispute of fact or law concerning the payment of prevailing wage rates, overtime pay, or proper classification, in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) of the investigation findings. (§ 5.11(a), (b)). If the Administrator finds there is reasonable cause to believe the contractor/subcontractor(s) should also be subject to debarment, the letter will so indicate. § 5.11(b)(1). Thereafter, a contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request a hearing by letter. The request shall set forth those findings which are in dispute and the reasons therefor with respect to the violations and/or debarment, as appropriate. §

⁷ The contractor officer shall approve additional classification and wage rate and fringe benefits only under the specific circumstances set forth in 29 C.F.R. § 5.5(a)(1)(ii)(A).

5.11(b)(2). Upon receipt of a timely request for a hearing, "the Administrator shall refer the case to the Chief Administrative Law Judge by **Order of Reference**...for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters." § 5.11(b)(3).

The proponent of the **Order of Reference** in a Davis-Bacon Act case bears the initial burden of going forward with the evidence and establishing a **prima facie** claim. The burden then shifts to Respondent, who bears the ultimate burden of proof by a preponderance of the evidence. Cody Zeigler, Inc., 1997-DBA-17 (ALJ, Apr. 7, 2000), aff'd in relevant part, ARB Case Nos. 01-014 and 01-015 (ARB, Dec. 19, 2003); see also Pythagoras General Contracting Corp. v Administrator, Wage and Hour Division, USDOL, 2005-DBA-14 (ALJ, June 4, 2008), aff'd., ARB Nos. 08-107, 09-007 (ARB Feb. 10, 2011) (errata issued Mar. 3, 2011) (the Administrator has the initial burden of "establishing that the employees performed work for which they were improperly compensated"; the burden then shifts to Respondent "to come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the employees' evidence"); Ray Wilson Co., ARB Case No. 02-086, 2000-DBA-14 (ARB, Feb. 27, 2004) (Respondent has the burden to rebut Department's proof of extent and amount of violations); Thomas & Sons Building Contractors, Inc., ARB Case No. 00-050, Case No. 1996-DBA-37 (ARB, Aug. 27, 2001) ("the Administrator has the burden of establishing that the employees performed work for which they were improperly compensated").

i. Classification of Employees

As discussed above, the Davis-Bacon Act does not permit an employer to unilaterally establish a classification based upon its own perception of the work to be performed. 29 C.F.R. §5.5(a)(1)(ii)(a). In order to comply with the Act, an employer must classify its workers according to the classifications used in the locality in which the contract is performed. Emerald Maintenance, Inc. v. U.S., 925 F.2d 1425, 1427 (Fed. Cir. 1991) (citing Building & Construction Trades's Dept. AFL-CIO v. Donovan, 712 F.2d 611, 614 (D.C. Cir. 1983) and Johnson-Massman, Inc., 96- ARB-118 (ARB, 1996)). The contractor must classify its employees in conformance with the wage rate determination incorporated into the bid solicitations and/or the contract or seek approval of an additional classification and wage rate in accordance with the regulations. 29 C.F.R. § 5.5 (a)(1)(ii)(A). **It is incumbent upon the contractor to be certain that its employees were properly classified when performing a job where**

the Act applies. By misclassifying and underpaying workers, respondents proceed at their own peril. The Matter of Tele-Sentry Security, WAB Case No. 87-43 (WAB, June 7, 1989).

The regulations require employees to be classified and paid according to the work they perform or the equipment used in the work that is performed, without regard to the level of skill or experience required. 29 C.F.R. §5.5(a)(1)⁸; Pythagoras General Contracting Corp., supra at 7 (citing 29 C.F.R. § 5.5(a)(1)(i)); Fry Brothers Corporation, WAB⁹ Case No. 76-06 (June 14, 1977); Framlau Corp., WAB Case No. 70-05 (WAB, April 19, 1975), as cited in Batteast Construction Company, WAB Case No. 83-12 (WAB, June 22, 1984). The Davis-Bacon wage determinations issued by the Department of Labor "list only job classifications and their corresponding minimum wage and fringe benefit rates; they do not contain job descriptions." Abhe & Svogoda, Inc. v. Chao, 2006 U.S. Dist. LEXIS 60383, * 3 (D.C.C. 2006). Generally, the "job content - or task list - for classifications in Davis-Bacon wage determinations must be based on locally prevailing practices, [and] where union rates prevail, the proper classification of duties under the wage determination is established by the area practice of union contractors signatory to the relevant collective bargaining agreement." Id. (citing Fry Brothers Corp., WAB Case No. 76-06, 1977 DOL Wage App. Bd. LEXIS 19 (June 14, 1977)).

In Fry Brothers, the Wage Appeal Board held:

When the Department of Labor determines that the prevailing wage for a particular craft derives from experience under negotiated arrangements, the Labor Department has to see to it that the wage determinations carry along with them as fairly and fully as may be practicable, the classifications of work according to job content upon which the wage rates are based. If a construction contractor who is not bound by the classifications of work at which the majority of employees in the area are working is free to classify or reclassify, grade or subgrade traditional craft work as he wishes, such a contractor can, with respect to wage rates, take almost any job away from the group of contractors and the employees who work for them who have established the locality

⁸ But see 29 C.F.R. § 5.5(a)(4).

⁹ The "Wage Appeal Board" was the predecessor to the Administrative Review Board.

wage standard. There will be little left to the Davis-Bacon Act.

Fry Brothers Corp., 1977 DOL Wage App. Bd. LEXIS 19, *18-19.

Though not officially published, the Fry Brothers decision's "inclusion in a commercial reporter and its treatment in subsequent judicial and administrative cases provide adequate notice that contractors" must turn to "locally prevailing practices, and that, where union rates prevail, the proper classification of duties under the wage determination is established by the area practice of union contractors signatory to the relevant collective-bargaining agreement." Abhe & Svoboda, Inc., ARB Case Nos. 01-063, 01-066, 01-068, 01-069, 01-070, ALJ Case Nos. 1999-DBA-20 to 27 (ARB, July 30, 2004), recon. denied (ARB, Oct. 15, 2004), aff'd., Abhe & Svoboda, Inc. v. Chao, 2006 WL 2474202 (D.D.C. Aug. 25, 2006), aff'd., 508 F.3d 1052 (D.C. Cir. 2007); George Campbell Painting Corp. v. Chao, 463 F.Supp.2d 184 (D. Conn. 2006); See also United States ex rel. Plumbers & Steamfitters Local Union No. 38 v. C.W. Roen Constr. Co., 183 F.3d 1088, 1093 (9th Cir. 1999) (noting "where the Department determines that prevailing wages are established by a collectively bargained agreement, the job classifications for the project or area at issue are also established by that agreement." More succinctly, "if the negotiated rate for an electrician is based on the fact that an electrician performs tasks X, Y, and Z, then any employee performing tasks X, Y, and Z must be classified and paid as an electrician."); In the Matter of Tele-Sentry Security, Inc., WAB Case No.87-43, 1989 DOL Wage App. Bd. LEXIS 20 (June 7, 1989) (internal citations omitted). Indeed, the ARB's comments regarding notice were affirmed and reiterated by the United States District Court for the District of Columbia. The District Court observed, "[a]s a general principle, parties to government contracts are obliged to know all applicable legal principles." Abhe & Svogoda, Inc. v. Chao, 2006 U.S. Dist. LEXIS 60383, * 3 (D.C.C. 2006) (citing ATC Petroleum, Inc. v. Sanders, 860 F.2d 1104, 1111-12 (D.C. Cir. 1988) ("[P]arties dealing with the government are expected to know the law.")).

Thus, where the applicable wage determination reflects collectively-bargained wage rates, the classifications of work used by contractors who are signatory to collective bargaining agreements and the practice of local signatory unions are conclusive under Department precedent. See Fry Brothers Corp., WAB Case No. 76-6, 1977 DOL Wage App. Bd. LEXIS 19 (June 14, 1977); More Drywall, Inc., WAB Case No. 90-20 (April 29, 1991);

Trataros Construction Corp., WAB Case No. 92-03 (April 28, 1993). The compensation practices of employers who are not signatories to the collective bargaining agreement make no difference to proper classification on a Davis-Bacon project. Fry Brothers, supra.

1. NeuWave failed to properly classify its employees.

As discussed in my January 13, 2017 Order Denying Summary Decision, this matter stems from Respondent's service as an electrical subcontractor on Contract No. ALCJC10a for construction services on the Davis County Library/Administrative Building and Children's Justice Center in Farmington, Utah (the "Project"). The Project required all laborers and mechanics, including sub-contractors, "be paid wages and fringe benefits at rates not less than the prevailing wage rates for all types and classifications of such work as established for Davis County or the surrounding area by the United States Department of Labor under the Davis-Bacon Act." General Decision Number UT100037, the Prevailing Wage Decision, governed building construction projects in Davis County, Utah and set forth the prevailing wage rates applicable to the Project.

The Prevailing Wage Decision contained two **relevant** electrician classifications: (1) Electrician, Excluding Low-Voltage Wiring and Installation of HVAC Temperature Controls; and (2) Electrician, Low-Voltage Wiring and Installation of HVAC Temperature Controls Only. The Prevailing Wage Determination also contained a notice indicating "[i]n the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing." (PX-2).

Of the two electrician classifications, the Electrician, Low-Voltage Wiring position was given the "SU" designation and thus governed by a non-union rate. The Electrician, Excluding Low-Voltage Wiring position was given the "ELEC 0354" designation. (PX-2). The evidence of record and the testimony of Ms. Jarrett, Mr. Lamoreaux, and Mr. Jackson indicate the presence of the marker "ELEC 0354" in association with the Electrician, Excluding Low-Voltage classification establishes that the Local 354 prevailed with regards to that classification. (Tr. 25-26, 137-138, 259-265; PX-2).

Accordingly, the Wage Determination at issue clearly reflects collectively-bargained wage rates. Specifically, the

Electrician, Excluding Low-Voltage Classification reflects a wage rate collectively bargained for by the International Brotherhood of Electrical Workers Local 354. Thus, as explicated in my Order Denying Summary Decision, the locally prevailing practice is most relevant in determining the proper classification of duties under a wage determination. Where, as here, a wage is based upon a collective-bargaining agreement, the signatory union's practice regarding which duties fall into the "Electrician, excluding low-voltage wiring" classification is wholly persuasive. Moreover, the practice of the contractor's signatory to the union in defining the classification Electrician, Excluding Low-Voltage Wiring is relevant to determining the scope of the classification. Moreover, as observed in Fry Brothers, the practices of non-signatories to the collective bargaining agreement are irrelevant to determining the parameters of the union classification.

In brief, the Administrator asserted it met its **prima facie** case that Respondent is bound by the Davis-Bacon prevailing wage provisions and that the employees at issue were misclassified. Specifically, the Administrator alleged: (1) the testimony of Mr. Lamoreaux and Mr. Shaffer established the controlling union practice for the Electrician, Excluding Low-Voltage classification; (2) NeuWave failed to consider the area practice in determining the proper wage classification and its reliance on industry standards is misplaced. The undersigned agrees.

At the hearing, Mr. Lamoreaux - the business manager for the International Brotherhood of Electrical Workers Local Union 354 - testified regarding the scope of the union's collective bargaining agreements. Most relevantly, Mr. Lamoreaux expressed that the "Inside Collective Bargaining Agreement" (Inside Agreement) applied to the Electrician, Excluding Low-Voltage Wiring classification. Mr. Lamoreaux explained that the term "inside agreement" comes from the division of two types of electrical work: inside and outside. According to Mr. Lamoreaux, "inside work" is everything from where the utility turns the power over to the customer - the demarc location. By contrast, "outside work" governs work with electricity coming from the power generation and distribution line to the demarc point.

Moreover, Mr. Lamoreaux explained that the Inside Agreement is defined by the Utah State Electrical Licensing Act Rule and the National Electrical Code and is intended to cover all work governed by an electrician's license. According to Mr. Lamoreaux, the Inside Agreement covers all electrical work from

the service point, but excludes certain lesser and lower voltage wiring systems which do not pose the same type of fire or shock hazard. More specifically, Mr. Lamoreaux indicated that systems dealing with 50 volts and less fall outside of the Inside Agreement, including: fire alarm systems, HVAC installation - controls and thermostats, security systems, audio visual systems, and data/voice systems.

Mr. Shaffer's testimony parallels that of Mr. Lamoreaux. As discussed above, I found Mr. Shaffer's testimony to be most relevant and persuasive. At the hearing, Mr. Shaffer testified that the Inside Agreement covers everything which requires an electrician's license. In general, Mr. Shaffer expressed that work requiring an electrician's license falls between 50 volts and 600 volts, and an electrician's license is not required to work at volts below 50 or above 600. Based upon his understanding of the state licensure requirements, the National Electrical Code, his experience of practicing according to the provisions, and his interactions with the 120 electrical employees of Skyline Electric, Mr. Shafer's testified that "low voltage" means 50 volts or less. Specifically, Mr. Shaffer explained low-voltage work inside a commercial office building typically involves security systems, fire alarm systems, and HVAC temperature controls.

Based upon the foregoing, I find the testimony of Mr. Lamoreaux and Mr. Shaffer establishes the controlling union practice for the Electrician, Excluding Low-Voltage classification. I find the union claims all work which requires an electrician's license in the State of Utah. According to the union and a signatory contractor, this generally involves working at voltages between 50 and 600 volts due to the inherent safety risks involved in working at those voltages. Nevertheless, it seems more common for electrical work to be defined by the type of work being performed and the systems involved rather than rigidly defined by exact voltages. As pointed out in the Administrator's brief, this is common - not only in the present matter - but in other Davis-Bacon Act cases dealing with electrical work. As such, I find the local practice is that generally all work which requires an electrician's license in the State of Utah, primarily premises wiring work with voltages between 50 and 600 volts, falls within the Electrician, Excluding Low Voltage Wiring classification. Moreover, work involving certain electrical systems involving voltages of less than 50 volts falls outside of the Electrician, Excluding Low Voltage Wiring classification. I find this latter category of work is that which falls within the "Electrician,

Low Voltage Wiring and Installation of HVAC Temperature Controls Only."

Moreover, as discussed above and in my Order Denying Summary Decision, following Fry Brothers, contractors wishing to participate in Davis-Bacon Act projects are on notice that they must turn to "locally prevailing practices, and that, where union rates prevail, the proper classification of duties under the wage determination is established by the area practice of union contractors signatory to the relevant collective-bargaining agreement." Fry Brothers, supra. Respondent's evidence and testimony reveals that he put forth no effort to determine the locally prevailing practices. The testimony and evidence reveal, upon evaluation of the Wage Determination, Respondent observed a union and non-union Electrician classification. Considering NeuWave to be a non-union contractor, Mr. Champneys focused upon researching the non-union classification. However, even in his efforts to research the non-union classification, Mr. Champneys made no effort to determine the locally prevailing practice regarding the non-union classification. (PX-15; RX-20). Mr. Champneys turned only to national industry standards. However, in a Davis-Bacon Act case, such standards do not govern the classifications found in a wage determination. Mr. Champneys is presumed to know the law and presumed to know the holding of Fry Brothers. In completely failing to consider the locally prevailing practice, NeuWave proceeded at its own risk.

2. NeuWave's employees performed work for which they were improperly compensated.

In consideration of the foregoing and the record evidence, I find the Administrator has met its **prima facie** burden in establishing that the employees performed work for which they were improperly compensated. As discussed above, the proponent will be found to have carried out its burden, "if [it] proves that [the employees] in fact performed work for which [they were] improperly compensated and if [it] produces sufficient evidence to show the amount and extent of that work as a matter of **just and reasonable inference**." Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946); Pythagoras General Contracting Corp, supra at 11. The Supreme Court in Mt. Clemens explained the policy behind such a burden:

When the employer has kept proper and accurate records, the employee may easily discharge his burden by securing the production of those records. But where

the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes, a more difficult problem arises. **The solution, however, is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work.** Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty....In such a situation, we hold that **an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.** The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.

Mt. Clemens, supra at 687-688.

I shall defer my discussion of the reasonableness of the Administrator's classifications for purposes of determining back pay for Section ii, infra. However, I find the Administrator in this matter has met its **prima facie** burden of establishing that NeuWave's employees performed work for which they were improperly compensated.

The Wage and Hour Division's investigation began following a complaint alleging that Respondent's employees were being improperly classified and paid on the Project. Ms. Jarrett conducted a series of interviews with five NeuWave employees. Interviewee A indicated he spent 50% of his time with electrical outlets (120V) and 50% of his time working with 277V. Interviewee B declared he spent 50% of his time with 480/227V and 50% of his time with 120/208V. Interviewee C reported working with 120V 50% of the time and 277/480V 50% of the time. Interviewee E declared he spent 75% of his time performing 277/480V lighting work and 25% of his time on outlets at 120V. Interviewee D did not provide a breakdown of time spent on various activities, but indicated that he worked with 120V and 277V. During her investigation, Ms. Jarrett conferred with the union regarding the work identified by NeuWave's employees. The union representative indicated that work involving 277/480 and

120/208 volts is work which falls within the union's jurisdiction and thus the Electrician, Excluding Low-Voltage Wiring classification. Accordingly, Ms. Jarrett concluded that NeuWave was misclassifying - at least - some of the work performed by its employees. Indeed, based upon this preliminary research it would seem that nearly 100% of the work reported by the five NeuWave employees was improperly classified.

The Electrician, Low-Voltage Wiring classification has a wage rate of \$21.00 with fringes. The Electrician, Excluding Low-Voltage Wiring classification has a wage rate of \$28.09 with fringes. NeuWave classified all the work performed by its employees under the Electrician, Low-Voltage Wiring classification. Moreover, the evidence indicates - at least - some of the work should have been classified under the Electrician, Excluding Low-Voltage Wiring classification. Accordingly, I find, by just and reasonable inference, NeuWave's employees performed work for which they were improperly compensated. The burden thus shifts to the Respondent to come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the employee's evidence

3. The Administrator's method of calculating back wages was reasonable and NeuWave failed to come forward with evidence to negate the Administrator's prima facie case.

As discussed above, the Administrative Review Board has applied the burden shifting principles in Mt. Clemens to Davis-Bacon Act cases. Pythagoras, supra at 5. Under the principles set forth in Mt. Clemens, the party bringing the Order of Reference, has the initial burden of proving that NeuWave improperly compensated its employees. Id.; Zeigler, Inc. v. Administrator, Wage and Hour Div., ARB Nos. 01-014, 01-015; ALJ No. 1977-DBA-017, slip op. at 8 (ARB Dec. 19, 2003). When the employer has kept proper and accurate records, the employee may easily discharge his burden by securing the production of those records. However, where - as here - the employer's records are inaccurate, a more difficult problem arises. The solution to such a problem, "however, **is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work.**" Rather, if an employer fails to supply accurate records, the administrative law judge must draw reasonable inferences from whatever evidence the Plaintiff produces. Pythagoras, supra at 13.

I find the principles of Mt. Clemens are most applicable to the present matter. Here, NeuWave failed to maintain records establishing time spent by employees performing work on different systems or at different voltages. The reasoning, clearly, because NeuWave believed all of the work fell under one classification. Moreover, as testified to by Mr. Champneys, any attempt to manually calculate the number of hours spent by his employees working on systems which fall within the Electrician, Low-Voltage Wiring classification would be "impossible." As NeuWave has failed to produce accurate payroll records, the undersigned must consider whether the Administrator's method of calculating back wages is reasonable.

The Administrator argues that its back wages calculations are reasonable under the circumstances. In brief, the Administrator explained that it calculated back wages based upon information received from Mr. Champneys and interviews with NeuWave's employees. In her discussions with Mr. Champneys, Ms. Jarrett asked Mr. Champneys to determine the percentage of time NeuWave's employees spent on fire alarms, access controls, closed circuit TVs, security, burglar alarms, and audio/visual systems. Mr. Champneys guesstimated that 75% of the work performed was spent on the foregoing systems. Mr. Champneys testified at the hearing that this estimate was based on the cost of the labor - quotes received from subcontractors - and not the actual labor hours. Mr. Champneys expressed it would be impossible to go through, hour by hour, to determine the amount of work done by NeuWave employees on the specific systems identified by Ms. Jarrett. Accordingly, Mr. Champneys estimated that his employees spent 75% of their time on such systems.

The Administrator also based its calculations upon interviews with NeuWave's employees. Based upon her discussions with NeuWave's employees, Ms. Jarrett concluded that the employees spent at least 50% of their time on the project working at 277/480 volts - which she considered to be claimed by the union. Ms. Jarrett then averaged the amount of time claimed by employees and the amount of time claimed by Mr. Champneys involving electrical systems other than those identified as low voltage and computed back wages for 37.5% of the total hours worked on the project. Based upon the evidence put forth at the hearing and arguments in brief, the Administrator asserts that it "over included" low-voltage work in its back calculations, but limits the recovery sought to only those wages Wadman withheld from NeuWave and paid to the WHD in response to the Notice of Determination issued on August 12, 2015.

In brief, Respondent does not address nor object to the Administrator's method of calculating back wages. However, in its Opposition to the Department of Labor's Motion for Summary Decision, Respondent asserted that the Wage and Hour Division's reconstruction of back wages was not necessarily reasonable. Respondent objected to Ms. Jarrett's methodology of averaging the percentages supplied by Mr. Champneys and his employees. Respondent asserts "Mr. Champneys did not state that 75% of the work performed was work related to the Low-Voltage Electrician rate. Mr. Champneys admitted only "that 75% of the work NeuWave did on the project was work wiring for alarms, telephones, computers, [and] sound and communications systems." NeuWave denies admitting "any percentage of [any] other electrical work [it did on the project] involved work other than low-voltage work." With regards to the interviews with NeuWave's employees, NeuWave points out the inconsistencies in the employee's description of their work and percentages of time spent working at different voltages. Given the foregoing, Respondent argued there was "little factual basis for [Ms. Jarrett's calculations]." And thus, NeuWave indicated "if NeuWave electricians did any work which fell into the classification of "Electrician, Excluding Low-Voltage Wiring," the parties will need to figure out how much work the [] employees did in that classification.... [and] it will necessarily have to be an estimate." However, NeuWave put forth neither an alternative calculation method nor evidence to support an alternative calculation. (RX-21).

Based on the foregoing, I find the Administrator's method of calculating back wages to be reasonable particularly given the minimal evidence provided by NeuWave regarding the division of labor. As NeuWave did not maintain any records of the type of work each employee performed and for what extent of time such work was performed, the Administrator had to determine how to classify and compensate the employees. I find the Administrator's method to be most reasonable given the circumstances in this case. Moreover, I find any error on the Administrator's part in classifying and compensating the employees is an error inuring to the benefit of NeuWave.

VI. ORDER

Based on the foregoing, I find and conclude that Respondent, NeuWave, failed to properly classify the work performed by its workers and pay its workers the applicable prevailing wage rates. Accordingly,

IT IS HEREBY ORDERED that:

Respondent, NeuWave, shall pay the Administrator, \$62,301.35 in back wages as itemized and evidenced in Plaintiff's Exhibits 8, 9, and 10.

ORDERED this 30th day of March, 2018 at Covington, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with 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 Petition must refer to the specific findings of fact, conclusions of law, or order at issue. 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, for traditional paper filing. Alternatively, the Board offers and Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically,, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. E-Filers will also have access to electronic service (eService), which is simply a way to receive

documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov.

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty-double spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpt of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and many include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

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.