Federal Judge Finds Periodic Inspection and Testing of Fire or Security Systems Does Not Fall Under the Illinois Prevailing Wage Act

Labor & Employment Law Update

By John Hayes and Jeffrey Risch on February 24, 2022

Court decisions dealing with and interpreting the Illinois Prevailing Wage Act do not occur with great regularity. So when an interesting decision comes down, we feel it is worth reporting on and should be noted by those businesses that are subject to the Act.

The case is *Rodriguez v. Simplex Grinnell LP and is from the U.S. District Court for the Northern District of Illinois, decided in August 2021. In that case, the court rejected plaintiffs' (employees of Simplex Grinnell who worked on public projects in the State of Illinois) argument that testing andor inspecting work performed by inspectors is a category of maintenance and therefore construction under the Act. The Rodriguez court went on to say:*

"This work is required periodically by life safety standards and is used to determine whether any components of the system have failed or are working improperly. The inspectors make a list of any problems and present the list of problems to the customer. The inspectors do not fix the problems. These undisputed facts lead the Court to conclude that the testing itself is not maintenance work. The testing is merely a means of determining whether maintenance work is needed. If that testing determines that any portion of the

system is not working properly, then any necessary corrections or repairs would be maintenance work....In this Court's opinion, the testing itself, however, does not fall within the plain meaning of maintenance in the Prevailing Wage Act."

The bottom line of the *Rodriquez case is that periodic inspection andor testing of fire or security alarm equipment and systems – specifically not part of any repair or installation or actual construction – does not fall under the Act. However, it should be noted that the court did find that software programming done on site as part of installing a fire or security system would fall under the "broad language" of the Act, as it is the final step of installation of the system, which is covered under the Act.*

Thus, and in line with the Illinois Supreme Court decision in another Prevailing Wage Act case, also from 2021, dealing with interpretation of the "where or if applicable" language, it is so very important for both public bodies and contractors to zero in – and be very precise – on what part of any on-site work involving the construction trades will fall under the Act and what part of the work will NOT fall under the Act. In that case, *Valerio et. al. v. Moore Landscapes, LLC,the Illinois Supreme Court held that when a public body uses the phrase "where applicable" in notifying contractors of prevailing wage obligations, the public body does not comply with the Act because it does not clearly stipulate that the contract must pay the prevailing wage rate. The court went on to imply that where written notification of the Act must be inserted in a contract, the phrase "where applicable" will lead to liability on that entity that fails to be more specific.*

Of course, the current Illinois Department of Labor could very well take a completely different position on this than the court in *Rodriguez. However, employers performing periodic testing or inspection work not tied to actual construction, installation or repair work should note this nice little gem of common sense from at least one federal district judge.*