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Decision No. 93183 June 2, 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Investigation on the Commission's own motion into the definition, criteria and procedure for determining prevailing wages for use in the establishment of carrier-filed rates.

OII 53
(Filed July 3, 1979)

(See Decision No. 91265 for appearances)

ORDER STAYING EFFECTIVITY OF STAFF PREVAILING WAGE REPORT

This order stays the effectivity of the prevailing wage report of the Transportation Division of the Commission's staff. That report was circulated May 13, 1981 to all appearances in OII 53, all appearances in Case No. 5432, Petition 884, et. al., and all carriers who have filed rate reductions since that date under the Commission's trucking reregulation program. It will also be furnished to individuals upon written request. It provides wage levels which are to be used in developing labor costs in rate reduction filings under the Commission's reregulation program. For the reasons below, we conclude that a petition filed by the California Teamsters Public Affairs Council (Teamsters) requesting a stay of the effectivity of the report should be granted.

The background of this order is as follows. In Decision 91265, the Commission adopted a methodology for calculating prevailing wages for use in justifying rate reductions permitted by Decisions Nos. 90663 and 91861 under the reregulation program. Briefly, a rate reduction is permitted if the carrier's rate will contribute to profitability when the prevailing wage (not the carrier's actual labor cost) is imputed as the labor cost component in a justification statement detailing all costs incurred in a particular haul. Imputation of the prevailing wage in a cost justification statement ensures that competition between carriers will occur on the basis of efficiency of operations, not union versus non-union wages. In Decision 91265, the Commission ordered its staff to determine actual prevailing wages on the basis of a definition of prevailing wage as:

> "(1) The rate of wages paid in the area in which the work is to be performed, to the majority of those employed in that classification in transportation in the geographic zone similar to the proposed undertaking.
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> (2) In the event there is not a majority paid at the same rate, then the rate paid to the greater number: Provided, such greater number constitutes 30 percent of those employed, or
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> (3) In the event that less than 30 percent of those so employed receive the same rate, then the average rate."

It envisioned the reregulation program going into effect on April 30, 1980. It also envisioned a certain amount of delay as the staff conducted the survey of California carriers referred to above. It further took cognizance of the fact that Teamster wages are modified on April 1 and October 1 of each year to reflect annual wage increases and/or cost of living adjustments (COLAs) under the Teamsters' contracts. The decision provided that the staff was therefore to publish on July 1 and January 1 of each year a prevailing wage report which reflected the COLA which took effect three months previously. The first staff report was to be issued July 1, 1980. Until that report was issued, Decision 91265 provided that the Teamsters' contract wages then in effect were deemed the prevailing wage.

Due to numerous problems which need not be discussed here, our hope for publication of a prevailing wage report on July 1, 1980 proved to be overly optimistic. Thus, Teamsters' contract wages have continued until now to serve as the prevailing wages for purposes of justification statements. The report which was to be published July 1, 1980 has just recently been published, as noted above. That report does not reflect the annual wage increase and COLA granted April 1, 1981.

In its petition to stay the effectivity of the staff report, the Teamsters Public Affairs Council accurately points out the fact that Decision 91265 envisioned at most a three month delay between the effectivity of a COLA increase under the Teamster contracts and the publication of a prevailing wage report. The staff report just published is now eight months behind the COLA it took cognizance of. Because it does not reflect the April 1, 1981 increase, it contains wage figures which are, in several important categories, dollars below the wage figures applicable under Teamster contracts. If a non-union carrier filing a rate reduction justification statement based his labor cost figure on the staff report, that carrier would have a distinct competitive advantage over a unionized carrier filing a cost justification statement which reflected his actual (e.g., union) labor costs. While we value competition under our reregulation program, and while it is evident that very brisk competition is developing in the carrier industry, we do not find it appropriate for that competition to proceed solely on the basis of union versus non-union labor costs. Such competition is unfair to organized labor and to unionized carriers in the transition period of our reregulation program.

Accordingly, we find good cause to order carriers to continue to use the wage figures applicable under the currently effective Teamsters' Western States Area Master Agreement and the California Intrastate Truckload Supplemental Agreement in all rate reduction justification statements, until further order of the Commission. This order simply serves to extend the status quo pending the staff's issuance of a prevailing wage report which accurately reflects the most recent COLA within the time framework envisioned in Decision 91265.

It is apparent that many parties, including the Teamsters, have questions regarding the staff's computation of the prevailing wage. Informally, the Commission has been informed that the California Manufacturers' Association (CMA) believes the staff's figures are too high. The Teamsters believe that even if the April 1, 1981 COLA was included in the staff's computation, the staff's figures would be too low. The Department of Industrial Relations (DIR) has commented that, although the staff obtained a 100 percent response to its intensive survey, no survey should have been done at all in such areas as San Francisco, Oakland and Los Angeles, since in its view a survey produces a misleading fictional average under the definition adopted in Decision 91265. The Teamsters question, among other things, whether the staff has properly loaded the concept of "the same rate", as it appears in Decision 91265, into its computer program for analyzing the survey data. The Teamsters therefore suggest that informal workshops be held, at which the Teamsters, CMA, DIR, California Trucking Association and all interested carriers could discuss with staff how the data was collected and analyzed. Our staff is prepared to allow interested parties to examine both the data and the staff's computer program in order that questions about the prevailing wage report may be laid to rest. Staff will protect proprietary information supplied by the carriers in response to the survey by insuring that no data can be attributed to any particular carrier. We believe that the workshop process can lead to faster issuance of the prevailing wage reports in the future.

Findings of Fact

1. The Commission's Transportation Division issued on May 13, 1981 a prevailing wage report prepared pursuant to Decision No. 91265.

2. The prevailing wage report contains wage levels which are to be used in developing labor cost figures in rate reduction justification statements under the Commission's reregulation program.

3. The report reflects COLA wage increases which took effect under Teamster contracts on October 1, 1980 but not the annual wage and COLA increases which took effect on April 1, 1981; the wage levels are therefore dollars below those set by the Teamster contracts now in effect.

4. Decision No. 91265 envisioned at most a three-month delay between the effective date of a COLA increase under the Teamster contracts and the issuance by staff of a prevailing wage report; the staff's recently issued prevailing wage report is not within that time framework.

5. Allowing carriers to file rate reduction statements based on the wage levels contained in the staff's recently issued prevailing wage report would lead to non-union carriers having an unfair competitive advantage over union carriers during the transition period of the Commission's reregulation program.

Conclusion of Law

1. The Commission should issue a stay of the effectivity of the prevailing wage report prepared by the staff of the Transportation Division.

O R D E R

IT IS ORDERED that:

1. Until further order of the Commission, carriers are to use the wage figures applicable under the currently effective Teamsters' Western States Area Master Agreement and the California Intrastate Truckload Supplemental Agreement in all rate reduction cost justification statements where the actual wages are below the levels of such agreements.

2. The effectivity of the staff's recently issued prevailing wage report is stayed until further order of the Commission.

3. As suggested in the Teamsters' petition, staff shall hold informal workshops with all interested parties in order to answer questions concerning preparation of the prevailing wage report.

4. A copy of this decision shall be served on all appearances in OII 53, all appearances in Case No. 5432, Petition 884, et. al., and all carriers who have filed rate reductions since May 13, 1981

The effective date of this order is today.

Dated June 2, 1981 at San Francisco, California.

John E. Bryson

Richard D. Gravelle

Leonard M. Grimes, Jr.

Victor Calvo

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.