

2000 APR 24 AM 8:19

JACK ROBERTS
COMMISSIONER



Vol MOO Page 13694

CERTIFIED TRUE COPY
Samuel Mats
Authorized Representative
Bureau of Labor & Industries

SUITE 1045
800 NE OREGON, # 32
PORTLAND, OREGON 97232
3865 WOLVERINE AVE. NE; E-1
SALEM, OREGON 97310
165 E 7TH, ROOM 220
EUGENE, OR 97401

BUREAU OF LABOR AND INDUSTRIES

**BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON**

In the Matter of:

CITY OF KLAMATH FALLS,

Respondent.

Case No. 02-00

FINDINGS OF FACT
ULTIMATE FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
ORDER

SYNOPSIS

Respondent, a public agency, awarded several contracts for improvements to its municipal water system during the summer of 1998. The commissioner found that five of those contracts constituted part of a single public works project, the total price of which exceeded \$25,000.00. Consequently, Respondent was required to comply with the prevailing wage rate laws with regard to each of the five contracts, including one for which the contract price was less than \$25,000.00. Respondent failed to include with the specifications for that contract a provision stating that a fee was required to be paid to the commissioner as provided in ORS 279.375(1) and administrative rule. That failure constituted a violation of ORS 279.352(2). The commissioner assessed no civil penalty. ORS 279.352(2), ORS 279.357, ORS 279.370(1), OAR 839-016-0310, OAR 839-016-0530, OAR 839-016-0540.

The above-entitled case came on regularly for hearing before Erika L. Hadlock, designated as Administrative Law Judge ("ALJ") by Jack Roberts, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on

AFTER RECORDING, RETURN TO:
SUSAN DIX, ORDER PROCESSOR

FINAL ORDER - 1

BUREAU OF LABOR AND INDUSTRIES
WAGE AND HOUR DIVISION, ROOM 1160
800 NE OREGON STREET # 32
PORTLAND, OR 97232

1 October 7, 1999, in the Hearings Room of the Oregon Employment Department, 801
2 Oak Avenue, Klamath Falls, Oregon.

3 The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by
4 David Gerstenfeld, an employee of the Agency. Respondent appeared through its
5 counsel, City Attorney Jeffrey Ball.

6 The Agency called Agency compliance specialist Lois Banahene, Agency
7 administrative specialist Dana Woodward, and Respondent's Water Superintendent,
8 David Steiner, as its witnesses. Respondent called Steiner as its sole witness.

9 The forum received into evidence:

10 a) Administrative exhibits X-1 to X-11 (generated or filed prior to hearing) and
11 exhibits X-12 and X-13 (generated or filed after the hearing).

12 b) Agency exhibits A-1 through A-4 and A-6 through A-14 (submitted prior to
13 hearing with the Agency's case summary) and A-15 and A-16 (submitted during the
14 hearing).

15 c) Respondent exhibits R-1 through R-9 (submitted prior to hearing with
16 Respondent's case summary).

17 Having fully considered the entire record in this matter, I, Jack Roberts,
18 Commissioner of the Bureau of Labor and Industries, hereby make the following
19 Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions
20 of Law, Opinion, and Order.

21 **FINDINGS OF FACT – PROCEDURAL**

22 1) On July 19, 1999, the Agency issued a Notice of Intent to Assess Civil
23 Penalties in which it alleged: a) Respondent had advertised for bids on a contract
24 called the "Last Street Waterline Project" that was one of a series of water system
25 improvement projects that constituted a single public works project the Agency called
the "Water Project"; b) the cost of the Water Project exceeded \$25,000.00 and was not

1 regulated by the federal Davis-Bacon Act; and c) Respondent had failed to include in
2 the specifications for the Last Street Waterline Project a provision that a fee must be
3 paid to the Commissioner pursuant to ORS 279.351(1) and administrative rules adopted
4 thereunder. The Agency concluded that Respondent had violated ORS 279.352(2) and
5 OAR 839-016-0020(2)(b) and sought a single penalty of \$2000.00. (Exhibit X-2)

6 2) The Agency served the Notice on Respondent through its counsel on July
7 20, 1999. (Exhibits X-3, X-5)

8 3) Respondent, through its City Attorney, filed an Answer denying that the
9 Last Street Waterline Project and other water systems improvement contracts
10 constituted a single public works project. Respondent reiterated that denial in the
11 context of an affirmative defense and also requested a contested case hearing. (Exhibit
12 X-6)

13 4) On August 5, 1999, the Agency filed a request for hearing with the
14 Hearings Unit and served Respondent with that request. (Exhibits X-1, X-7)

15 5) On or about August 9, 1999, the Hearing Unit served Respondent with: a)
16 a Notice of Hearing that set forth the time and place for hearing; b) a Summary of
17 Contested Case Rights and Procedures containing the information required by ORS
18 183.413; c) a complete copy of the Agency's administrative rules regarding the
19 contested case hearing process; and d) a copy of the Notice of Intent. (Exhibit X-8)

20 6) On September 3, 1999, the forum ordered the Agency and Respondent
21 each to submit a case summary including: lists of all persons to be called as witnesses;
22 identification and copies of all documents to be offered into evidence; a brief statement
23 of the elements of the claim (for the Agency only); a brief statement of any defenses to
24 the claim (for Respondent only); a statement of any agreed or stipulated facts; and any
25 wage, damages, and penalties calculations (for the Agency only). The forum ordered

1 the participants to submit their case summaries by September 24, 1999, and notified
2 them of the possible sanctions for failure to comply with the case summary order.
3 Respondent and the Agency filed timely case summaries. (Exhibits X-9, X-10, X-11)

4 7) At the start of the hearing, counsel for Respondent stated that he had
5 received the Summary of Contested Case Rights and Procedures and had no questions
6 about it. (Statement of counsel for Respondent)

7 8) Pursuant to ORS 183.415(7), the ALJ verbally advised the Agency and
8 Respondent of the issues to be addressed, the matters to be proved, and the
9 procedures governing the conduct of the hearing. (Statement of the ALJ)

10 9) At the close of the hearing, the Agency moved to amend the Notice of
11 Intent to include an allegation that Respondent had violated ORS 279.363 by failing to
12 notify the Agency within 30 days of awarding the Last Street Contract. The Agency
13 sought a civil penalty of \$500.00 for the alleged violation. The ALJ granted the motion
14 to amend. After the hearing, the Agency filed an unopposed motion to withdraw the
15 amendment. On October 11, 1999, the forum issued an order granting that motion.
16 (Exhibits X-12, X-13)

17 10) The ALJ issued a proposed order on January 7, 2000, that notified the
18 participants they were entitled to file exceptions to the proposed order within ten days of
19 its issuance. Neither the Agency nor Respondent filed timely exceptions.

20 FINDINGS OF FACT – THE MERITS

21 1) Respondent, the City of Klamath Falls, is a public agency. (Exhibits X-2,
22 X-6)

23 2) Respondent has several different departments, one of which is the Public
24 Works Department. The Water Division is part of that Department and has its own
25 budget. David Steiner has been Respondent's Water Superintendent since March 1998
and heads the Water Division. (Testimony of Steiner)

1 3) Respondent's water system serves 40,000 residential water customers as
2 well as some industrial and commercial customers. It includes over 230 miles of water
3 line. (Testimony of Steiner)

4 4) In May 1996, Respondent passed an ordinance authorizing the issuance
5 of water revenue bonds in an amount not to exceed \$7,000,000.00. The ordinance
6 provided, in pertinent part:

7 "WHEREAS, the Council of the City of Klamath Falls (the "City"),
8 finds that it is financially feasible and in the best interests of the City to
9 improve the City's water system and facilities through further
10 development, repair and improvement (the "Project"); and

11 "WHEREAS, the City is authorized to finance the Project by issuing
12 revenue bonds pursuant to Section 47 of the Charter of the City; and

13 "WHEREAS, Section 47 of the Charter of the City provides that
14 such revenue bonds shall be secured solely from the unobligated
15 revenues produced by the facility or similar facilities, and by, in the
16 discretion of the City Council, mortgage or similar encumbrance upon the
17 facility; and

18 "WHEREAS, the cost of the Project, including bond issuance costs
19 and debt service reserves, is estimated to be an amount not to exceed
20 \$7,000,000; and

21 "WHEREAS, the City anticipates incurring expenditures
22 ("Expenditures") to finance the costs of the Project and wishes to declare
23 its official intent to reimburse itself for the Expenditures made on the
24 Project from the proceeds of tax and revenue bonds, the interest on which
25 shall be excludable from gross income under Section 103 of the Internal
Revenue Code of 1986, as amended (the "Code").

 "WHEREAS, Section 47 of the City Charter provides that this
Ordinance (the "Ordinance") authorizing the issuance and sale of revenue
bonds shall be subject to referendum, which pursuant to ORS 221.310 is
for a period of 30 days after passage by the City Council and approval by
the mayor; NOW THEREFORE

 "THE CITY OF KLAMATH FALLS ORDAINS AS FOLLOWS:

 "Section 1.

"Revenue Bonds Authorized. There are hereby authorized to be Issued in
an aggregate principal amount of not to exceed \$7,000,000 of the City's
Water Revenue Bonds, Series 1996 on a parity with the City's outstanding
Water Revenue Bonds, Series 1994 (the "1994 Bonds"). * * *

 * * * * *

1 "Section 3.

2 "Bonds Payable Solely from Revenues. The bonds shall not be general
3 obligation bonds of the City, nor a charge upon its tax revenues, but shall
4 be payable solely from the net revenue of the water system and revenues
to be adopted by the City and on a parity with the 1994 Bonds. * * *

5 Respondent later issued two-year bonds authorized by this ordinance. Respondent
6 referred to these bonds as the 1996 Water Bonds. (Exhibits A-3, A-4; Testimony of
7 Steiner)

8 5) In a feasibility study related to the 1996 Water Bonds, Respondent's plan
9 for spending the bond funds was described as follows:

10 "The Additional Bond proceeds will pay for the cost of issuing the bond,
11 funding a reserve account, and for capital improvements to expand the
12 capacity of the water system. Over the next ten years, the City plans to
make over \$7.09 million of capital improvements to the water system, and
to spend an average of \$200,000 per year for replacement of the oldest
parts of the water system. * * *

13 The purpose of the 1996 bond measure was to obtain funds to improve Respondent's
14 water system. (Exhibit A-15; Testimony of Steiner)

15 6) Respondent included a Schedule of Capital Improvements in its feasibility
16 study for the 1996 bond measure. In that schedule, Respondent projected spending
17 approximately \$200,000.00 per year through the year 2005 on water system
18 "replacement" contracts. (Exhibit R-9)

19 7) The Agency publishes a Prevailing Wage Rate ("PWR") booklet twice
20 each year that includes the wage rates that must be paid for labor on public works. The
21 July 1997 booklet included recommended language for public works contracts:

22 **"ALL CONTRACTS AND CONTRACT SPECIFICATIONS MUST**
23 **CONTAIN A PROVISION STATING THAT THE FEE SHALL BE PAID**
24 **TO THE BUREAU.'**

24 "Examples of language satisfying ORS 279.352(2)

25 ****Contract Specifications:**

1 "-The contractor is required to pay a fee to the Bureau of Labor and
2 Industries pursuant to the provisions of ORS 279.352(2). The fee is one-
3 tenth of one percent of the price of this contract, but not less than \$100
4 nor more than \$5,000, regardless of the contract price.

5 **"*Contract:**

6 "-The contractor shall pay a fee equal to one-tenth of one percent (.1
7 percent) of the price of this contract. The fee shall be paid on or before
8 the first progress payment or 60 days from the date work first began on
9 the contract, whichever comes first. The fee is payable to the Bureau of
10 Labor and Industries * * *."

11 (Exhibit A-14; Testimony of Banahene)

12 8) The February 1998 PWR booklet included a page titled "LEGISLATIVE
13 CHANGES" that summarized 1995 and 1997 legislation affecting agencies that award
14 contracts for public works and the contractors working on those projects. That page
15 included the following pertinent statement:

16 "Public contracting agencies may not divide projects to avoid compliance
17 with the PWR law."

18 (Exhibit A-13; Testimony of Banahene)

19 9) Respondent did not start any construction funded by the 1996 Water
20 Bonds until 1997 and not much was done that year. When Steiner started working for
21 Respondent in March 1998, he determined that the 1996 Water Bond funds had to be
22 allocated by the end of 1998. The construction season in Klamath Falls generally lasts
23 only from April to October or November. Consequently, Respondent bid out 14 water
24 system contracts in the spring and summer of 1998. (Testimony of Steiner)

25 10) In early 1998, Respondent issued an advertisement for bids on the Last
Street Waterline Project, which it described as "Construction of approximately 725 L.F.
of 6 inch PVC waterline, fittings, valves and appurtenances." The advertisement did not
include a statement that a fee was required to be paid to the commissioner as provided
in ORS 279.375(1) and administrative rule. The bidding period for the Last Street
construction closed on June 8, 1998. (Exhibits X-2, X-6, A-6; Testimony of Steiner)

1 11) Respondent described the Last Street contract in a memorandum as "the
2 construction of a replacement 6" water main on Last Street from Harriman to Addison
3 (Idaho)." The "existing 4" cast iron main" was to be replaced with "leaded joints and 3"
4 steel main, with welded joints." The Last Street contract was to be funded by the 1996
5 Water Bond. (Exhibit A-3; Testimony of Steiner)

6 12) The Last Street contract was awarded to Jefferson State Rock Products,
7 Inc., at a bid price of \$15,529.00. The engineer was Adkins Engineering. (Exhibits R-1,
8 R-7; Testimony of Steiner)

9 13) The Last Street contract called for construction to be complete by July 31,
10 1998. (Exhibit R-6; Testimony of Steiner)

11 14) Respondent accepted bids on a second contract – the Iowa Street/Biehn
12 Street Water Main – until July 9, 1998. The work involved both installation of new line
13 and replacement of existing line and involved "construction of approximately 1500 feet
14 of 6-inch water main and appurtenances." The Iowa/Biehn construction was located
15 near the intersection of Iowa and Biehn Streets, about 1/4 mile from the Last Street
16 improvement. The engineer on the contract was Paoli Engineering; the contractor was
17 B.J. Williams. The price of the Iowa/Biehn contract exceeded \$25,000.00 and it was
18 funded by the 1996 Water Bond. (Exhibits A-6, A-11, R-1; Testimony of Steiner)

19 15) Respondent accepted bids on a third contract – the Pine Street Water Line
20 Replacement – until July 23, 1998. That contract involved replacing approximately
21 2100 feet of existing 6" water main with 8" polyvinyl chloride ("PVC") plastic pipe. The
22 seven-block-long Pine Street improvement was located approximately one mile from the
23 Last Street project. The engineer for Pine Street was W & H Pacific. The contractor
24 was Grimes Construction. The Pine Street improvement cost more than \$25,000.00
25

1 and was funded through the 1996 Water Bond. (Exhibits A-6, A-8, R-1; Testimony of
2 Steiner)

3 16) Respondent accepted bids on three more contracts -- the Eastside
4 Waterline Project, the Jefferson and 11th Street Waterline Project, and the Lincoln Street
5 Waterline Project -- until August 6, 1998. (Exhibits A-7, A-9, A-10; Testimony of
6 Steiner)

7 17) Eastside involved construction of a new water main: "Construction of
8 approximately 2760 L.F. of 12 inch ductile iron waterline, 4580 L.F. of 8 inch PVC
9 waterline, firehydrants, valves, fittings, and appurtenances." The construction was
10 performed near the Klamath Falls airport, which is approximately 5 1/2 miles from the
11 Last Street improvement. The engineer for the Eastside project was Adkins
12 Engineering. The contractor was Mark Wendt Construction. The project cost more than
13 \$25,000.00 and was funded by the Airport Fund. (Exhibits A-7, A-9, R-1; Testimony of
14 Steiner)

15 18) The Jefferson and 11th Street project involved replacement of an existing
16 water line and "Construction of approximately 1460 L.F. of 8 inch waterline, 420 L.F. of
17 service line, 24 services, fire hydrants, fittings, valves and appurtenances." This
18 construction ran along Jefferson Street from the Sacred Heart Academy to the end of
19 Jefferson, near 11th Street, approximately 3/4 mile from the Last Street improvement.
20 The engineer for the Jefferson and 11th Street project was Adkins Engineering and the
21 contractor was Mountain Pacific. The contract cost exceeded \$25,000.00 and was
22 funded through the 1996 Water Bond. (Exhibits A-6, A-9, R-1; Testimony of Steiner)

23 19) The Lincoln Street project involved replacement of metallic pipe with PVC
24 pipe: "Construction of approximately 1400 L.F. of 6 inch waterline, fittings, valves and
25 appurtenances." The construction ran from the intersection of Lincoln and 4th Streets to

1 about Lincoln and 7th Streets, approximately 3/4 mile from the Last Street improvement.
2 The engineer for Lincoln Street was Adkins Engineering. The contractor was Mountain
3 Pacific. The contract price exceeded \$25,000.00 and the construction was funded
4 through the 1996 Water Bond. (Exhibits A-6, A-10, R-1; Testimony of Steiner)

5 20) The Last Street improvement was completed in about October 1998.
6 Respondent made its last payment on the contract on or about December 10, 1998.
7 Respondent paid a total of \$15,735.71 to Jefferson State on the Last Street contract.
8 (Exhibit R-4; Testimony of Steiner)

9 21) The six water system contracts described in Findings of Fact – the Merits
10 10 through 20, *supra*, involved construction, reconstruction or major renovation work in
11 the State of Oregon. The contracts were not regulated by the federal Davis-Bacon Act.
12 (Exhibits X-2, X-6; Testimony of Banahene)

13 22) Respondent funded all six of these contracts except the Eastside contract
14 from the 1996 Water Bonds. Respondent's Water Division budget included a single line
15 item for infrastructure improvements, with specific reference to bond funding. That line
16 item covered the cost of the five water system contracts other than Eastside.
17 (Testimony of Steiner)

18 23) The five water system contracts other than Eastside fell within the
19 "replacement" category on Respondent's schedule of water system capital
20 improvements for which Respondent projected spending approximately \$200,000.00
21 per year. (Exhibit R-9; Testimony of Steiner)

22 24) These five contracts all involved the replacement of existing water lines
23 with new water lines of a more modern type. The Last Street construction and at least
24 one other water main replacement were undertaken in part because the existing water
25 lines were leaking. (Testimony of Steiner)

1 25) None of these five water system construction projects was physically
2 connected to another. (Exhibits A-6, A-7, A-8, A-9, A-10, A-11; Testimony of Steiner)

3 26) Completion of the Last Street construction was not necessary to
4 implementation of any of the other five water system construction contracts. Nor was
5 construction of any of other water lines a prerequisite to completion of Last Street. The
6 Last Street construction could have been performed independently and in the absence
7 of the other construction. (Testimony of Steiner)

8 27) Respondent's action in bidding out the Last Street construction in a
9 separate contract, rather than combining it with the other water system contracts, was
10 not taken for the purpose of avoiding compliance with the PWR laws. Had Respondent
11 combined all the water system improvements into a single contract, construction would
12 not have been completed before the end of 1998. (Testimony of Steiner)

13 28) On November 18, 1998, Hedera Trumbo, a BOLI PWR coordinator, sent a
14 letter to Jefferson State stating that the Agency had not yet received the \$100.00 public
15 works contract fee for the Last Street Waterline Project, and asking Jefferson State to
16 submit a fee information form along with the fee. Jefferson State sent a copy of that
17 letter to Steiner, who received it sometime in November 1998. (Exhibit R-2; Testimony
18 of Steiner)

19 29) On November 24, 1998, Jefferson State sent a facsimile transmission to
20 the Agency stating that Last Street was a "stand-alone project in no way connected with
21 any other project by this corporation..." (Exhibit R-5)

22 30) On December 16, 1998, Trumbo sent another letter to Jefferson State
23 stating that the Agency had not received any response regarding its November 18,
24 1998, fee request. Trumbo notified Jefferson State that it could be subject to a
25 maximum \$1000.00 penalty if it failed to pay the fee. (Exhibit R-3)

1 31) On December 28, 1998, Agency compliance specialist Banahene sent a
2 letter to Vicky Young, Respondent's public works director. In that letter, Banahene
3 explained the Agency's position as follows:

4 "Our prevailing wage rate (pwr) data base shows the City of Klamath Falls
5 advertised bids on six waterline projects between May 31, 1998 and July
6 26, 1998. * * *

7 "Oregon's prevailing wage regulations prohibit public agencies from
8 dividing public works projects into more than one contract to avoid
9 regulation under the prevailing wage laws. In addition, the regulations
10 include the criteria the Bureau uses to evaluate whether multiple contracts
11 constitute more than one project. I have included a copy of the text of
12 Oregon Administrative Rule 839-016-0310. Generally, if a public agency
13 uses several contracts which are closely related in purpose time and
14 place, to conduct a public works project, it is considered one project. The
15 Bureau also examines the manner in which the public agency administers
16 and implements the project.

17 "OAR 839-016-0020(f) (copy enclosed) requires each contractor to pay a
18 fee equal to one-tenth of one percent (.001) of the total contract price.
19 The fee may be no more than \$5,000 and no less than \$100, and applies
20 to all Oregon pwr projects with a total project amount of \$25,000 or more.

21 "At first glance, these waterline projects appear to be closely related in
22 purpose time and place and as such would be one large project. If so, the
23 overall combined list of projects would amount to far greater than the
24 \$25,000.00 threshold for coverage. Furthermore, if this is true, [Jefferson
25 State's] argument (that their contract amount of \$15,529.00 for the Last
Street waterline makes it a stand-alone project) would not be correct and
the Jefferson State Rock Projects Inc. contract fee of \$100.00 is past due.

 "Please review the enclosed administrative rules. By on or before January
6, 1998, please provide a response regarding the coverage of the Last
Street Waterline project. If you determine that it is not a covered project,
please provide reasons of how and why you reached that determination."

20 Banahene enclosed copies of OAR 839-016-0310 and OAR 839-016-0020 with this
21 letter. (Exhibit R-5; Testimony of Banahene)

22 32) The December 28, 1998, letter was the first notice the Agency sent to
23 Respondent regarding this matter. (Testimony of Banahene)

24 33) On January 29, 1999, Banahene sent a letter to Respondent's attorney
25 that stated, in substantive part:

1 "In November 1998, the Bureau of Labor and Industries notified Jefferson
2 State Rock Products that a fee in the amount of \$100.00 was due on the
3 Last Street Waterline contract. The company's response to our notice
4 was that the Last Street project was a 'stand-alone project in no way
5 connected with any other project by this corporation and was under the
6 \$25,000 amt. required for the fee...'

7 "Through the City of Klamath Falls' response to my letter dated December
8 28, 1998, (copies enclosed) and subsequent phone calls with Tom Del
9 Santos and David Steiner, the Bureau has concluded that it appears that
10 several waterline contracts, including the Last Street Waterline, were, for
11 all intents and purposes, part of one public improvements project. The
12 source of funding (a five million dollar bond) was primarily intended to
13 cover water main replacements, new steel tank reservoirs and
14 transmission pipelines. Although pieces of the project were bid in several
15 separate contracts, these contracts were closely related in overall
16 purpose, time and place. A single public works project may include
17 several types of improvement and contain several contracts.

18 "Upon hearing the above, David Steiner stated that although he disagreed
19 with the outcome, he felt it was the City's responsibility, not Jefferson
20 State Rocks Products, Inc. to pay the \$100.00 fee because there was no
21 fee language in the contract. He asked that I direct my letter to you rather
22 than the contractor.

23 "Please remit a fee in the amount of \$100.00 to the Bureau of Labor and
24 Industries at the Portland address below, by no later than February 5,
25 1999."

(Exhibit A-1; Testimony of Banahene)

34) On August 3, 1999, the Agency served Jefferson State Rock Products,
Inc. with a Notice of Intent to Assess Civil Penalties based on Jefferson's alleged failure
to pay the \$100.00 prevailing wage rate fee required by ORS 279.375 and OAR 839-
016-0200 for the Last Street Waterline Project. Jefferson did not timely request a
hearing on the Notice of Intent and the Administrator of the Wage and Hour Division
issued a Final Order of Determination (Default) requiring Jefferson to pay a \$1000.00
penalty for the violation. (Exhibit A-12; Testimony of Banahene)

35) There is no evidence in the record that Respondent previously has
violated any PWR laws. (Entire Record)

36) There is no evidence in the record that any worker on the Last Street contract was paid less than the prevailing wage rate. (Entire Record)

37) The Agency's Field Operations Manual ("FOM"), Volume VI – Prevailing Wage Rate, includes an "Interpretation" as follows:

VOLUME: VI – Prevailing Wage Rate	ORS: 279.357(2)
SUBJECT: Criteria Used to Determine PWR Coverage	OAR: 839-16-310(1)(2)
SOURCE: WHD Administration	DATE: 06-27-89
<u> </u> POLICY <u> X </u> INTERPRETATION <u> </u> REFERENCE	PAGE: 1 of 2

"Generally"

"The Prevailing Wage Rate Law, ORS 279.348 to 279.363, requires that the prevailing rate of wage, as determined by the Labor Commissioner, must be paid to workers upon all public works contracts. ORS 277.348(1); 279.350(1). "Public works" are defined very broadly to include roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on by a public agency to serve the general public interest and is not limited to those public works listed. ORS 279.348(3). The only public works projects excluded are projects regulated under the federal Davis-Bacon Act. 40 U.S.C. s 279 a, projects of \$25,000 or less and certain utility district contracts. ORS 279.357(1) and (2); 261.345.

"Criteria"

"1. Does the particular project in question involve improvement of "public works?" A single public works project may include several types of improvements or structures. ORS 279.348(3).

"2. What is the ultimate intent of the parties to the particular project? Precisely what did the parties contemplate their project or entity would finally look like? It must be underscored that what is meant by this criteria is not the desire to avoid the effect of the law, but the anticipated outcome of the particular improvements the agency plans to fund. Evidence of intent will be closely scrutinized for evasion of the statute. The amount of funding that may be available to an agency or the execution of separate contracts are not regarded as determinative of intent. OAR 839-16-008(2); 839-16-100(1)(2); 839-16-310(1)(2).

"3. Are the particular projects, alleged to be separate and distinct, in actuality, one project? A project encompassing several structures or distinct improvements may be one project if the structures or improvements are similar to one another and combine to form a single, logical entity having an overall purpose or function.

1 "4. Is the timing of each particular improvement, alleged to be a separate
2 and distinct project, indicative of one project or several projects?
3 Improvements performed in one time period or in several phases as
4 components of a larger entity will generally be considered a single project.

5 "5. Are the contractor, subcontractor and their respective workers either
6 the same or substantially the same throughout the particular project or, if
7 different, part of a continuum providing distinct improvements that
8 complete the public agency's ultimate intent?

9 "6. How do the public agency and contractors administer and perform the
10 improvements alleged to be separate and distinct?

11 "7. Does the total value of all anticipated improvements to the public
12 works exceed \$25,000? ORS 279.357(1); OAR 839-16-100(1)(a)."

13 (Exhibit A-2; Testimony of Banahene)

14 38) The Agency assesses the fee required by ORS 279.352(2) on each
15 contract for any part of a public works project. In the Agency's view, a project may
16 include more than one contract. (Testimony of Banahene)

17 39) Agency personnel use the FOM and the applicable statutes and rules to
18 determine whether several contracts combine to form a single public works project.
19 (Testimony of Banahene)

20 40) The testimony of all witnesses was credible. (Witnesses' testimony)

21 **ULTIMATE FINDINGS OF FACT**

22 1) Respondent is a public agency.

23 2) In the spring and summer of 1998, Respondent bid out 14 contracts for
24 improvements to its city water system, six of which are at issue in this case: the Last
25 Street, Iowa/Biehn, Jefferson, Lincoln, Pine, and Eastside contracts. These six
contracts all involved construction, reconstruction, or major renovation designed to
serve the public interest.

3) The Last Street, Iowa/Biehn, Jefferson, Lincoln, and Pine Street contracts
were part of a single public works project, the total cost of which exceeded \$25,000.00.

4) Respondent did not include in the specifications for the Last Street contract a provision stating that a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279.375(1) and administrative rule.

5) Respondent knew or should have known that it was required to include this provision in the Last Street contract specifications.

6) No evidence in the record suggests that any person who worked on the Last Street contract was paid less than the prevailing wage rate.

7) No evidence in the record suggests that Respondent has committed any previous violations of the prevailing wage rate laws.

CONCLUSIONS OF LAW

1) ORS 279.348(3) defines "Public works" as follows:

"Public works' includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest but does not include the reconstruction or renovation of privately owned property which is leased by a public agency."

OAR 839-016-0004 further provides:

"(17) 'Public work,' 'public works,' or 'public works project' includes but is not limited to roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency the primary purpose of which is to serve the public interest regardless of whether title thereof is in a public agency but does not include the reconstruction or renovation of privately owned property which is leased by a public agency.

"(18) 'Public works contract' or 'contract' means any contract, agreement or understanding, written or oral, into which a public agency enters for any public work."

Each of the six water system improvement contracts, including Last Street, was a public work, unless it fell within one of the exemptions defined in ORS 279.357.

2) ORS 279.357(1) provides, in pertinent part:

"(1) ORS 279.348 to 279.380 do not apply to:

"* * * * *

1 "(b) Projects regulated under the Davis-Bacon Act (40 U.S.C.
276a). * * *

2 Neither the Last Street contract nor any of the other contracts was regulated under the
3 federal Davis-Bacon Act. None of those contracts was exempted from the definition of
4 "public works" by operation of ORS 279.357(1)(b).

5 3) ORS 279.357 further provides, in pertinent part:

6 "(1) ORS 279.348 to 279.380 do not apply to:

7 "(a) Projects for which the contract price does not exceed
8 \$25,000.

9 * * * * *

10 "(2)(a) No public contracting agency shall divide a public works
project into more than one contract for the purpose of avoiding compliance
with ORS 279.348 to 279.380.

11 "(b) When the commissioner determines that a public contracting
12 agency has divided a public works project for the purpose of avoiding
compliance with ORS 279.348 to 279.380, the commissioner shall issue
13 an order compelling compliance.

14 "(c) In making determinations under this subsection, the
commissioner shall consider:

15 "(A) The physical separation of the project structures.

16 "(B) The timing of the work on project phases or structures.

17 "(C) The continuity of project contractors and subcontractors
working on project parts or phases.

18 "(D) The manner in which the public contracting agency and the
contractors administer and implement the project."

19 OAR 839-016-0310 further provides, in relevant part:

20 "(1) Public contracting agencies shall not divide a public works project
21 into more than one contract for the purpose of avoiding compliance with
ORS 279.348 to 279.380.

22 "(2) When making a determination of whether the public agency divided
23 a contract to avoid compliance with ORS 279.348 to 279.380, the
commissioner shall consider the facts and circumstances in any given
situation including, but not limited to, the following matters:

24 "(a) The physical separation of project structures;

25 "(b) Whether a single public works project includes several types of
improvements or structures;

1 "(c) The anticipated outcome of the particular improvements or
2 structures the agency plans to find;

3 "(d) Whether the structures or improvements are similar to one another
4 and combine to form a single, logical entity having an overall purpose or
5 function;

6 "(e) Whether the work on the project is performed in one time period or
7 in several phases as components of a larger entity;

8 "(f) Whether a contractor or subcontractor and their employees are the
9 same or substantially the same throughout the particular project;

10 "(g) The manner in which the public contracting agency and the
11 contractors administer and implement the project;

12 "(h) Other relevant matters as may arise in any particular case."

13 The Last Street, Biehn/Iowa, Lincoln, Jefferson, and Pine Street contracts combined to
14 form a single public works project, the total cost of which exceeded \$25,000.00.
15 Consequently, the contracts did not fall within the exemption created by ORS
16 279.357(1)(a).

17 4) ORS 279.352(2) provides:

18 "The specifications for every contract for a public work shall contain a
19 provision stating that a fee is required to be paid to the Commissioner of
20 the Bureau of Labor and Industries as provided in ORS 279.375(1), and
21 the contract shall contain a provision that the fee shall be paid to the
22 commissioner pursuant to the administrative rule of the commissioner."

23 Respondent violated ORS 279.352(2) by failing to include the described provision in the
24 specifications for the Last Street contract.

25 5) The commissioner has authority to assess a civil penalty not exceeding
26 \$5000.00 for the violation of ORS 279.352(2). ORS 279.370(1), OAR 839-016-0530(1),
27 (4)(b), OAR 839-016-0540(1). In determining the magnitude of that penalty, the
28 commissioner must consider "the amount of the underpayment of wages, if any, in
29 violation of any statute or rule" (OAR 839-016-0520(3)) plus:

30 "(a) The actions of the contractor, subcontractor or contracting agency
31 in responding to previous violations of statutes and rules;

32 "(b) Prior violations, if any, of statutes and rules;

1 "(c) The opportunity and degree of difficulty to comply;

2 "(d) The magnitude and seriousness of the violation;

3 "(e) Whether the contractor, subcontractor or contracting agency knew
4 or should have known of the violation."

4 OAR 839-016-0520(1).

5 **OPINION**

6 The Oregon Prevailing Wage Rate ("PWR") laws, collectively known as the Little
7 Davis-Bacon Act, govern contracts for "public works," which are defined as follows:

8 "'Public works' includes, but is not limited to, roads, highways, buildings,
9 structures and improvements of all types, the construction, reconstruction,
10 major renovation or painting of which is carried on or contracted for by any
11 public agency to serve the public interest but does not include the
12 reconstruction or renovation of privately owned property which is leased
13 by a public agency."

11 ORS 279.348(3). The specifications for every public works contract must include a
12 provision informing potential contractors "that a fee is required to be paid to the
13 Commissioner of the Bureau of Labor and Industries as provided in ORS 279.375(1) * *
14 * ." ORS 279.352(2).

15 There are several exemptions from the applicability of Little Davis-Bacon. The
16 scope of one of those exemptions, as defined in ORS 279.357(1)(a), is the central issue
17 in this case. That statute provides:

18 "(1) ORS 279.348 to 279.380 do not apply to:

19 "(a) Projects for which the contract price does not exceed \$25,000."

20 The disputed question in this case is the meaning of "[p]rojects" in the context of ORS
21 279.357(1)(a).

22 The City of Klamath Falls awarded 14 different contracts for improvements to its
23 municipal water system in 1998. The Agency contends that five of those contracts –
24 Last Street, Iowa/Biehn, Jefferson, Lincoln, and Pine – formed a single public works
25

1 "project," the total cost of which exceeded \$25,000.00.¹ Because of that, the Agency
2 argues, the City was required to include in the specifications for each of the contracts a
3 provision that the contractor was required to pay a fee to the Commissioner of the
4 Bureau of Labor and Industries as provided in ORS 279.375(1) and administrative rule.
5 The participants agree that the City did not include such a provision in the specifications
6 for the Last Street contract. The Agency contends that, by omitting that provision, the
7 City violated ORS 279.352(2).

8 The City disagrees. It believes the Last Street contract, the cost of which was
9 below \$25,000.00, was a stand-alone job that did not combine with the other water
10 system improvements to form a single public works project. Consequently, it argues,
11 the specifications for the Last Street contract did not have to include a provision stating
12 that a fee was required to be paid as provided in ORS 279.375(1).

13 It is important at the outset to clarify what is *not* at issue in this case. Little Davis-
14 Bacon includes a provision prohibiting contracting agencies from "divid[ing] a public
15 works project into more than one contract *for the purpose* of avoiding compliance with
16 ORS 279.348 to 279.380." ORS 279.357(2)(a) (emphasis added). The Agency
17 concedes, and the forum agrees, that no evidence in the record suggests that
18 Respondent let five separate contracts, rather than a single contract covering all five
19 improvements, "for the purpose of" avoiding compliance with the PWR laws. Thus,
20 section (2) of ORS 279.357 does not apply to this case.

21 Instead, the Agency asks this forum to rule that the five improvements
22 constituted a single "project" for which the contract price exceeded \$25,000.00. If that

23
24 ¹ The Agency initially charged that an additional contract – Eastside – also was part of this public works
25 project. At the close of the hearing, the Agency essentially conceded that Eastside was not part of the
project, because its location was relatively remote from the other five improvements, it had a different
funding source, and it involved construction of a new water main and not replacement of existing pipes.
The forum agrees.

1 is the case, Respondent was required to abide by the dictates of Little Davis-Bacon with
 2 regard to that entire project, because it did not fall within the exemption created by
 3 section (1) of ORS 279.357.

4 The threshold question, then, is whether the word "Projects" in ORS
 5 279.357(1)(a) refers to individual contracts as they are bid out by contracting agencies
 6 or, more abstractly, to any group of public works contracts that properly are viewed as
 7 fitting together to form a single project.

8 The term "project" is not defined in Little Davis-Bacon. Nor has the Agency
 9 defined that word in its regulations implementing the Act.² However, the statutory
 10 context for ORS 279.357(1)(a) does shed light on the legislature's intent in using the
 11 word "project." Section (2) of the statute prohibits the division of a "project" into more
 12 than one "contract" for the purpose of avoiding the PWR laws. That language suggests
 13 that a project is a large, multiphase endeavor that may encompass more than one
 14 contract. Another portion of section (2) provides further support for that notion. It states
 15 that, in determining whether a prohibited division has occurred, the commissioner must
 16 consider:

- 17 "(A) The physical separation of the project structures.
- 18 "(B) The timing of the work on project phases or structures.
- 19 "(C) The continuity of project contractors and subcontractors working on
 20 project parts or phases.
- 21 "(D) The manner in which the public contracting agency and the
 22 contractors administer and implement the project."

23 ORS 279.357(2)(c). This language contemplates that the commissioner will examine
 24 various smaller public works undertakings – phases, parts, and structures – to

25 ² A regulation does define the term "public works project," but equates that phrase with the terms "public work" and "public works." This rule speaks only to the *type* of work that may constitute a public work and does not speak to the issue of whether and when several public works contracts may combine to form a single "project."

1 determine whether they are, in fact, part of a single larger endeavor – a public works
2 "project." The Agency is correct in arguing that the ORS 279.357(1)(a) exemption for
3 "[p]rojects for which the contract price does not exceed \$25,000.00" applies only where
4 the cost of the *entire* project – not just a single contract – is \$25,000.00 or less.

5 The next question is what factors the commissioner should consider in
6 determining whether a group of public works contracts combine to form a single public
7 works project for purposes of ORS 279.357(1)(a). The Agency argues that the factors
8 listed in section (2)(c) of that statute, quoted *supra*, are not relevant because subsection
9 (c) starts "In making determinations *under this subsection*, the commissioner shall
10 consider * * * [the quoted factors]." (Emphasis added). According to the Agency, the
11 section (2)(c) factors are relevant only in determining whether a contracting agency
12 violated ORS 279.357(2) by dividing a project into more than one contract for the
13 purpose of avoiding compliance with Little Davis-Bacon. Similarly, the Agency argues
14 that the factors listed in OAR 839-016-0310(2) are relevant only to consideration of
15 whether a contracting agency improperly divided a project, in violation of ORS
16 279.357(2), and not to whether a group of contracts forms a single project for purposes
17 of ORS 279.357(1)(a). To answer the latter question, the Agency argues, this forum
18 should look exclusively to the discussion in the Agency's Field Operations Manual
19 ("FOM"), which the Agency contends applies specifically to section (1) of ORS 279.357
20 and not to section (2).

21 Respondent disagrees. It argues that the factors listed in ORS 279.357(2)(c) and
22 OAR 839-016-0310(2) are the only factors this forum should consider because they are
23 the only guidelines properly promulgated by the legislature and the Agency.
24 Respondent also notes that the Agency sent it a letter stating that OAR 839-016-0310
25 "include[s] the criteria the Bureau uses to evaluate whether multiple contracts constitute

1 more than one project." The Agency enclosed a copy of that regulation with its letter
2 and essentially asked Respondent to use the rule to evaluate whether the Last Street
3 construction was a covered project.

4 The forum agrees with Respondent that ORS 279.357(2)(c) and OAR 839-016-
5 0310 contain the factors this forum must consider in determining whether the Last
6 Street contract was part of a larger public works project. The listed factors concern
7 whether various contract structures, phases, or parts are sufficiently related in time,
8 space, contracting, administration and implementation so that they should be viewed as
9 a single endeavor, or project. They have nothing to do with whether a contracting
10 agency was improperly motivated by a desire to avoid the PWR laws when it divided the
11 project into several contracts. In the absence of a statutory definition of "project," the
12 factors listed in ORS 279.357(2)(c) provide the context demonstrating what the
13 legislature meant when it used that term.

14 The forum also rejects the Agency's argument that the FOM discussion relates
15 specifically to the definition of "project" in section (1)(a) of ORS 279.357 and that the
16 forum should consider *only* that discussion in determining whether Last Street was part
17 of a larger public works project. First, there is simply no reason to believe that the
18 legislature intended the word "project" to have different meanings depending on
19 whether the commissioner was deciding whether several contracts constitute a single
20 project, under section (1)(a) of the statute, or was deciding whether a contracting
21 agency improperly had divided a single project into several contracts, as prohibited by
22 section (2) of the statute. Second, the page of the FOM in evidence is labeled an
23 "INTERPRETATION," rather than a policy or reference. The page identifies a single
24 statute, presumably the one to which the interpretation applies. The identified statute is
25 ORS 279.357(2), the provision containing the factors which the Agency argues do not

1 apply to this case. Thus, if ORS 279.357(2) were not relevant to this case, the FOM
2 also would have no significance. The forum, of course, has concluded to the contrary
3 that the factors listed in ORS 279.357(2) are those that must be considered in
4 determining whether several contracts form a single project. Consequently, both the
5 statute and the FOM provide guidance.

6 Another question is what weight to give the Agency's implementing rules and the
7 FOM. ORS 279.357(2)(c) lists four factors the commissioner "shall" consider but does
8 not prohibit the commissioner from taking other matters into account. Consequently,
9 the commissioner had authority to implement a rule listing additional factors related to
10 the definition of a "project," so long as the rule did not conflict with the statute. The
11 forum finds that OAR 839-016-0310(2) does not conflict with the statute in any way but
12 merely provides useful guidance to contracting agencies that must determine whether
13 their contracts form part of a public works project. In turn, the FOM provides the
14 Agency's interpretation of that rule.

15 The ultimate question is whether, taking into account the statutory and regulatory
16 factors, as further explained by the FOM interpretation, the Last Street contract and the
17 other four water improvement contracts formed a single public works project. The
18 factors are:

- 19 1) The physical separation of the project structures (ORS 279.357(2)(c)(A) and
20 OAR 839-016-0310(2)(a))

21 The five water line improvements at issue do not directly connect and some of
22 them are separated by a significant physical distance. They are, however, part of a
23 single system – the City of Klamath Falls municipal water system – and are linked by
24 other pipes. Because the improvements are neither directly connected nor wholly
25 separate, this factor is not helpful in deciding whether the improvements form a single
project.

- 1 2) The timing of the work on project phases or structures (ORS 279.357(2)(c)(B))
2 and whether the work is performed in one time period or in several phases as
3 components of a larger entity (OAR 839-016-0310(2)(e))

4 As the FOM explains, "Improvements performed in one time period or in several
5 phases as components of a larger entity will generally be considered a single project."
6 Respondent contracted for the five improvements over a period of only a few months
7 during a single construction season. The timing of the contracts suggests they were
8 part of a single public works project.

- 9 3) The continuity of project contractors and subcontractors working on project parts
10 or phases (ORS 279.357(2)(c)(C)) and whether a contractor or subcontractor and
11 their employees are the same or substantially the same throughout the particular
12 project (OAR 839-016-0310(2)(g))

13 Respondent used four different contractors and three different engineering firms
14 on the five contracts. At first glance, this diversity of contractors and engineers could be
15 viewed as suggesting that the improvements were not part of a larger project. However,
16 Steiner explained that Respondent could not bid out all the improvements in a single
17 contract -- using a single contractor -- because the work could not have been completed
18 by the year-end deadline for use of the Water Bond funds. Thus, Respondent's use of
19 multiple contractors and engineers does not weigh as heavily against a "single project"
20 finding as it might under other circumstances.

- 21 4) The manner in which the public contracting agency and the contractors
22 administer and implement the project (ORS 279.357(2)(c)(D) and OAR 839-016-
23 0310(2)(g))

24 A single line item in Respondent's budget covered all five of the water system
25 improvements, including Last Street. Additionally, the funding for all five improvements
came from the 1996 Water Bond measure. This factor weighs in favor of a
determination that the improvements were part of a single project.

- 5) Whether a single public works project includes several types of improvements or
structures (OAR 839-016-0310(2)(b)) and whether the structures or
improvements are similar to one another and combine to form a single, logical
entity having an overall purpose or function (OAR 839-016-0310(2)(d))

1 The five contracts all involved replacement of old water mains with new pipes of
2 more modern design. The work on all the contracts was of a similar nature. In addition,
3 the new water lines are all part of a single, logical entity that has an overall purpose or
4 function – Respondent's municipal water system. This factor weighs heavily in favor of
5 a determination that the improvements were part of a single project.

6 6) The anticipated outcome of the particular improvements or structures the agency
7 plans to fund (OAR 839-016-0310(2)(c))

8 By issuing the 1996 Water Bonds, Respondent hoped "to improve the City's
9 water system and facilities through further development, repair and improvement * * *."
10 Performance of each of the five contracts helped further this goal. Consequently, this
11 factor, too, weighs in favor of a determination that the improvements were part of a
12 single project.

13 This is not a clear-cut case because the factors to be considered weigh both in
14 favor of and against a finding that the five water system contracts constituted a single
15 public works project. However, on balance, the forum finds that each of the five
16 improvements, including Last Street, was part of a larger project. In making that finding,
17 the forum considers each of the following facts to be significant: 1) each contract was
18 performed to improve part of a single, large facility – Respondent's municipal water
19 system; 2) the improvements were of a similar nature; 3) the improvements took place
20 during a single construction season; and 4) the funding source for all the improvements
21 was identical. In the absence of any one of these facts, the result of this case might be
22 different.

23 The remaining question is whether Respondent violated ORS 279.352(2), which
24 provides:

25 "(2) The specifications for every contract for a public work shall contain
a provision stating that a fee is required to be paid to the Commissioner of
the Bureau of Labor and Industries as provided in ORS 279.375(1), and

1 the contract shall contain a provision that the fee shall be paid to the
2 commissioner pursuant to the administrative rule of the commissioner."

3 The statute requires each contract for a public work to contain the specified provision.

4 The only time the statute does not apply is if the contract – and any public works project
5 of which the contract is a part – has a total contract price of \$25,000.00 or less. ORS
6 279.357(1)(a). Here, the Last Street contract was part of a larger public works project,
7 the cost of which far exceeded \$25,000.00, and the specifications for the contract did
8 not include the provision described in ORS 279.352(2). Respondent violated that
9 statute by failing to include the required provision in the contract specifications.

10 The Agency asks this forum to impose a civil penalty of \$2000.00 for
11 Respondent's violation of ORS 279.352(2). The commissioner may, but is not required
12 to, assess a civil penalty for each violation of any provision of ORS 279.348 to 279.380,
13 including ORS 279.352(2). ORS 279.370(1), OAR 839-016-0530(1), (4)(b), OAR 839-
14 016-0540(1). In this case, there are several mitigating circumstances. First, there is no
15 evidence that any person was paid less than the prevailing wage rate on the Last Street
16 contract. Second, there is no evidence in the record that Respondent previously has
17 violated Little Davis-Bacon. Finally, Respondent did not intentionally sever the Last
18 Street contract from the other water line improvement contracts to avoid having to
19 comply with the prevailing wage rate laws. Under these circumstances, the forum
20 imposes no civil penalty.

21 ///

22 ///

23 ///

24 ///

25 ///

ORDER

NOW, THEREFORE, the Commissioner of the Bureau of Labor and Industries hereby finds that Respondent **City of Klamath Falls** has violated ORS 279.352(2). The commissioner assesses no civil penalty.

DATED this 28th day of January 2000.



JACK ROBERTS, Commissioner
Bureau of Labor and Industries

JUDICIAL REVIEW NOTICE

Pursuant to ORS 183.482, you are entitled to judicial review of this Final Order. To obtain judicial review, you must file a Petition for Judicial Review with the Court of Appeals in Salem, Oregon, within sixty (60) days of service of this Final Order.

If you file a Petition for Judicial Review, you must also serve a copy of the Petition on the BUREAU OF LABOR AND INDUSTRIES and the DEPARTMENT OF JUSTICE -- APPELLATE DIVISION at the following addresses:

BUREAU OF LABOR AND INDUSTRIES
HEARINGS UNIT
1005 STATE OFFICE BUILDING
800 NE OREGON STREET # 32
PORTLAND, OREGON 97232-2162

DEPARTMENT OF JUSTICE
APPELLATE DIVISION
400 JUSTICE BUILDING
SALEM, OREGON 97310

If you file a Petition for Judicial Review and if you wish to stay the enforcement of this final order pending judicial review, you must file a request with the Bureau of Labor and Industries, at the address above. Your request must contain the information described in ORS 183.482(3) and OAR 137-003-0090 to OAR 137-003-0092.

CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL
AND THE WHOLE THEREOF.



KlamathFalls-FO.doc

BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON

13723

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I MAILED THE ATTACHED

FINAL ORDER

In the Matter of
CITY OF KLAMATH FALLS

Case # 02-00

BY ENCLOSING IN A SEALED ENVELOPE WITH POSTAGE PREPAID AND ADDRESSED
TO THE LAST KNOWN ADDRESS OF EACH PERSON LISTED BELOW:

.....

David K. Gerstenfeld
Case Presenter, BOLI
800 NE Oregon Street, #32
Portland, OR 97232

Jeffrey D. Ball
City Attorney
City of Klamath Falls
500 Klamath Avenue
Klamath Falls, Oregon 97601

City of Klamath Falls
P O Box 231
Klamath Falls, Oregon 97601

.....

By Depositing at the U.S. Post Office in Portland, Oregon on Friday, January 28, 2000



Etta Creech, Hearings Unit Coordinator
Bureau of Labor and Industries

State of Oregon, County of Klamath
Recorded 04/24/00, at 8:19 a m.
In Vol. M00 Page 13694
Linda Smith,
County Clerk Fee \$ 161⁰⁰