

March 23, 2010

Kenny Kent
88543 Weiss Estates Lane
Bandon, OR 97411

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Bandon High School Bleacher Replacement
Requested by: Kenny Kent

Dear Mr. Kent:

On February 22, 2010, you submitted a request asking if the Prevailing Wage Rate law would apply to a project to replace the bleachers in the Bandon High School gymnasium. Sufficient information to make a determination was received on February 25, 2010, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. The Bandon School District owns the Bandon High School, which includes the gymnasium in which the bleachers will be replaced.
2. Creating Healthy and Safe Environments, Inc. ("CHASE") is a private non-profit entity that was first registered with the Oregon Secretary of State Corporation Division in 1992. CHASE's stated goal is to protect children within the Bandon School District. CHASE sponsors offerings such as leadership classes and drug and alcohol prevention summits, and also raises money for school projects.
3. A group of local Bandon-area citizens established a group called The Bandon Bleacher Committee ("BBC"). CHASE and BBC have raised enough money in private donations to pay for the installation of new bleachers at the Bandon High School.
4. Bandon School District personnel will assist CHASE volunteers in removing the existing bleachers from the Bandon High School.
5. CHASE will purchase a bleacher package, which includes installation of the bleachers, for approximately \$63,000. CHASE will donate the bleachers to the Bandon School District.

6. Bandon School District personnel will ensure the new bleachers meet all safety requirements, but will not have substantial control over the project.
7. No funds of a public agency will be used on this project, either directly or indirectly.

CONCLUSIONS OF LAW

1. The Bandon High School Bleacher Replacement project is a publicly-owned improvement that involves reconstruction. Therefore, the definition of “public works” under ORS 279C.800(6)(a)(A) needs to be considered for applicability to this project.
2. The Bandon School District will not be contracting for this project, and therefore the project is not being “contracted for” by a public agency. The School District will not exercise substantial control over this project, and therefore the project is not being “carried on” by a public agency. As such, the project does not meet the definition of “public works” under ORS 279C.800(6)(a)(A).
3. Even if the Bandon High School Bleacher Replacement project was a public works under ORS 279C.800(6)(a)(A), the exemption from the prevailing wage rate laws applies for projects which use no funds of a public agency, either directly or indirectly. ORS 279C.810(2)(b)

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will not apply to the Bandon High School Bleacher Replacement project.

This determination is based on the agency’s file as of the date of this determination. The commissioner may make a different determination if any of the project information is incorrect, or if the project or project documents are modified or supplemented after the date of this determination.

REQUEST FOR A RECONSIDERATION

After the commissioner issues a determination, the requestor or any public agency served with a copy of the determination may request that the commissioner reconsider the determination. A request for reconsideration must be submitted in writing to the Prevailing Wage Rate Unit, must include the reason or reasons for the request and any documents in support of the request, and must be received within 15 calendar days of the date the determination was mailed. A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.

RIGHT TO A HEARING

The requestor and any person adversely affected or aggrieved by this determination are entitled to a hearing as provided by the Administrative Procedures Act (ORS 183.413 to 183.470) and ORS 279C.817. If you want a hearing, the Bureau of Labor and Industries, Wage and Hour Division must receive your written request for hearing within 21 days from the date this notice was mailed. Hearing requests should be addressed and delivered to:

Administrator
Wage and Hour Division
Bureau of Labor and Industries
800 NE Oregon St., Suite 1045
Portland, Oregon 97232

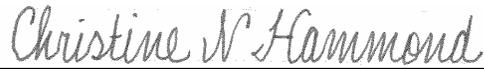
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel or an authorized representative. If you request a hearing, you will receive information on Contested Case Rights and Procedures before the hearing. After the hearing, an order confirming, modifying, or reversing this determination will be issued. This determination shall remain in effect until the final order is issued.

If you request a hearing, but fail to appear at any scheduled hearing, you will have waived your right to hearing, and the commissioner may issue a final order by default. If the commissioner issues a final order by default, the agency file on this matter shall serve as the record for purposes of proving a prima facie case. You are not entitled to judicial review of this determination order unless you have made a timely request for a hearing.

Date: March 23, 2010

Brad Avakian, Commissioner
Bureau of Labor and Industries



Christine N. Hammond, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On March 23, 2010, I mailed the Prevailing Wage Rate Determination for the Bandon High School Bleacher Replacement project to the requestor, interested parties and public agencies associated with the project, as follows:

Kenny Kent
88543 Weiss Estates Lane
Bandon, Or 97411

Amy Remy, President
CHASE Inc.
PO Box 1955
Bandon, OR 97411

LeeAnn Gibson, Chair
Bandon Bleacher Committee
PO Box 2110
Bandon, OR 97411

Diane Buche, Superintendent
Bandon School District
455 9th Street SW
Bandon, OR 97411

Nancy Peters
Bandon School District Board of Directors
455 9th Street SW
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Susan Wooley
PWR Technical Assistance Coordinator
Wage and Hour Division
Bureau of Labor and Industries