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ENGINEERS—DEPARTMENT OF INDUSTRIAL RELATIONS —MECHANIC AND LABORER—LABORERS, WORKMEN AND MECHANICS—PHRASES USED IN SECTION 17-4a G. C.— DEPARTMENT NOT AUTHORIZED TO DETERMINE PREVAILING RATES OF WAGES OF TECHNICAL AND PROFESSIONAL ENGINEERS—WORK ON PUBLIC IMPROVEMENTS.

SYLLABUS:

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 rates of wages of technical and professional engineers, in connection with work on public improvements.

Columbus, Ohio, October 9, 1951

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"It is the custom of the County Engineer of Cuyahoga County, pursuant to the provisions of Sections 17-4 and 17-4a, General Code, to have the Department of Industrial Relations ascertain and determine the prevailing rates of wages for workmen on construction projects, for use as a guide on force account work and for incorporation into county construction contracts as minimum requirements in the matter of rates of wages paid by the contractor to his employes.

"On June 27, 1951 the Department of Industrial Relations certified to the County Engineer a schedule of the prevailing rates of wages effective July 1, 1951. However, in addition to the usual and customary rates of wages for mechanics and laborers in the building and construction trades, there was included in this schedule a tabulation of rates for a new classification entitled 'technical and professional engineers', which had not been included in any previous schedule. A copy of the tabulation of technical and professional engineers as certified by the Department of Industrial Relations is hereto attached.

"Section 17-4, G. C., relating to the prevailing rates of wages to be paid in the construction of a public improvement,

requires the Department of Industrial Relations to ascertain and determine such prevailing rates of wages for 'mechanics and laborers for the class of work called for by the public improvement.' The County Engineer raises the question whether the phrase 'mechanics and laborers' is sufficiently broad to permit the Department of Industrial Relations to include the various classifications of technical and professional engineers in the certification. The County Engineer poses the following questions upon which your opinion is respectfully requested:

'1. 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 rates of wages of technical and professional engineers as classified in the schedule above referred to?

'2. If the answer to question 1 is in the affirmative, is the County Engineer required to pay the rates fixed to his employes in the new classifications when engaged in engineering work incident to force account construction?

'3. Does the new classification apply to the County Engineer's office workers who draw plans, write specifications, etc. leading to working drawings for construction work?

'4. Does the new classification apply to engineering personnel engaged in the direction and supervision of construction contracts?

'5. Does the new classification apply to work on preliminary surveys producing data for the preparation of construction plans?

'6. Does the new classification apply to personnel engaged in engineering and survey field work other than construction, such as land surveys for building sites or for new right of way?

'7. Is the County Engineer required to incorporate all of the classifications of technical and professional engineers in the schedule in the proposal blanks and bid forms issued to contractors bidding on county construction projects?' "

The tabulation of the scale of wages for technical and professional engineers issued by the Department of Industrial Relations and referred to in your letter, reads as follows:

"TECHNICAL AND PROFESSIONAL ENGINEERS

Classification	*Weekly Salary*
Rodman	$ 80.00
Tracer	80.00
Chainman	65.00
Tracer and Junior Draftsman	65.00
Instrument Man	95.00
Draftsman and Material Inspector	95.00
Party Chief	115.00
Assistant Designer	115.00
Project Engineer	130.00
Designer	130.00"

The statutes commonly referred to as the "prevailing wage law" had their beginning in the enactment of Sections 17-3 and 17-4, General Code, 114 Ohio Laws, 116. Section 17-3 contains definitions of terms used in the law, but does not define "laborers," "workmen" or "mechanics." Section 17-4, as originally enacted, read as follows:

> "Any public authority authorized to contract for a public improvement may, before advertising for bids for the construction thereof, fix and determine a fair rate of wages to be paid by the successful bidder to the *employees* in the various branches or classes of the work, which shall not be less than the prevailing rate of wages paid for each such branch or class in the locality wherein the physical work upon such improvement is to be performed. The rate of wages so fixed shall be printed on the bidding blanks."

Later, Section 17-4 was amended and Section 17-4a was enacted. Section 17-4 as now in force, reads as follows:

> "It shall be the duty of every public authority authorized to contract for or construct with its own forces for 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; 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. * * *"

Section 17-4a reads as follows:

> "The wages to be paid for a legal day's work, as herein-

before 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 understanding, 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 labor and shall be paid not less than the wage prevailing in the locality for such labor as a result of collective agreements or understanding between bona fide organizations of labor and employers, at the date such 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. The wages to be paid for a legal day's work, to *laborers, workmen or mechanics upon any material to be used upon or in connection therewith,* shall not be less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where such public work on, about or in connection with such labor is performed in its final or completed form is to be situated, erected or used and shall be paid in cash. Such contracts shall contain a provision that each laborer, workman or mechanic, employed by such contractor, sub-contractor or other person about or upon such public work, shall be paid the wages herein provided. No contractor or sub-contractor shall sublet any of the work covered by such contract unless specifically authorized to do so by the provisions of the contract.

"Where contracts are not awarded or construction undertaken within ninety days from the date of the establishment of the prevailing rate of wages as provided in section 17-4 of this act, there shall be a redetermination of the prevailing rate of wages before the contract is awarded."

Attention is called to the language of Section 17-4, supra, as originally enacted, in that it required the public authority itself to fix and determine a fair rate of wages to be paid by the successful bidder on a public contract to the "employes" in the various classes of work. In the amendment, whereby the prevailing scale of wages was to be determined by the Department of Industrial Relations, the word "employes" was dropped and "mechanics and laborers" substituted. In the enactment of Section 17-4a at the same time the legislature used the words "laborers, workmen and mechanics." This change seems to me to be significant, since the word "employes" would be of much wider scope than "mechanics and laborers" or "laborers, workmen and mechanics." "Employes" would

include those who are engaged in professional work, as well as manual laborers. Lewis v. Dawson, 6 O. C. C., 243. We must ascribe to the legislature in making the change above noted, an intention to confine the provisions of the law to the classes named rather than to extend it to all employes who might have some part in a public work.

We may well begin with the definition of the terms used in the law. Turning to Webster's Unabridged Dictionary, we find the following definitions:

> "Laborer': one who works at a toilsome occupation; a person who does work which requires strength, rather than skill."
>
> "'Workman': one who does relatively skilled work, as contrasted with a laborer."
>
> "'Mechanic': one who practices any mechanical art; one skilled or employed in constructing, requiring or using machinery or tools."

Since your inquiry relates to an engineer, I note Webster's definition of "engineer" to be:

> "One versed in, or who follows as a calling or profession any branch of engineering as, a civil, military, electrical, mining, or structural engineer."
>
> "'Civil engineering': the design, construction and maintenance of public works."

The words above referred to, have been construed in a great many decisions. It seems unnecessary to recite authorities as to the meaning of the word "laborer" as used in the statutes, because by general agreement the courts follow pretty closely the definition above given, quoted from Webster. A "workman" is one employed in manual labor, skilled or unskilled, an artificer, mechanic or artisan. Cohen v. Rosalsky, 246 N. Y. S., 299, 301; one required to use his hands to a considerable degree in manufacturing or building or in similar pursuits; he may be skilled or unskilled; he may or may not be aided by tools and machinery. In re Greenwald, 9 F. 705. "Workman" is the general term which is applied to one who does relatively skilled work, as contrasted with a "laborer." State v. City of Ottawa, 84 Kans. 100.

In some decisions, "laborer" and "workman" are regarded as synonymous. Atlanta v. Hatcher, 31 Ga. App., 633; Leuffer v. Pennsylvania & D. R. Co., (Pa.), 11 Phila., 548.

A "mechanic" is a workman employed in shaping and uniting materials, such as wood, metal, etc., into some kind of structure, machine, or other object requiring the use of tools. Story v. Walker, 79 Tenn. (11 Lee) 515; Merrigan v. English, 9 Mont. 113, 5 L. R. A. 837.

Authorities indicating the same line of distinction might be cited in large numbers. In the case of Sim v. State, 254 N.Y.S., 150, it was held that an inspector of engineering work was not a laborer, workman or mechanic within a statute authorizing claims against the state for failure to pay the prevailing rates of wages.

In the case of State v. Rust, 55 Wis., 465, it was held that members of the engineers' corps are not to be included in the term "laborers" in the statute requiring railroad companies to pay to the Governor a certain sum to be expended by him in paying the claims of laborers.

A civil engineer was held not to be a laborer, in Railroad Company v. Leuffer, 84 Pa., 168; McPherson v. Stroup, 100 Ga. 228. Mechanical engineers, electrical engineers, and all that class of employes whose employment is associated with mental skill and labor, are not considered laborers. State ex rel, Grocery Company v. Land, 108 La., 512.

It is obvious that not all of the employes mentioned in the classification supplied by the department of industrial relations in the case you present, are engineers. Most of them are engaged in work which calls for a certain degree of special professional training. However, it is possible that some of the positions named may be filled by men who might be classed as laborers. I do not consider that it is necessary for me, in answering your question, to attempt to draw the precise line. It is my opinion that the General Assembly in enacting the laws in question had in mind only men who work with their hands, and who are included in the commonly accepted definitions of "mechanic", "workman" and "laborer", and did not intend to include persons whose work is based on professional training.

Accordingly, in the specific answer to your first question it is my opinion that 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 rates of wages of technical and professional engineers, in connection with work on public improvements.

The answer to this question seems to make it unnecessary to consider your remaining questions.

Respectfully,

C. WILLIAM O'NEILL
Attorney General