

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER

In the Matter of

THE COMPTROLLER OF THE CITY OF
NEW YORK, *ex. rel.* DISTRICT NO. 1,
PACIFIC COAST DISTRICT, MARINE
ENGINEERS BENEFICIAL ASSOCIATION,
AFL-CIO,

Petitioner,

-against-

THE OFFICE OF LABOR RELATIONS OF
THE CITY OF NEW YORK,

Respondent,

for a determination of the prevailing rate of
wages and supplements pursuant to New York
State Labor Law § 220

OATH Index No. 1667/21

COMPTROLLER’S INTERIM DETERMINATION AND ORDER

Section 220 of the New York State Labor Law (the prevailing wage law”) requires the City of New York (“the City”) to pay its “laborers, workmen or mechanics” the prevailing rate of wages and supplemental benefits paid in the private sector “for a day’s work in the same trade or occupation in the locality” where the work is performed. Labor Law §§ 220(3)(a) and 220(5)(a). Under the law, the City and public employee organizations must negotiate in good faith towards a collective bargaining agreement. If one cannot be reached, the union is authorized to file a verified complaint with the Comptroller on behalf of the employees it represents. The Comptroller must then issue a determination on the prevailing rate of wages and supplemental benefits due to the employees (“prevailing wage employees”) after an investigation by Comptroller’s Bureau of Labor Law. Labor Law §§ 220(8-d) and 220(8). If the Comptroller’s office believes a hearing is warranted, the

Comptroller's rules authorize the Office of Administrative Trials and Hearings ("OATH") to conduct such a hearing. After the conclusion of the hearing OATH issues a report and recommendation and the Comptroller issues a Final Determination. See 44 RCNY § 2-06(d)(1).

On January 22, 2018, the Marine Engineers Beneficial Association ("MEBA") filed a complaint with the Comptroller's office on behalf of mechanical engineers and chief engineers (collectively, the "Marine Engineers") employed by the Staten Island Ferry. According to the complaint, the last collective bargaining agreement between the City and MEBA had expired in 2010, negotiations for a new agreement were unsuccessful and requested that the Comptroller determine the prevailing rate for the Marine Engineers. In their complaint to the Comptroller's office, the union argued that the work of the Mechanical Engineers on the Staten Island Ferry was comparable to the work performed by the chief engineers and watch engineers at Penn South Mutual ("Penn South") covered by a collective bargaining agreement between the Local 94 and Mutual Redevelopment Houses, Inc. After an investigation, the Comptroller issued a preliminary determination rejecting MEBA's suggestions that Penn South engineers were comparable, and instead identified stationary engineers/building HVAC services operators in buildings subject to the RAB/Local 94 contract as comparable.

MEBA disagreed with the Preliminary Determination, and the Comptroller's Bureau of Labor Law agreed to bring the matter to OATH for a hearing on the issue (hence, the Comptroller's Bureau of Labor is the "Petitioner" for these proceedings). Proceedings were held before the Honorable Faye Lewis, Administrative Law Judge ("ALJ"). During these proceedings, MEBA newly argued that Marine Engineers should be paid at the rate provided to chief engineers and first assistant engineers on U.S. flagged Maersk cargo vessels ("Maersk Engineers") under the Dry Cargo Agreement. None of the parties advanced the argument that the work of chief engineers and watch engineers at Penn South as the comparable group.

ALJ Faye Lewis conducted a five-day trial over the course of October 2021. Each party, including MEBA, was represented by counsel and had an opportunity to present testimony and documentary evidence. All parties submitted post-trial memoranda of law. ALJ Lewis issued a Report and Recommendation dated August 23, 2022.

New York State Labor Law § 220, known as the prevailing wage law, requires the City of New York to pay its “laborers, workmen or mechanics” the prevailing rate of wages and supplemental benefits paid in the private sector “for a day’s work in the same trade or occupation in the locality” where the work is performed. Labor Law §§ 220(3)(a) and 220(5)(a).

The following facts are undisputed by the parties:

- Staten Island Ferry Marine Engineers are entitled to a prevailing rate of wage.
- Staten Island Ferry Marine Engineers perform the same work and have the same licensing requirements as the Maersk Engineers on U.S. flagged cargo ships.
- Maersk, U.S.-flagged and foreign-flagged, ships pass through New York City waters to and from ports in New Jersey.
- Locality is not defined in the Maersk Collective Bargaining Agreement and is therefore a factual determination.

Based upon the record before this office, including ALJ Lewis’s Report and Recommendation (attached hereto as Appendix A), the exhibits, and the briefs submitted by each party, and as set forth below, the ALJ’s recommendation is adopted in part and the matter is remanded for further briefing on the remaining issues as permitted by 44 RCNY § 2-06(e)(1).

IT IS HEREBY ORDERED AND DETERMINED THAT:

1. In its Preliminary Determination, the Comptroller’s Bureau of Labor Law did not properly determine the classification and prevailing wage rates for the Staten Island Ferry Marine

Engineer and Chief Marine Engineer civil service titles. Specifically, we reject Petitioner's classification that Building HVAC Engineers perform comparable work to Marine Engineers for the purpose of setting the prevailing wage rate for Marine Engineers under § 220 of NY Labor Law.

2. The ALJ's factual finding that the relevant locality is the City of New York is accepted. Maersk Engineers working on cargo vessels that pass-through New York City waters perform work in the same locality as Staten Island Ferry Marine Engineers.
3. Maersk Engineers on US-flagged cargo vessels are in the same trade or occupation as the Staten Island Ferry Marine Engineers. Specifically, they perform the same work that requires the same professional qualifications.
4. The record does not conclusively establish that the Maersk CBA covers at least thirty percent of the workers in the same trade or occupation in New York City, as required by New York Labor Law § 220(5). As such the parties are to submit further briefing, within thirty days of this decision and order, in accordance with 44 RCNY § 2-06(e)(1), as to:
 - a. Whether the Maersk CBA covers at least thirty percent of Marine Engineers operating in the locality. The briefs should include further case law and analysis of such case law, as well as relevant facts, discussing whether foreign flagged ships are appropriately included or excluded from the determination regarding the prevailing wage rate paid to Marine Engineers, while keeping in mind that that there was no evidence in the record regarding (1) the wages paid to marine engineers operating on foreign flagged ships; (2) whether the marine engineers employed on foreign flagged ships are solely individuals that do not meet the licensing requirements for operating U.S. flagged ships; or (3) whether the worker conditions on foreign flag ships are in line with or undermine the statutory intent of prevailing wage, and;

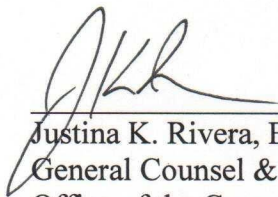
foreign flagged ships; (2) whether the marine engineers employed on foreign flagged ships are solely individuals that do not meet the licensing requirements for operating U.S. flagged ships; or (3) whether the worker conditions on foreign flag ships are in line with or undermine the statutory intent of prevailing wage, and;

- b. If the Maersk CBA does not cover thirty percent or more of the Marine Engineers in New York City, how should the average wage paid to Marine Engineers, on cargo and non-cargo ships, who perform work in New York City for the relevant time period, be calculated? The briefs should include additional facts to be considered including but not limited to identification of the relevant marine engineers in the NYC locality, applicable CBA, and the relevant standard for calculation.

This constitutes the interim decision and order of the Comptroller.

Dated: October 27, 2022

By:



Justina K. Rivera, Esq.
General Counsel & Deputy Comptroller for Legal Affairs
Office of the Comptroller of the City of New York