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WAGES—PHRASES, “MECHANICS AND LABORERS” USED IN SECTIONS 4115.04 RC, 17-4 GC AND “LABORERS, WORKMEN OR MECHANICS” USED IN SECTIONS 4115.05 RC, 17-4a GC—DO NOT AUTHORIZE DEPARTMENT OF INDUSTRIAL RELATIONS TO ASCERTAIN AND DETERMINE PREVAILING RATES OF WAGES FOR A SURVEYING OR ENGINEERING PARTY, CHAINMAN, RODMAN, INSTRUMENT MAN AND PARTY CHIEF.

## SYLLABUS:

The phrases “mechanics and laborers” used in Section 4115.04, Revised Code, Section 17-4, G.C., and “laborers, workmen or mechanics” used in Section 4115.05, Revised Code, Section 17-4a, G.C., do not authorize the department of industrial relations to ascertain and determine the prevailing rates of wages for the following members of a surveying or engineering party, to wit, chainman, rodman, instrument man and party chief.

Columbus, Ohio, October 30, 1953

Hon. Margaret Mahoney, Director, Department of Industrial Relations  
Columbus, Ohio

Dear Miss Mahoney:

I have before me a communication from your department requesting my opinion and reading in part, as follows:

“The Department of Industrial Relations in performing its duties pursuant to the provisions of Sections 17-3 to 17-6 of the General Code, receives collective bargaining agreements between bona fide organizations of labor and employers for the purpose of certifying prevailing wage rates that are to be paid in connection with construction of public improvements in Ohio. Recently this department received an agreement made by and between the International Union of Operating Engineers, Local Union 18 and 18c, representing employees, and two contractors’ associations and 24 individual contractors, representing employers. This agreement contains the following statement:

“The purpose of this agreement is to establish wage rates and conditions of employment to apply in the construction industry for *workmen* of the following classifications:

| <i>Classifications</i> | <i>Weekly Salary</i> |
|------------------------|----------------------|
| Chainman .....         | \$ 72.00             |
| Rodman .....           | 87.00                |

| <i>Classifications</i> | <i>Weekly Salary</i> |
|------------------------|----------------------|
| Instrument Man .....   | \$102.00             |
| Party Chief .....      | 122.00'              |

"I underscore the word "workmen" as the designation given by the contracting parties to the classifications of chainman, rodman, instrument man and party chief.

"I call your attention to Attorney General's Opinion No. 809, dated October 9, 1951, wherein these classifications, among others, are discussed. \* \* \*

"I call your attention to the definition of the classifications of chainman, rodman, instrument man and party chief as contained in the Dictionary of Occupational Titles, Definitions of Titles, Volume I, Second Edition, March, 1949, published by the U. S. Bureau of Employment Security:

'CHAINMAN: Surveyor assistant, surveyor helper, tape man, measures distance by steel tape and cloth tape, sets stakes, clears brush and trees from survey line, etc.

'RODMAN: Surveyor assistant, surveyor helper, handles level rod, drives stakes, clears brush and trees from survey line, etc.

'INSTRUMENT MAN: Sets up, adjusts and operates engineers' level, transit or other surveyor's instrument; establishes angles and elevations, secures data pertaining to angles and elevations for construction, map making, mining or other purposes. Keeps notes, sketches or records of work performed or data secured. Exercises limited supervision or direction over chainman, rodman or other lesser members of surveying party.

'PARTY CHIEF: Surveyor who establishes lines, points and grades for highway construction work.'

"Do the phrases 'mechanic' and 'laborer' used in Section 17-4, G. C., and 'laborers, workmen and mechanics' as used in Section 17-4a, G. C., authorize the Department of Industrial Relations to ascertain and determine the prevailing rates of wages for persons classified as:

1. Chairman.
2. Rodman.
3. Instrument Man.
4. Party Chief."

Section 4115.04, Revised Code, Section 17-4, G. C., reads in part, as follows:

"Every public authority authorized to contract for or construct with its own forces a public improvement, before adver-

tising for bids or undertaking such construction with its own forces, shall have the department of industrial relations 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 \* \* \*.”

(Emphasis added.)

Section 4115.05, Revised Code, Section 17-4a, G. C., reads in part as follows:

“The wages to be paid for a legal day’s work, as prescribed in section 4115.04 of the Revised Code, to *laborers, workmen, or mechanics* upon 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 a contract is made. \* \* \*”

(Emphasis added.)

It may be noted that in the first of the above quoted sections the legislature has used the words “*mechanics and laborers*,” whereas in the second it has used the words “*laborers, workmen or mechanics*.” I have no doubt that both sections contemplate the same classes. As will hereafter be shown, it would appear that the word “*workmen*” might include both of the other named classes.

Your letter refers to my former opinion No. 809, Opinions of the Attorney General for 1951, page 580. The syllabus of that opinion is as follows:

“The phrase ‘*mechanic and laborer*’ as used in Section 17-4, General Code, and the phrase, ‘*laborers, workmen and mechanics*’ as used in Section 17-4a, General Code, do not authorize the Department of Industrial Relations to determine the prevailing rate of wages of technical and professional engineers in connection with work on public improvements.”

That opinion was rendered in answer to the following question:

“Does the phrase ‘*mechanics and laborers*’ as used in Section 17-4, G. C., authorize the Department of Industrial Relations to ascertain and determine the prevailing rate of wages for technical and professional engineers as classified in the schedule above referred to?”

It is obvious that I had no occasion in that opinion to ascertain the precise duties and determine the correct classification of the four employes to whom your present inquiry is directed. You now ask that I

determine specifically whether the following employes of a surveying party, to wit, chainman, rodman, instrument man and party chief, are included in the phrase "mechanics and laborers", as used in Section 4115.04, Revised Code, Section 17-4, G. C., and the phrase "laborers, workmen or mechanics" as used in Section 4115.05, Revised Code, Section 17-4, G. C., and whether those sections authorize and require your department to ascertain the prevailing rates of wages for chainman, rodman, instrument man and party chief.

The answer to this question makes it necessary to determine the proper classification of the four employes named in your letter, and also to determine the legal significance of the words, "laborers, workmen and mechanics," as used in the statutes from which I have quoted.

I note the definitions which you quote in your letter from the "Dictionary of Occupational Titles, Definitions of Titles, Volume I, Second Edition, March, 1949," published by the United States Bureau of Employment Security. I note further that these definitions as contained in your letter are not the full definitions set forth in the publication referred to, and for purposes of clarity I set out here the full text of the same:

"RODMAN: Surveyor assistant; surveyor helper. Holds level rod or stadia rod at points designated by Instrument Man (profess. & kin.) or Surveyor for purposes of establishing or obtaining the elevation of those points. Reads rod and calls out readings to Note Keeper or Surveyor. Marks points with elevation or an identifying mark. Carries and sets stakes if this is not done by Stake-man. Clears brush and trees from survey line if this is not done by Axman, Surveying. Locates points of established elevations with reference to other points by making measurements between the points. Performs other duties relating to surveying work as directed by Surveyor. The duties of this worker and those of Chainman, Surveying are interchangeable in most surveying parties.

"CHAINMAN, SURVEYING—Surveyor assistant; surveyor helper; tapeman, Measures distances as directed by Surveyor, using steel tape, cloth tape, or surveyor's chain. Marks measuring points with keel (marking chalk), scratches, tacks, or stakes. Carries and sets stakes, if this is not done by Stake-man. Cut and clears brush and trees from survey line, if this is not done by Axman, Surveying. Performs other duties relating to surveying work as directed by Surveyor. The men work in pairs, the head chainman holding the advanced end of tape and establishing the most advanced measuring point, while

the rear chainman holds the rear end of tape at last established measuring point. These duties and those of Rodman are interchangeable in most survey parties.

“INSTRUMENT MAN—Sets up, adjusts, and operates an alidade, engineer’s level, transit, and other surveying instruments to establish angles and elevations, or to secure data pertaining to angles and elevations for construction map making, mining, or other purposes. Keeps notes, sketches, and records of work performed or data secured (Note Keeper). Exercises limited supervision and direction over Chainman, Surveying; Rodman (any ind.); and lesser members of survey party. Is frequently the Surveyor, has full supervision over other members of the surveying party, and is responsible for the quality of work done. May perform duties of Chainman, Surveying.

“PARTY CHIEF—SURVEYOR—Chief of party; party chief. Supervises, directs, and is responsible for the accuracy of the work of an engineering survey party engaged in determining the exact location and measurements of points, elevations, lines, areas, and contours on the earth’s surface for purposes of securing data for construction, map making, land valuation, mining, or other purposes. Calculates information needed to conduct survey from notes, maps, deeds, or other records. Keeps accurate notes, records, and sketches of work performed or data secured. Verifies by calculations the accuracy of survey data secured. Adjusts surveying instruments to keep them accurate, or oversees the adjustments (Instrument Man) as a regular part of his duties. Different branches and types of surveying require special techniques gained through experience or training and Surveyors are designated by title according to the type of surveying work performed.”

Here, “party chief” is treated as synonymous with “surveyor,” who is certainly not a laborer, workman or mechanic, but rather the head of a surveying crew.

There have been furnished to me affidavits of several registered professional engineers and surveyors, all with many years of practical experience, describing the character of work required of these several employes.

Typical of these statements I quote from the affidavit of one :

“Rodman, Chainman, Instrument men and Chiefs of Party are usually employed as a crew, each one of whom must be familiar with the job of transferring land measurements to notes for the use of designers and then transferring the finished

designs to the ground for construction purposes. Each member of the crew must exercise judgment and know basic principles of survey, design and construction. There are many different phases to this work, such as land surveying, taking topography, making location surveys, and lay-out work for construction. In these several operations the various positions become critical at times because of the accuracy required. For instance in land surveying it is not unusual for a head Chainman to be a professional man. In taking topography the Rodman must know what points on the ground it is necessary to reflect by measurement and elevation in order to secure a contour map projection. The Instrument man likewise must know what angles it is necessary to turn, where his base lines are located and have some knowledge of astronomy. In fact, each member of the crew acts as an assistant surveyor. There are incidental jobs of a manual nature which may be performed by a member of the group, such as carrying stakes, driving stakes, brushing out a line, etc. However, if any one of these tasks becomes arduous or time consuming, it is normal practice to hire laborers to do the work. \* \* \*

“Affiant further says that historically the duties of Rodman and Chainman have been considered to be of a professional nature and, therefore, in most instances these positions are filled with apprentice engineers or those people interested in eventually obtaining the right to practice as a professional engineer.”

The others fully bear out his statement.

In my former opinion, to which reference has been made, a number of cases were cited indicating the view of the courts as to the definition of the terms “laborer,” “workmen” and “mechanic.”

Referring particularly to “workman,” it was said in *Cohen v. Rosal-sky*, 246 N.Y.S., 299, that a “workman is one employed in manual labor, skilled or unskilled, an artificer, mechanic or artisan.” To like effect, *Railway Company v. Wallace*, 38 Okla., 233; *State v. Ottawa*, 84 Kan. 100; 71 C. J., 176.

Many other cases might be cited bearing on the same subject. Among others I note the case of *Sim v. State*, 254 N.Y.S., 150, in which the court held that an inspector of engineering work was not a laborer or workman within the meaning of the statute authorizing claims against the state for failure to pay prevailing rates of wages. In the course of the opinion, the court said that the fact that this employe sometimes performed manual labor in connection with his work did not change the

general nature of his employment, which was of a professional character. In the case of *Railway Company v. Leuffer*, 84 Pa., 168, the court distinguished between employes who were engaged in engineering work and those denominated as laborers or workmen. That was a case where the law gave the workmen and laborers a lien on the property of a railroad for their wages. The court, in the course of its opinion said :

“When we speak of the laboring or working classes, we certainly do not intend to include therein persons like civil engineers, the value of whose services is rather in their scientific than in their physical ability. We therefore intend those who are engaged not in head but in hand work, and who depend upon such hand work for their living.”

Many like cases are cited in “Words and Phrases.” The gist of all these cases is to the effect that the terms “laborer,” “workman,” and “mechanic” include those whose work depends on strength of body or skill of hands, and exclude those whose work is of a more or less professional character.

Further light is thrown upon the proper classification of the employes referred to in your request by the manual of the Ohio Society of Professional Engineers, where reference is made to “engineers in training” who occupy in the surveying party such positions as chainman, rodman, and instrument man. Among the minimum qualifications for entrance into what is called “Grade I - Engineer in Training,” are that the candidate must be a graduate of an accredited senior high school, and must have the “ability to carry out written and oral directions and some knowledge of engineering terms and equipment.” As examples of the work performed by these, the following is given :

“Under immediate supervision, to assist in engineering work by performing simple technical tasks and manual work in office, field or laboratory as assigned; to perform the usual work of a rodman, chainman, tracer or junior laboratory assistant.

“Assisting in a survey party as rodman or chainman; acting as weighmaster or load checker; plotting sections, reducing notes, computing earthwork sheets, checking areas, and checking such work done by others; making tracings of drawings, plans, etc., made by others; working at laboratory with materials; or generally doing work of equal difficulty and responsibility.”

In the light of the above considerations I must conclude that the generally accepted qualifications and duties of rodman, chainman, instru-

ment man and party chief make them essential parts of an engineering or surveying crew, that their duties are professional in nature, and that they are not properly classed as laborers, workmen or mechanics within the purview of the laws relating to prevailing wages and the duties of your department in fixing the scale of such wages.

It should also be noted that the statutes above quoted refer only to employes who are to be used in the "construction" of a public improvement. The work of a surveying crew would appear to be preliminary not only to "construction" but in many cases even to the preparation of plans for a contemplated improvement. It may readily happen that the survey and plans which follow will develop reasons which cause the public authority to decide not to construct the proposed improvement. Therefore, it does not appear that this preliminary work, or the employes engaged in it could be brought within the purview of those statutes.

Accordingly, in specific answer to the question submitted, you are advised that in my opinion the phrases "mechanics and laborers," used in Section 4115.04, Revised Code, Section 17-4, G. C., and "laborers, workmen or mechanics" used in Section 4115.05, Revised Code, Section 17-42, G. C., do not authorize the department of industrial relations to ascertain and determine the prevailing rates of wages for the following members of a surveying or engineering party, to wit, chainman, rodman, instrument man and party chief.

Respectfully,

C. WILLIAM O'NEILL

Attorney General