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1. WAGES—MECHANICS AND LABORERS—WORK ON PUBLIC IMPROVEMENTS—DEPARTMENT OF INDUSTRIAL RELATIONS—SHALL FIX SCALE AT NOT LESS THAN PAID ANY TRADE OR OCCUPATION IN LOCALITY WHERE WORK PERFORMED—COLLECTIVE AGREEMENTS—ORGANIZATIONS OF LABOR AND EMPLOYERS—DATE WHEN CONTRACT MADE—SECTIONS 17-4, 17-4a, G. C.

2. DEPARTMENT OF INDUSTRIAL RELATIONS—NO AUTHORITY IN FIXING SCALE OF WAGES TO TAKE INTO CONSIDERATION A PROVISION NOT RELATING TO MINIMUM WAGES—RATIO OF APPRENTICES TO JOURNEYMAN—CONTRACT FOR PUBLIC IMPROVEMENT.

3. FAILURE OF EMPLOYER TO COMPLY WITH TERMS OF COLLECTIVE AGREEMENT WITH ORGANIZATION OF EMPLOYES—RATIO OF APPRENTICES TO JOURNEYMEN—NOT A VIOLATION OF PREVAILING WAGE LAW IN OHIO—SECTION 17-4a, G. C.

1. In fixing the scale of wages to be paid mechanics and laborers for work on public improvements, as provided in Sections 17-4 and 17-4a, General Code, the department of industrial relations shall fix such scale at not less than the wages paid in any trade or occupation in the locality where such work is being performed, under collective agreements or understanding between bona fide organizations of labor and employers, at the date when the contract for such improvement is made.

2. The department of industrial relations has no authority in fixing such scale of wages to take into consideration a provision in such agreement not relating to the minimum wages fixed therein, but dealing with the ratio of apprentices to journeymen to be employed under a contract for a public improvement.

3. The failure of an employer to comply with the terms of a collective agreement with an organization of employees contemplated by Section 17-4a, General Code, relative to the ratio of apprentices to journeymen, does not constitute a violation of the prevailing wage law of Ohio.

Columbus, Ohio, November 8, 1951

Hon. Albert A. Woldman, Director, Department of Industrial Relations, Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

> "The Department of Industrial Relations respectfully requests your legal opinion involving the interpretation of Ohio's prevailing wage rate law for public improvements (Section 17-3 thru 17-6, General Code).
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> "Involved is an agreement between Liberty Union Local School Board of Education of Baltimore, Ohio, and Westgate Electric Construction Company of Columbus, Ohio—which agreement is marked Exhibit 'A'. This contract involves the furnishing of labor and material by the contractor for the electric wiring of a school building located in the town of Baltimore, county of Fairfield, State of Ohio. A copy of said agreement is hereto attached. You will note that the only reference this agreement makes to prevailing wage rates is the sentence: 'The contractor agrees . . . to include labor at the prevailing wage rate for the district;'.
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> "However, the school board did not comply with the provisions of Section 17-4, G. C., which requires 'the duty . . . to have the Department of Industrial Relations ascertain and determine the prevailing rates of wages of mechanics and laborers for the class of work called for by the public improvement, in the locality where the work is to be performed; and such schedule of wages shall be attached to and made part of the specifications for the work, and shall be printed on the bidding blanks where the work is done by contract * * *.'
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> "I further call your attention to the definition of prevailing wage as contained in Section 17-4a as follows:
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> 'The wages to be paid for a legal day's work, as hereinbefore

prescribed in section 17-4 of this act, to laborers, workmen or mechanics upon such public works shall not be less than the wages paid in the same trade or occupation in the locality where such public work is being performed, under collective agreements or understandings, between bona fide organizations of labor and employers, at the date such contract is made. Serving laborers, helpers, assistants and apprentices shall not be classified as common laborer and shall be paid not less than the wages prevailing in the locality for such labor as a result of collective agreements or understandings between bona fide organizations of labor and employers, at the date said contract is made. In the event there is no such agreement or understanding in the immediate locality, then the prevailing rates of wages in the nearest locality in which such collective agreements or understandings are in effect shall be the prevailing rate of wages, in such locality, for the various occupations covered by this act . . . Such contracts shall contain a provision that each laborer, workman or mechanic employed by such contractor, subcontractor or other person about or upon such public work, shall be paid the wages herein provided * * *."

"A complaint has been filed with this department by representatives of electricians that the aforesaid contractor on said public work, although paying the prevailing rate for journeymen electricians, has been circumventing the purpose, intent and spirit of the prevailing wage laws of Ohio, by employing on said public work an extraordinary number of helpers, assistants and apprentices in relation to the number of journeymen electricians employed on said job.

"On or about June 9, 1950, there was filed with the Department of Industrial Relations of the State of Ohio an agreement, dated June 16, 1947, and amended May 5, 1948, April 26, 1949, July 18, 1949, and June 1, 1950—(which agreement is marked Exhibit 'B'), by and between Electrical Contractors of Columbus, Ohio, and Local Union No. 683 of the International Brotherhood of Electrical Workers. This agreement provides among other things for wages to be paid to journeymen wiremen at $2.45 per hour; and wage rates for apprentices as follows:

Hrs. of employment		*of Journeymen rate*	*Per Hr.*
1st 500	41%	" " "	$1.00
2nd 500	45%	" " "	1.10
2nd 1000	49%	" " "	1.20
3rd 1000	57%	" " "	1.40
4th 1000	61%	" " "	1.49
5th 1000	65%	" " "	1.59
6th 1000	69%	" " "	1.69
7th 1000	73%	" " "	1.79
8th 1000	77%	" " "	1.80

"The wage rates embodied in the above agreement have been ascertained and determined by the Department of Industrial Relations to be the prevailing rate of wages of mechanics and laborers to be performed in Fairfield County, Ohio, wherein the school building in which the aforesaid wiring by the Westgate Electric Construction Company was performed for the Liberty Union Local School Board of Education of Baltimore, Ohio, is located.

"We further call your attention to the following provision contained in the aforesaid agreement (p. 3, Article III, Sec. 7):

> 'There shall not be more than one apprentice for the first two journeymen employed by an employer, and one additional apprentice for each four (4) additional journeymen employed thereafter.'

"The complaint registered with the Department of Industrial Relations points out that the aforesaid employer has circumvented the prevailing wage law of Ohio by employing a disproportionate number of apprentices in relation to journeymen electricians employed, in that he employed three journeymen and seven apprentices instead of employing one apprentice for the first two journeymen and one additional apprentice for each four additional journeymen as provided by agreement. (Exhibit 'B'.)

QUESTION:

"Do the provisions of Section 17-4 and 17-4a specifying that the Department of Industrial Relations shall ascertain and determine the prevailing rates of wages of mechanics and laborers for work performed on public improvements and that said wages shall not be less than the wages paid in the same trade or occupation in the locality where such public work is being performed, under collective agreements or understandings, between bona fide organizations of labor and employers, at the date said contract is made, contemplate that the Department of Industrial Relations shall give consideration to provisions in agreements such as Exhibit 'B' which provides among other things the ratio between the number of journeymen and helpers employed, to-wit, 'There shall not be more than one apprentice for the first two journeymen employed by an employer and one additional apprentice for each four additional journeymen employed thereafter?

QUESTION:

"Does a failure on the part of the employer to comply with the provision in said agreement (Exhibit 'B') relative to the ratio of employment of apprentices to journeymen, constitute a violation of the prevailing wage law of Ohio?"

Your first question relates to your authority and duty in fixing the prevailing scale of wages for laborers, workmen and mechanics employed on public work or public improvements pursuant to the provisions of Section 17-4a of the General Code. Inasmuch as you have quoted the essential portion of this section in your letter I do not think it necessary to repeat it.

Section 17-4, General Code, makes it the duty of every public authority authorized to contract for or construct with its own forces, a public improvement, before advertising for bids or undertaking such construction with its own forces, "to have the department of industrial relations ascertain and determine the prevailing rates of wages of mechanics and laborers for the class of work called for by the public improvement, in the locality where the work is to be performed."

The statutes do not by any affirmative provision authorize or require your department to ascertain and determine such prevailing rate of wages, but Section 17-4a evidently assumes such authorization and duty by providing certain standards upon which such schedule of wages shall be based. It is specifically provided that the wages to be paid for a legal days' work to laborers, workmen or mechanics upon such public works "shall not be less than the wages paid in the same trade or occupation in the locality where such public work is being performed, under collective agreements or understanding, between bona fide organizations of labor and employers, at the date such contract is made." It is further provided in the same section that "serving laborers, helpers, assistants and apprentices shall not be classified as common labor and shall be paid not less than the wage prevailing in the locality for such labor as a result of collective agreements" of the character mentioned.

It is to be noted that there is nothing in this statute which suggests that in fixing a scale of wages, you are to be governed in any way by the terms of such collective agreements except that the scale which you set up shall call for wages that are not less than the wages prevailing in the locality as a result of such agreements.

You have attached to your letter a copy of the agreement between certain electrical contractors of Columbus, and Local Union No. 683, of the International Brotherhood of Electrical Workmen. This agreement, in addition to setting out the minimum rate of wages for foremen, journey-

men and apprentices, contains a number of other provisions defining specifically the relations between these employers and their employes. These include provisions calling for double pay on Sundays and holidays; provisions as to tools to be furnished by the employers and employes, respectively; pay for traveling time and transportation; board for employes under certain circumstances, and other provisions of like character.

You call my attention especially to certain portions of that contract, which is attached to your letter as Exhibit "B". Section 5, of that contract, as originally signed, under date of June 16, 1947, reads as follows:

"Sec. 5. The minimum rate of wages shall be:

Foreman $2.15
Journeyman 1.95
Apprentices:

Hrs. of employment		*of Journeymen rate*	*Per Hr.*
1st	500	41% " " "	$ .80
2nd	500	45% " " "	.88
2nd	1000	49% " " "	.96
3rd	1000	57% " " "	1.11
4th	1000	61% " " "	1.19
5th	1000	65% " " "	1.27
6th	1000	69% " " "	1.35
7th	1000	73% " " "	1.42
8th	1000	77% " " "	1.50

Section 7, reads as follows:

> "There shall not be more than one apprentice for the first two journeymen employed by an employer, and one additional apprentice for each four (4) additional journeymen employed thereafter."

From your letter I understand that a certain contractor, who was not a party to this agreement, has adopted practices which are considered unfair to contractors who are parties to the agreement, in that he has employed on work which was let to him what is claimed to be a disproportionate number of apprentices in relation to the journeymen employed. It is stated that he employed seven apprentices to only three journeymen, instead of employing one apprentice for the first two journeymen and one additional apprentice for each four additional journeymen, as provided by the agreement aforesaid. This would manifestly give him an advantage over the employers who are parties to the agreement aforesaid,

in that he, in effect is employing cheaper labor to do the work involved in his contract.

From the standpoint of the employers who are parties to the agreement in question, this amounts to unfair competition. Your question suggests the possibility that in fixing the wage scale for electrical workers in this area, you might give consideration to the provisions in this agreement which I have quoted relative to apprentices, and in some way prevent an independent contractor from taking this competitive advantage.

I am unable to find any basis upon which you could fix or alter the wage scale which the law authorizes you to set up, so as to prevent the situation to which you have called attention. The only possible authority which the law gives you in reference to a contract of the character set forth, is that the scale of wages which you fix for the various classes of employes involved, "shall be *not less than the wage prevailing* in the locality for such labor *as a result of collective agreements*" of the character in question. The other conditions contained in the contract in question are purely between the employers and the employes who are parties to the contract, the latter represented by the union. The provisions of this contract setting up a scale of wages are, by the law, made binding upon you; the provision relative to the ratio of apprentices to journeymen is binding only upon the parties to the contract. I can see no process by which you, in the exercise of your wage fixing authority, can prevent an outsider from taking advantage of his independent situation and securing a contract to his advantage. Such outside contractor must, of course, pay the scale of wages fixed by your department, but there is nothing in the law which compels him to employ the proportion of journeymen and apprentices stipulated in the contract.

Your second question is whether a failure on the part of the employer to comply with the provision in the agreement referred to, relative to the ratio of employment of journeymen and apprentices constitutes a violation of the prevailing wage laws of Ohio.

I must assume that your question contemplates that such violation on the part of the employer relates to an employer who is a party to the agreement in question, since manifestly a matter which arises solely from a contract could not impose a penalty for violation on one who is not a party to the contract. The statutes impose certain penalties for viola-

tion of the provisions of the law in question. Section 17-4b, General Code, imposes a penalty by way of fine of any public official authorized to contract for a public improvement who fails, before advertisement for bids, to have the department of industrial relations ascertain and determine the prevailing wage for the work to be performed. Section 17-5, General Code, requires that the contract for such public improvement shall require the successful bidder and all his sub-contractors to pay a rate of wages not less than the scale so fixed. The same section gives a mechanic or laborer on such work, who has been paid less than the prevailing wage thus established, a right to recover against the public authority the difference between the fixed rate of wages and the amount paid to him and in addition, a penalty equal to the amount of such difference.

Section 17-6, General Code, provides that any person or corporation who violates the wage provisions of such contract or who shall suffer, permit or require any employe to work for less than the rate of wages so fixed, shall be subject to a fine, and further provides that any employe who has been paid less than the fixed rate of wages, may recover the difference between the fixed rate of wages and the amount paid to him, and in addition thereto a penalty equal in amount to such difference.

Manifestly, the only statutory penalty that an employer, whether a party to the agreement in question or not, could incur, would be that above mentioned, for failure to pay an employe the amount fixed by the wage scale set up by your department, and his failure to abide by the agreement in question would certainly not subject him to prosecution or the imposition of a fine.

In specific answer to your questions, it is my opinion and you are advised:

1. In fixing the scale of wages to be paid mechanics and laborers for work on public improvements, as provided in Sections 17-4 and 17-4a, General Code, the department of industrial relations shall fix such scale at not less than the wages paid in any trade or occupation in the locality where such work is being performed, under collective agreements or understanding between bona fide organizations of labor and employers, at the date when the contract for such improvement is made.

2. The department of industrial relations has no authority in fixing

such scale of wages to take into consideration a provision in such agreement not relating to the minimum wages fixed therein, but dealing with the ratio of apprentices to journeymen to be employed under a contract for a public improvement.

3. The failure of an employer to comply with the terms of a collective agreement with an organization of employes contemplated by Section 17-4a, General Code, relative to the ratio of apprentices to journeymen, does not constitute a violation of the prevailing wage law of Ohio.

Respectfully,

C. WILLIAM O'NEILL
Attorney General.