

**ANALYSIS OF CLASSIFICATION WAGE RATE
AND BENEFIT STRUCTURE FOR OMNI LLC,
LOUISVILLE, KENTUCKY PROJECT**

I. Applicable Local Ordinance and State Statute (January 2015)

- Partial funding for the Omni LLC project (the “Project”) was provided by Metro Louisville under the provisions of Louisville Metro Ordinance (“LMO”) § 37.75.
- This Ordinance creates several requirements for Taxpayer Increment Financing (“TIF”) projects, including the creation of a prevailing wage structure for the Project.
- The Ordinance cites to Kentucky statutes regarding the procedure for determining a prevailing wage, **but does not adopt the state prevailing wages.**
- The Ordinance looks to the Executive Director of the Human Relations Commission to make this determination following the process outlined in KRS 337.505. *See* LMO § 37.75 *Prevailing Wage* (b).
- The Executive Director had not, however, published any prevailing wage rates to be used on the Project or any other construction projects that could be found or used as guidance for the Project.

II. Confirmation of Wage Rates and Benefits by Audra Collins, Commonwealth of Kentucky, Department of Workplace Standards (March 1, 2015 – May 4, 2015)

- Because of confusion created by the Ordinance regarding the appropriate prevailing wage rates to use, Omni Hotel and Resorts, the Project owner, and Brasfield & Gorrie (“B&G”), the General Contractor on the Project, made a good faith effort to identify the appropriate prevailing wage rates in April 2015.
- Specifically, counsel for B&G had several telephone conversations with Audra Collins, an official with the Kentucky Labor Cabinet, responsible for the process of determining the appropriate prevailing rates on state-funded projects. Counsel was advised by Ms. Collins that no Kentucky Prevailing Wage Rates would be issued for the Project.
- Ms. Collins was informed by counsel that the Project was a signature TIF project and that a portion of the funding would come through Louisville Metro Government.
- Ms. Collins advised counsel that the fact of it being a TIF project made no difference. Ms. Collins understood and agreed that the Federal rates would be the most particularized rates to use.
- Ms. Collins confirmed that no Kentucky rates and benefits were applicable, and made the point several times that the state prevailing rates and benefits were inapplicable.
- Ms. Collins identified the federal prevailing wage rates as the correct rates and benefits to be used by Omni and B&G on the Project.

III. Confirmation of Rates and Benefits for the Project by Office of Mayor (September 2015)

- The Carpenters Union raised questions with members of the Council and the Mayor’s office objecting to the established rates.

- In response, the Office of the Mayor, in a letter signed by Kellie R. Watson, General Counsel, on September 1, 2015, issued its conclusion that Omni and B&G were using the correct wage and benefit rates.
- In reliance on the representations from the Kentucky Labor Cabinet and the Office of the Mayor, Omni and B&G proceeded to engage in significant budgeting and bidding efforts and in communications with potential subcontractors.
- In turn, those subcontractors submitted bids in reliance on the prevailing wage and benefit rates confirmed by the Kentucky Labor Cabinet, the Office of the Mayor, and counsel for B&G. Competitive bids were received and accepted from both union and open shop contractors.

IV. Confirmation of Rates and Benefits for the Project by the Human Relations Commission (December 2015 – February 2016)

- At the insistence of the Carpenters Union, the wage and benefit rate issue ultimately ended up before the Executive Director of the Human Relations Commission, as contemplated by LMO § 37.75.
- There was no dispute that the April 2015 Federal wage and benefit rates were appropriate to use for every trade on the Project except for the Drywall Hanging and Metal Stud Installation trade.
- For that trade only, the Carpenters Union argued that the Federal wage and benefit rates should not be used, and instead attempted to require reliance on a Kentucky wage rate sheet published after B&G's initial round of bids.
- On February 5, 2016, the Executive Director of the Human Relations Commission, Ms. Miller-Cooper, reached a determination that “the rates used for this project are to come from the USDOL.”
- She also determined that “the fringes should be the amount established by O/B&G.”
- Ms. Miller-Cooper created a blended prevailing wage rate of \$20.47 for Drywall Hanging and Metal Stud Installation.
- Under the Ordinance, this determination was final.

V. Confirmation of Human Relations Decision by Jefferson County Circuit Court (March 2016 – October 2016)

- Despite the ruling from the Human Relations Commission and representations from the Office of the Mayor and the Kentucky Labor Cabinet, the Carpenters Union further pressed the issue in Jefferson Circuit Court and sued Metro Louisville.
- After briefing by both parties, the Jefferson Circuit Court dismissed that lawsuit on October 28, 2016.
- No appeal was taken and the wage and benefit rate determination was final and binding on all parties.

VI. Events of May 24, 2017, May 25, 2017 and May 26, 2017

- On May 24, 2017, David O. Suetholz, Attorney for IKORCC, and union representatives acting in concert with Mr. Suetholz persuaded approximately 70 employees of Professional Drywall Concepts, Inc. (PDC) to strike the Project.
- Those employees were told by Mr. Suetholz that the rates being paid on the Project were below the IKORCC Carpenter rates that should be paid on the Project.
- On May 24, 2017, at 11:30 a.m. approximately 45 employees assembled in a meeting where they were advised, through a translator, the status of the dispute, the reasons for the established rates on the Project and actions which could lawfully be taken by their employer which could result in their permanent replacement on the PDC work crew. The employees at the meeting returned to work; the striking employees remained on strike.
- On May 25, 2017, at approximately 1:15 p.m. Sergio Callejas, of PDC, was advised by a letter from Suetholz that the workers on strike against the “Omni Louisville hotel” were making an unconditional offer to “return to work.”
- All striking PDC workers returned to work the following morning and have continued working since that date.
- The PDC workers are engaged exclusively in the performance of drywall hanging, metal stud installation and laborer tasks.
- Those workers, as identified by Mr. Suetholz, were predominantly Latino. Based on information and belief, it is B&G’s understanding that most of those workers had been moved to the Project by PDC from other PDC job sites.
- B&G neither knew nor considered the race, nationality, ethnicity or any other personal characteristic of the employees or who might ultimately perform the work for each of the many trades identified on the rate sheet.
- The rates being paid on the Project, both before the strike and subsequent to the strike, have remained unchanged. No rate on the Project was identified as a residential rate.
- Contractors working on the Project have uniformly been required to pay the wages and benefits which were established for the classifications applicable to the Project. Those established rates and benefits were finally approved by the Metro Louisville Jefferson County Human Relations Commission on November 17, 2015, and affirmed by court order on October 28, 2016.

VII. Wage Rate and Benefit Contribution Confirmation Process by B&G for Omni, LLC, Louisville, Kentucky Project (Duration of Project)

- Subcontractor(s) for B&G submits payroll to B&G onsite payroll administrator within 7 days of the date of the subcontractor’s check to the employee.
- Enhanced Management Administrative Reporting System (eMARS) verifies approximately 35 items, including those set forth below, for confirmation of accuracy in the payroll process. Subcontractor’s payroll documents are “red flagged” if they are not in compliance with the law. Only authorized persons for B&G and Project subcontractors enter original and revised payroll information. Items verified or stored include but are not limited to the following:
 - Payroll to be submitted in date order from the start of work by the subcontractor on the project;

- The rate per the prevailing wages in the contract for each classification, including fringes;
- Verify that OT is paid at 1.5 contract base rate plus fringes;
- Identify anyone who has not had payroll related taxes properly deducted;
- Store employee information for reporting and audit (future); and
- Store information for MBE/WBE reporting.
- Payroll Administrator verifies but cannot change the following:
 - That hours reported on daily reports match payroll reports;
 - That employees reported on daily reports match payroll reports;
 - That fringe benefits claimed as credit by subcontractor(s) are allowed under the law;
 - That other deductions claimed by subcontractor(s) are allowable under the law and to ensure that no kickbacks occurred;
 - That classification of employees reported on daily report matches classification reported on payroll;
 - That payroll is submitted in a timely manner;
 - That equipment operated is reported correctly on payroll, for employee who operated such equipment;
 - That equipment on daily report is defined properly, with proper information easily identifiable by staff;
 - That payroll submissions and other required information by Omni representative on site, has been provided per contract (including all original submissions and revisions); and
 - That if errors are found, contractor will be notified, and submitted information will be updated and corrected. (Full compliance is required. Failure to correct mistake will result in pay being withheld from the negligent subcontractor.)