IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN RE PORT OF WILMINGTON GANTRY CRANE LITIGATION	)	**C.A. No. N17C-11-276 PRW CCLD (CONSOLIDATED)**

THIS MATTER RELATES TO:

KOCKS KRANE, GMBH, Plaintiff,	)	
v.	)	**C.A. No. N17C-12-339 PRW CCLD**
CERRON CADE, et al., Defendants.	)	

Submitted: May 28, 2020
Decided: August 20, 2020

OPINION AND ORDER

Upon Plaintiff Kocks Krane GmbH's
Motion for Partial Summary Judgement,
DENIED—Partial Judgment Entered for the Delaware Department of Labor.

Raymond H. Lemisch, Esquire, Sean M. Brennecke, Esquire, KLEHR HARRISON HARVEY BRANZBURG LLP, Wilmington, Delaware, *Attorneys for Plaintiff Kocks Krane GmbH.*

Oliver J. Cleary, Esquire, DEPARTMENT OF JUSTICE, Wilmington, Delaware, *Attorney for the State of Delaware.*

WALLACE, J.

This particular decision in this complex consolidated action concerns the application of Delaware's Prevailing Wage Law, 29 *Del. C.* § 6960 (the "PWL"), to a contract between the Diamond State Port Corporation ("DSPC") and Kocks Krane GmbH ("KKG") for the purchase and assembly of two ship-to-shore gantry cargo cranes, and the employment of workers engaged for that work (the "Contract"). KKG was engaged as the prime contractor responsible for delivering and assembling certain gantry cranes at the Port of Wilmington. Following an investigation of KKG's subcontractors for PWL violations, the Delaware Department of Labor ("DDOL") ordered DSPC to withhold over $1 million from KKG (the "Withholding Orders").

In response, KKG initiated this declaratory judgment action (the "Complaint") to secure the money DSPC allegedly owes KKG under the Contract. The DDOL then filed its counterclaim in this action (the "Counterclaim"), seeking to recover over $1 million from KKG for the alleged wage deficiencies.

Before the Court is KKG's Motion for Partial Summary Judgment (the "Motion"). KKG has moved for summary judgment on two counts: (1) Count I of its Complaint for a judgment declaring that DDOL is not authorized under the PWL to withhold funds from KKG; and (2) the DDOL's Counterclaim that DDOL can seek recovery directly from KKG for payment of alleged wage deficiencies by

KKG's subcontractor and that subcontractor's subcontractor of the amounts paid to their employees.

Having considered the record and the parties' arguments, the Court **DENIES** KKG's Motion and, instead enters final declaratory judgment in favor of the DDOL on both challenged counts—except to the extent the Counterclaim seeks recovery for KKG's alleged direct administrative violations of the PWL.

I. FACTUAL BACKGROUND

KKG is a German company that manufactures cranes and crane systems.[1] KKG was engaged as the prime contractor responsible for delivering and assembling certain gantry cranes. DSPC is a Delaware corporation tasked with overseeing the Port of Wilmington. In April 2015, DSPC and KKG entered into the Contract. KKG agreed to deliver, install and erect two Ship-to-Shore Gantry Cranes along with related equipment.[2] KKG subcontracted with certain third parties, including Industrial Crane Services, Inc. ("ICS"), to assist in fulfilling the Contract. ICS in turn contracted with certain subcontractors including, among others, Romar Offshore Welding Services, LLC ("Romar").

In 2017, the DDOL investigated whether several of the involved entities,

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1 Compl. ¶ 19.

2 Transmittal Affidavit of Sean M. Brennecke, Esq., Ex. A.

including ICS and Romar, failed to pay their employees a prevailing wage. The DDOL ultimately concluded that there were in fact wage deficiencies and issued wage notices.[3]

The ICS Wage Notice: (a) identified the employees that were allegedly underpaid; (b) contained the asserted amount of the underpayments; (c) demanded that ICS cure the deficiency within 15 days; and (d) warned that ICS's failure to cure or respond may result in additional penalties and an order directing the contracting agency, DSPC or the prime contractor (which was KKG), to withhold payments from ICS.[4] The Romar Wage Notice provided substantially similar information and warnings concerning Romar's alleged failure to pay its employees a prevailing wage.[5] The Wage Notices did not mention KKG, allege KKG failed to pay its employees a prevailing wage, or threaten to withhold payments from KKG.[6] And the DDOL did not provide KKG with a copy of either Wage Notice.[7]

By letter dated August 16, 2017, the DDOL advised DSPC of ICS's alleged

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3 *See id.* Exs. D & E.

4 *See id*. Ex. E.

5 *See id*. Ex. D.

6 *See id.* Ex. D & E.

7 *Id*.

PWL violations and ordered it to withhold $738,505 from ICS.[8] In this letter, the DDOL stated explicitly that "[ICS] has failed to pay" the identified workers "the correct prevailing wage rates."[9]

DSPC advised the DDOL that it had only contracted with KKG, not ICS.[10] The DDOL therefore orally advised DSPC to withhold $738,505 from KKG. On August 25, 2017, DSPC emailed the DDOL, copying KKG, seeking written confirmation of DDOL's order.[11] That same day, the DDOL responded to DSPC with a withholding order (the "ICS Withholding Order").[12] The ICS Withholding Order identifies the purported legal basis for withholding payments from ICS, the associated notices to ICS, and the purported legal basis for directing KKG to withhold payment from ICS.[13] The ICS Withholding Order does not identify any notice provided to KKG nor any other basis for withholding payments from KKG.[14] DSPC explained in a September 14, 2017 letter: "[i]f and when the [DDOL] rescinds

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8 *Id*. Ex. F.

9 *Id.* at 1.

10 *Id.* Ex. G.

11 *Id*.

12 *Id*. Ex. H.

13 *See id.*

14 *See id.*

[the Withholding Orders], DSPC will promptly make all payment(s) to [KKG] that are due and payable to [KKG] in accordance with our contract."[15]

Several months after sending the Wage Notices, the DDOL revised its demands. On October 27, 2017, the DDOL sent Romar a revised demand letter in which it amended the amount of the alleged deficiency to $301,530.39.[16] Similarly, in early 2018, the DDOL revised its calculation of ICS's alleged deficiency.[17] In a letter from the DDOL to ICS dated March 19, 2018, the DDOL advised that ICS's deficiency was $964,634.03.[18] The revisions in the deficiency amounts arose because the DDOL determined that the appropriate prevailing wage rates to apply to the project were the 2015 prevailing wage rates.[19] On March 19, 2019, the DDOL issued a revised deficiency letter to ICS, reflecting a reduced purported deficiency amount for failure to pay wages of $878,858.55.[20] On the same date, the DDOL

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15 *Id*. Ex. C.

16 *Id*. Ex. K.

17 *Id*. Ex. L.

18 *Id*.

19 *Id*. Exs. M & N.

20 *Id*. Ex. M.

issued a revised deficiency letter to Romar, reducing the purported amount of Romar's deficiency to $297,985.05.[21]

Ten days later, the DDOL provided DSPC with the revised deficiency notices for ICS and Romar and demanded that DSPC continue to withhold from KKG payments in the amount of $1,176,843.60 based on those amended notices.[22] The DDOL also ordered DSPC to withhold further amounts from KKG by reason of certain alleged penalties the DDOL claimed were owed by either ICS or KKG.[23]

In total, on March 29, 2019, the DDOL ordered DSPC to withhold $1,506,843.60 from KKG based upon DDOL's various claims.[24]

II. THE PARTIES' CONTENTIONS

KKG contends that the PWL does not permit the DDOL to direct the withholding of payment to a prime contractor in connection with the DDOL's enforcement of PWL claims against a subcontractor. In KKG's view, the DDOL may only order the withholding of payments or seek to recover alleged unpaid wages from the individual employees' direct employer, which KKG contends it was not.

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21 *Id*. Ex. N.

22 *Id*. Ex. O.

23 *See id.*

24 *Id.*

The DDOL argues that the PWL provides broad remedial authority to enforce the terms and purposes of the statute, and that by the plain terms of the statute a prime contractor such as KKG may be liable for any alleged wage underpayment. In the DDOL's view, to hold otherwise would too narrowly construe the PWL as extracting a prime contractor from the PWL enforcement scheme and shielding it from any liability for any of its subcontractors' unpaid or underpaid wages.

III. APPLICABLE LEGAL STANDARDS

The standard of review on a motion for summary judgment is well-settled. The Court's principal function when considering a motion for summary judgment is to examine the record to determine whether genuine issues of material fact exist, "but not to decide such issues."[25] Summary judgment will be granted if, after viewing the record in a light most favorable to a non-moving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.[26] If, however, the record reveals that material facts are in dispute, or if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record, then summary judgment will not be granted.[27]

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[25] *Merrill v. Crothall–American Inc.*, 606 A.2d 96, 99–100 (Del. 1992) (internal citations omitted); *Oliver B. Cannon & Sons, Inc. v. Dorr–Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. Ct. 1973).

[26] *Merrill*, 606 A.2d at 99–100; *Dorr–Oliver*, 312 A.2d at 325.

[27] *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962); *see also Cook v. City of Harrington*, 1990 WL 35244, at *3 (Del. Super. Ct. Feb. 22, 1990) ("Summary judgment will not be granted

The moving party bears the initial burden of demonstrating that the undisputed facts support that party's claims or defenses.[28] If the motion is properly supported, then the burden shifts to the opponent to demonstrate that there are material issues of fact for the resolution by the ultimate fact-finder.[29] And that opposing party must do "more than simply show that there is some metaphysical doubt as to material facts."[30]

If the Court concludes that the moving party is not entitled to summary judgment, and the state of the record is such that the opponent clearly is entitled to such relief, the judge may summarily grant final judgment in favor of that motion's opponent.[31] Because, "[t]he form of the pleadings does not place a limitation upon the court's ability to do justice."[32]

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under any circumstances when the record indicates . . . that it is desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.") (citing *Ebersole*, 180 A.2d).

[28] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979) (citing *Ebersole*, 180 A.2d at 470).

[29] *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

[30] *Id.* (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

[31] *Bank of Delaware v. Claymont Fire Co. No. 1*, 528 A.2d 1196, 1199 (Del. 1987).

[32] *Id.*; *see also* 6 Moore's Federal Practice § 56.12; Wright and Miller, 10A Federal Practice and Procedure § 2720 at 29–34.

IV. ANALYSIS

There is no material dispute of fact here. This is a simple question of statutory interpretation. So the Court is "to determine and give effect to the legislature's intent."[33] And, in doing so, "this Court's role is to interpret the statutory language that the General Assembly actually adopt[ed], even if unclear and explain what [the Court] ascertain[s] to be the legislative intent without rewriting the statute to fit a particular policy position."[34] When a questioned statute read as a whole is unambiguous, that is accomplished by applying the plain, literal meaning of its words.[35]

For a court is allowed to look behind the statutory language itself only if the statute is truly ambiguous.[36] But a statute isn't ambiguous simply because the parties

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[33] *LeVan v. Independence Mall, Inc*., 940 A.2d 929, 932 (Del. 2007).

[34] *Taylor v. Diamond State Port Corp.*, 14 A.3d 536, 542 (Del. 2011); *Pub. Service Comm'n of State of Del. v. Wilmington Suburban Water Corp.*, 467 A.2d 446, 451 (Del. 1983) ("Judges must take the law as they find it, and their personal predilections as to what the law should be have no place in efforts to override properly stated legislative will.").

[35] *Arnold v. State*, 49 A.3d 1180, 1183 (Del. 2012) (citing *Dennis v. State*, 41 A.3d 391, 393 (Del. 2012)).

[36] *Friends of H. Fletcher Brown Mansion v. City of Wilmington*, 34 A.3d 1055, 1059 (Del. 2011) ("[T]he meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms.") (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)); *Ross v. State*, 990 A.2d 424, 428 (Del. 2010).

disagree about the meaning of the statutory language.[37] No, a statute is ambiguous only if it is "reasonably susceptible to different interpretations, or if giving a literal interpretation to the words of the statute would lead to an unreasonable or absurd result that could not have been intended by the legislature."[38]

A statute is unambiguous when its words reasonably bear only one non-absurd interpretation.[39] Just so here.

A. SECTION 6960(b)'S WHOLE TEXT

These parties' dispute arises from the two two-word phrases "employed by" and "the employer" found in § 6960(b). To discern those phrases' meanings, it is important to read § 6960(b) in its entirety:

> Every contract based upon these specifications shall contain a stipulation that the employer shall pay *all mechanics and laborers employed directly upon the site of the work*, unconditionally and not less often than once a week and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the specifications, *regardless of any contractual relationship which may be alleged to exist between the employer and such laborers and mechanics*. The specifications shall further stipulate that the scale of wages to be paid shall be posted by the employer in a prominent and easily accessible place at the site of the work, and that there may be *withheld from the employer* so much of accrued payments as may be considered necessary by the Department

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[37] *Stop & Shop Cos., Inc. v. Gonzales*, 619 A.2d 896, 899 (Del.1993) (citing *Centaur Partners v. Nat'l Intergroup, Inc.*, 582 A.2d 923, 927 (Del. 1990)).

[38] *Arnold*, 49 A.3d at 1183 (citing *Dennis*, 41 A.3d at 393).

[39] *Leatherbury v. Greenspun*, 939 A.2d 1284, 1288 (Del. 2007).

> of Labor to pay to *laborers and mechanics employed by the employer* the difference between the rates of wages required by the contract to be paid *laborers and mechanics on the work* and rates of wages received by such laborers and mechanics to be remitted to the Department of Labor for distribution upon resolution of any claims.[40]

The PWL does not expressly define "employed" or "employer." When words used in any statute are undefined, those words should be given their ordinary, common meaning.[41] Thus, "[u]ndefined words or phrases in the Delaware Code are 'construed according to the common and approved usage of the English language.'"[42]

1. Meaning of "employed" in the PWL

It is normally presumed that a given word or phrase is used to mean the same thing throughout a statute.[43] But this presumption is not absolute.[44] "It yields readily to indications that the same [word or] phrase used in different parts of the same statute means different things, particularly where the [word or] phrase is one

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[40] DEL. CODE ANN. tit. 29, § 6960(b) (2018) (emphasis added).

[41] *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1245 (Del. 1985).

[42] *State v. Daniels*, 2019 WL 6869071, at *2 (Del. Super. Ct. Nov. 13, 2019) (quoting DEL. CODE ANN. tit. 1, § 303).

[43] *Brown v. Gardner*, 513 U.S. 115, 119 (1994).

[44] *Barber v. Thomas*, 560 U.S. 474, 484 (2010).

that speakers can easily use in different ways without risk of confusion."[45]

The word "employed" is used twice in § 6960(b). In the first clause, it states that "the employer shall pay all mechanics and laborers *employed* directly upon the site of the work [. . .] regardless of any contractual relationship which may be alleged to exist between the employer and such laborers and mechanics."[46] And contrary to KKG's arguments, in the second instance, § 6960(b)'s text does not state that DDOL may withhold funds to pay "employees" but rather to pay "laborers and mechanics *employed by* the employer."[47] The text surrounding both appearances of the word "employed" in this subsection reveals its intended broader meaning as used here; it is not cabined to only where a contractual relationship exists directly between the employer and the laborers and mechanics.[48]

Section 6960(i) further explains the liability of a person contracted for a public works project:

> Whenever any person shall contract with another for the performance of any work which the contracting person has undertaken to perform, he or she shall become civilly liable to employees engaged in the

[45] *Id.* (providing as examples: *General Dynamics Land Systems, Inc. v. Cline*, 540 U.S. 581, 596–97 (2004) ("age" has different meanings in the Age Discrimination in Employment Act of 1967); *United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 213 (2001) (same for "'wages paid'" in the Internal Revenue Code); and *Robinson v. Shell Oil Co.*, 519 U.S. 337, 343–44 (1997) (same for "employee" in Title VII of the Civil Rights Act of 1964)).

[46] DEL. CODE ANN. tit. 29, § 6960(b) (2018) (emphasis added).

[47] *See* DEL. CODE ANN. tit. 29, § 6960(b) (2018) (emphasis added).

[48] *See id.*

> performance of work under such contract for the payment of wages, exclusive of treble damages, as required under this section, whenever and to the extent that the employer of such employees fails to pay such wages, and the employer of such employees shall be liable to such person for any wages paid by the employer under this section.[49]

Because "this Court must presume that each word and phrase choice by the legislature . . . is meaningful," the phrase "the employer of such employees" in § 6960(i) must be ascribed a different meaning than the phrase "laborers and mechanics employed by the employer" in § 6960(b).[50] While the former clearly refers to an immediate employer-employee relationship; the latter, as explained now, obviously encompasses a broader relationship.

a. The common definitions of the base word: "employ"

The plain meaning of "employ" itself simply doesn't require a contractual relationship. According to the Merriam-Webster Dictionary,[51] "employ" means "to

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[49] DEL. CODE ANN. tit. 29, § 6960(i) (2018).

[50] *Evans v. State*, 212 A.3d 308, 316 (Del. Super. Ct. 2019); *Taylor*, 14 A.3d at 540 ("To the extent possible, we construe statutory language against surplusage, and assume the General Assembly used particular text purposefully."); *Mayor and Council of Wilmington v. Riverview Cemetery Co. of Wilmington*, 190 A. 111, 114 (Del. Super. Ct. 1937) ("It is a well recognized canon of statutory construction that every sentence, phrase or word will, if possible, be given weight and consideration.").

[51] *Cephas v. State*, 911 A.2d 799, 801 (Del. 2016) ("Under well-settled case law, Delaware courts look to dictionaries for assistance in determining the plain meaning of terms which are not defined" within the statutes they appear.); *Andrews v. State*, 34 A.3d 1061, 1063 (Del. 2011) (Because a key word was not otherwise specifically defined in the subject statute, it "must be given its common, or dictionary, definition."); *Freeman v. X-ray Associates, P.A.*, 3 A.3d 224, 227–28 (Del. 2010) ("Because dictionaries are routine reference sources that reasonable persons use to

make use of (someone or something inactive)," "to use or engage the services of," and "to provide with a job that pays wages or a salary."[52] By way of further example, 29 U.S.C. 203(e)(1) of the Federal Fair Labor Standards Act defines "employ" to mean "to suffer or permit to work."[53]

A prime contractor makes use of a subcontractor's mechanics and laborers in completion of the project under the prime contract. It also follows that the prime contractor necessarily is one that provides a job paying wages or a salary to the employees of the subcontractor: without the prime contractor, there would be no project and no contract under which the subcontractor would perform.

b. The federal origin of the PWL

To gain further insight into the PWL, it is also appropriate to consult the federal law it is modeled after—the Davis-Bacon Act, 40 U.S.C. § 276a *et seq.*[54]

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determine the ordinary meaning of words, we often rely on them for assistance in determining the plain meaning of undefined terms.").

[52] *Employ*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/employ (last visited Aug. 12, 2020); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED 743 (1993).

[53] 29 U.S.C. § 203(e)(1) (2018).

[54] *See James Julian, Inc. v. Dep't of Transp. of State of Delaware*, 1991 WL 224575, at *1 n.1 (Del. Ch. Oct. 29, 1991) (Delaware's PWL "is modeled after the federal Davis-Bacon Act."); *see also* Del. Att'y Gen. Op. No. 80-IO23, 1980 WL 99014 (July 9, 1980) (consulting the Davis-Bacon Act where Delaware's prevailing wage law was silent on the use of fringe benefits in determining whether an employer has met its obligations thereunder); Del. Att'y Gen. Op. 98-IB07, 1998 WL 648717 (July 28, 1998) (explaining that the Davis-Bacon Act should be consulted where Delaware prevailing wage law is silent on the issue); *State ex rel. French v. Card Compliant LLC*, 2017 WL 1483523, at *11 (Apr. 21, 2017) (noting that federal decisions on the False Claims

The Davis-Bacon Act requires that laborers and mechanics be paid prevailing wages on state public construction projects:

> Every contract based upon the specifications referred to in subsection (a) must contain stipulations that--
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> (1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, *regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics*;
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> . . .
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> (3) there may be withheld from the *contractor* so much of accrued payments as the contracting officer considers necessary to pay to *laborers and mechanics employed by the contractor or any subcontractor on the work* the difference between the rates of wages required by the contract *to be paid laborers and mechanics on the work* and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.[55]

Similar to the PWL, which traces almost verbatim that of its federal counterpart, the Davis-Bacon Act does not separately delineate the terms "contract," "contractor,"

Act, 31 U.S.C. § 3730, "[t]he federal analogue to the [Delaware False Claims and Reporting Act are] informative when deriving the proper definition of 'administrative proceeding' under our statute"); *State v. Jock*, 404 A.2d 518, 521 (Del. Super. Ct. 1979) ("Finally, some insight may be gained by examining the closely analogous federal wiretap law, Title III and its accompanying varied interpretations on the issue of interspousal immunity.").

[55] 40 U.S.C. § 3142 (2018) (emphasis added).

"subcontractor," "mechanic," "laborer," or "employed." Corresponding regulations promulgated by the Secretary of Labor define these terms.[56] The term "contract" comprises "any prime contract which is subject . . . to the labor standards provisions of [the Davis-Bacon Act] and any subcontract of any tier thereunder, let under the prime contract."[57] This definition is not limited by a particular degree of separation from the prime contractor. These federal regulations further define the meaning of "employed":

> (o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is employed regardless of any contractual relationship alleged to exist between the contractor and such person.[58]

Subsection (o) expressly disavows any requirement that a worker demonstrate a particular contractual relationship. Furthermore, the regulatory definition of "laborer" and "mechanic" is governed by function, as opposed to contractual formality, and extends to "at least those workers whose duties are manual or physical in nature."[59] Similar to the federal regulations, Delaware regulations promulgated

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[56] *See* 29 C.F.R. § 5.2.

[57] *Id.* § 5.2(h).

[58] *Id.* § 5.2(o).

[59] *Id.* § 5.2(m).

to implement § 6960 define the terms "laborer" and "mechanic" not by a certain contractual relationship, but by function, including "at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial."[60]

Of course, "it is inappropriate for this Court to interpret a statute *solely* by reference to a definition in a set of regulations."[61] Instead, the Court "must accord the administrative body's interpretation due weight to the extent it serves the ultimate goal of statutory construction, which is 'to determine and give effect to legislative intent.'" [62] The Court recognizes the federal regulations promulgated under the Davis-Bacon Act and Delaware's state regulations are relevant to the extent that they further confirm the intent of the PWL to protect all workers functioning as "laborers" and "mechanics." With this additional interpretive assistance, it is easy to understand "employed by" in § 6960(b)'s text to mean the employer's use of services provided by laborers and mechanics, as opposed to a specific contractual relationship between the parties.

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60 19 DEL. ADMIN. CODE § 1322-3.1.3 (2018).

61 *Dec. Corp. v. Wild Meadows Home Owners Ass'n*, 2015 WL 9301813, at *7 (Del. Ch. Dec. 22, 2015) (emphasis added and omitted).

62 *Id.*

And so, under the plain language of the PWL, this Court must consistently interpret the base word "employ" as it appears in the key KKG-questioned § 6960 terms here to mean "to make use of."

2. Meaning of "the employer" in the PWL

The next issue for this Court is whether KKG is "the employer" as contemplated under § 6960. The ordinary, common meaning of an "employer" is "one that employs or makes use of something or somebody, . . . especially: a person or company that provides a job paying wages or a salary to one or more people."[63] Similar to the definition of "employ," this definition does not require the existence of a contractual relationship. Rather, the act of making use of somebody is sufficient to make one an "employer." Section 6960(e) further clarifies that contractors and subcontractors are considered "employers":

> No public construction contract in this State shall be bid on, awarded to or received by any *contractor or subcontractor* or any person, firm, partnership or corporation in which *such employer* has an interest.[64]

"Such employer" clearly refers to either the contractor or subcontractor. There is no doubt that KKG is an employer under the ordinary, common meaning sense of the word.

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[63] *Employer*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/employer (last visited Aug. 17, 2020).

[64] DEL. CODE ANN. tit. 29, § 6960(e) (2018) (emphasis added).

The word "the" that immediately precedes "employer" in § 6960(b) also warrants particularized scrutiny. The question is how does the article "*the*" modify the word "employer." Again, when reading any part of the Delaware Code words and phrases must be read with their context and must be construed "according to the common and approved usage of the English language."[65] An article is typically "definite" if it provides distinct and certain limits to the noun it precedes.[66] And the definite article "the" is generally used as a "function word to indicate that a following noun or noun equivalent refers to someone or something previously mentioned, or clearly understood from the context or the situation."[67] KKG argues that the context provided by the phrase "laborers and mechanics employed by the employer" means that "the employer" is necessarily the subcontractor. But, as explained above, the use of "employed" here does not mean that there is a direct employer-employee relationship. Rather, the contractor *or* the subcontractor may "employ" laborers and mechanics.

The Court looks to the whole text of § 6960 for context. The first sentence of § 6960(b) states: "Every contract based upon these specifications shall contain a

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[65] *Id.* at tit. 1, § 303.

[66] *ION Geophysical Corp. v. Fletcher Int'l, Ltd.*, 2010 WL 4378400, at *7 (Del. Ch. Nov. 5, 2010) (citing WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 334 (9th ed. 1987)).

[67] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED 2368 (1993).

stipulation that *the employer* shall pay all mechanics and laborers employed directly upon the site of the work . . . regardless of any contractual relationship which may be alleged to exist between the employer and such laborers and mechanics."[68] A contractor's and a subcontractor's contracts are included within the scope of "[e]very contract based upon these specifications." This provision as a whole requires certain stipulations in at least the prime contract and subcontract.

The fact that it states "*a* stipulation" is also telling. The word "a" is an indefinite article used as a function word before singular nouns when the referent is unspecified.[69] It is thus reasonable that these stipulations would vary based on the specific contract. It is clear then that the term "the employer" used throughout this provision must function as a variable term that refers to the employer that is the party bound by the contract. As such, this section requires a prime contractor's contract to stipulate that there may be withheld from the prime contractor—*the* employer under that contract—so much of accrued payments as may be considered necessary by the Department of Labor to pay to laborers and mechanics employed (*i.e.*, made use of) under the prime contract.

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[68] DEL. CODE ANN. tit. 29, § 6960(b) (2018) (emphasis added).

[69] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED 1 (1993); *ION Geophysical Corp.*, 2010 WL 4378400, at *7 ("An article is typically 'indefinite' where it does not designate an identified or immediately identifiable person or thing or fails to give exact limits to the noun it modifies.") (citing WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 43 (9th ed. 1987)).

The use of the term "employer" elsewhere in related legislation also supports finding that the term "the employer" as applied in § 6960 refers to either the contractor or the subcontractor. Prior to 2007, Delaware Workers' Compensation Act, 19 *Del. C.* § 2311, barred employees of a subcontractor from pursuing workers' compensation claims against the prime contractor:

> No . . . subcontractor shall receive compensation under this chapter, but shall be deemed to be an employer and all rights of compensation of the employees of any such . . . subcontractor shall be against *their* employer and *not against any other employer*.[70]

In *Dickinson v. Eastern R. R. Builders, Inc.* (1979), the Supreme Court recognized § 2311 as a legislative effort, in the circumstances specified therein, to cut through the multi-employer situation and to assign responsibility under the Compensation Act to a single employer.[71] Specifically, where there is a hierarchy of employers that have many employees working at a single job site, an employee may follow instructions from several employers at about the same time.[72] Because it is difficult for the courts to administer a particular test to determine which of the employers should be liable for compensation in the context of the contractor-subcontractor

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70 DEL. CODE ANN. tit. 19, § 2311 (1978).

71 *See Dickinson v. E. R. R. Builders, Inc.*, 403 A.2d 717, 721 (Del. 1979).

72 *Id*.

relationship, § 2311 seeks to provide certainty on the situation by assigning this liability to the employee's immediate employer.[73]

The General Assembly revised § 2311 in January 2007.[74] This revision created § 2311(a)(5), which initially read as follows:

> Any contracting entity shall obtain, and retain for 3 years from the date of the contract, certification of insurance in force from any entity described in the preceding subsection. If the contracting entity should fail to do so, the contracting entity shall be deemed the employer for purposes of any workers' compensation claim arising from the transaction.[75]

Section 2311(a)(5) was further amended later, in May 2007, to its current version.[76] In relevant part, the May 2007 revisions changed the final sentence of § 2311(a)(5) to state that "the contracting entity shall not be deemed the employer" of an uninsured subcontractor or its employees, "but shall be deemed to insure any workers' compensation claims arising under this chapter."[77]

The shifting meaning of "the employer" in the legislative history of § 2311 further demonstrates that a contractor can be considered the employer of a

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[73] *Id*.

[74] 76 DEL. LAWS ch. 1, § 6 (2007); *Liberty Mut. Ins. Co. v. JBR Contractors, Inc*., 2010 WL 5306782, at *3 (Del. Super. Ct. Dec. 2, 2010).

[75] *See* DEL. CODE ANN. tit. 19, § 2311(a)(5) (Jan. 2007).

[76] 76 DEL. LAWS ch. 33, § 3 (2007); *Liberty Mut. Ins. Co.*, 2010 WL 5306782, at *3.

[77] *See* DEL. CODE ANN. tit. 19, § 2311(a)(5) (May 2007) (emphasis added).

subcontractor's employees and that the legislature's primary intent is to promote protection for employees. Because in the normal everyday sense one readily understands an employer-employee type relationship between a contractor and the subcontractor's employees,[78] the legislature expressly narrowed § 2311's specific statutorily defined employer-employee relationship to promote protection for workers.[79]

But under § 6960, the contractor is also responsible for ensuring the subcontractor's employees are paid.[80] And what § 2311(a)(5) demonstrates is that when the General Assembly intends to limit "the employer" to mean an employee's direct and immediate employer—the subcontractor in § 2311's case—it knows precisely how to do that.[81] The General Assembly did not in § 6960. And this Court

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[78] *Dickinson*, 403 A.2d at 721 ("If there is such a relationship, the statutory policy assigns all rights of compensation of an employee of a subcontractor to that subcontractor 'and not against any other employer.'").

[79] *See McKirby v. A & J Builders, Inc.*, 2009 WL 713887, at *3 (Del. Super. Ct. Mar. 18, 2009) (finding Section 2311(a)(5)'s May 2007 alteration "clarified the lack of an employer-employee relationship with the contracting entity . . . was necessary to preserve tort liability claims by injured workers against third parties."), *appeal dismissed*, 979 A.2d 1110 (Del. 2009).

[80] *See generally* DEL. CODE ANN. tit. 29, § 6960 (2018).

[81] *Evans v. State*, 212 A.3d at 316 ("If the legislature intended to include taking on a wholly fictitious persona as an act prohibited by the impersonation statute, no doubt it knew exactly how to do so. It did not. And, this Court cannot do so in its stead."); *State ex rel. Christopher v. Planet Ins. Co.*, 321 A.2d 128, 136 (Del. Super. Ct. 1974) ("If the section had been intended to be confined to those contracting directly with the general contractor, such a simple limitation could have been inserted.").

has no authority to do so in its stead.[82]

Accordingly, the Court finds that the plain meaning of the text supports the DDOL's interpretation that the PWL bestowed it with the authority to request the Withholding Orders against KKG—"the employer."

B. THE PWL'S PURPOSE

KKG's suggested read that the PWL excludes a prime contractor from the scope of the DDOL's enforcement mechanisms for alleged wage underpayments would lead to unreasonable results.[83] That interpretation would run counter to the express assignment in the PWL of responsibility for prevailing wage compliance to a prime contractor's contract documents and contract fulfillment,[84] as well as express liability for those wages.[85]

This Court has found that Delaware's prevailing wage law has a twofold

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[82] *General Motors Corp. v. Burgess*, 545 A.2d 1186, 1191 (Del. 1988) (quoting *Giuricich v. Entrol Corp.*, 449 A.2d 232, 238 (Del. 1982)) ("The courts may not engraft upon a statute language which has been clearly excluded therefrom by the Legislature."); *Leatherbury*, 939 A.2d at 1291 ("It is well established that 'a court may not engraft upon a statute language which has clearly been excluded therefrom.'") (quoting *In re Adoption of Swanson*, 623 A.2d 1095, 1097 (Del. 1993)).

[83] *See Doroshow, Pasquale, Krawitz & Bhaya v. Nanticoke Mem'l Hosp., Inc.*, 36 A.3d 336, 343 (Del. 2012) ("According to the golden rule of statutory interpretation, 'unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result.'") (citing *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1247 (Del. 1985)).

[84] DEL. CODE ANN. tit. 29, § 6960(a), (b) (2018).

[85] *Id*. § 6960(i).

purpose: "One is to secure to the individual workman a minimum living wage, fixed by law, and the other is to penalize the employer who fails to pay the wage."[86] The PWL is a remedial statute intended to protect laborers and mechanics during the pendency of a dispute.[87] Under Delaware law, remedial statutes are construed liberally to accomplish the intended purposes of the act.[88] The Court accords the PWL a broad construction to accomplish the legislature's clear objective of ensuring laborers and mechanics working under a contract are properly paid for the hours they work.[89]

Under accepted principles of statutory interpretation, "the cardinal rule [is] that the general purpose, intent or purport of the whole act shall control, and . . . all

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[86] *Callaway v. N. B. Downing Co*., 172 A.2d 260, 263 (Del. Super. Ct. 1961); *see also James Julian, Inc.*, 1991 WL 224575, at *15 ("The policy underlying the prevailing wage concept is that workers on public construction contracts should receive a minimum wage prescribed by law, so that contractors competitively seeking to submit the lowest bid cannot reduce wage rates below those prevailing in a community to the detriment of workers. That is, by statutorily providing that the existing wages in a given community shall be mandatory minimum rates in government contracts, workers under such contracts are protected against their wages being depressed below customary levels by competition among employers for government work.").

[87] *See Callaway v. N. B. Downing Co*., 172 A.2d at 263.

[88] *Kohn v. Collison*, 27 A. 834, 835 (Del. Super. Ct. 1893).

[89] *See Holland v. Zarif, M.D*., 794 A.2d 1254, 1268 (Del. Ch. 2002) ("[W]hen a statute may be deemed remedial legislation, the court is required to accord it a broad construction to accommodate the legislative will.") (citing *Stop & Shop Cos.,* 619 A.2d at 898).

the parts are subsidiary and harmonious . . . ."[90] As the DDOL rightly notes:

> The PWL intends to permit the DDOL to withhold funds. If the DDOL could not withhold funds from a contracting agency, it would be limited to withholding orders against the prime contractor. A prime contractor such as KKG could simply abscond with the disputed funds, leaving the employees of the subcontractor without a means of recovering wages owed. The General Assembly did not intend to subject these workers to the ignominy of receiving paper judgments against which there is nothing to collect.[91]

The PWL explicitly imposes broad civil liability on prime contractors for the wages owed by their subcontractors:

> Whenever *any person* shall contract with another for the performance of any work which the contracting person has undertaken to perform, he or she shall become *civilly liable to employees engaged in the performance of work under such contract for the payment of wages*, exclusive of treble damages, as required under this section, whenever and to the extent that the employer of such employees fails to pay such wages, and the employer of such employees shall be liable to such person for any wages paid by the employer under this section. If pursuant to this subsection *a person becomes civilly liable to employees of another*, such liability shall not constitute a violation of this section for purposes of the termination, civil penalty and debarment provisions of subsections (d) and (e) of this section.[92]

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[90] 2A Sutherland Statutory Construction § 46:5 (7th ed.); *see E. I. Du Pont De Nemours & Co. v. Clark*, 88 A.2d 436, 438 (Del. 1952) ("The object of statutory construction is to give, if possible, a sensible and practical meaning to a statute as a whole.").

[91] Def.'s Ans. Br. in Opp. to Plf.'s Mot. for Partial Summ. J. at 15.

[92] DEL. CODE ANN. tit. 29, § 6960(i) (2018) (emphasis added).

Thus, the statute clearly permits the DDOL to pursue wage deficiencies against the prime contractor. Under 6 *Del C.* § 3503, a contractor is prohibited from receiving funds until all persons involved in the construction of the building have been paid:

> No contractor, or agent of a contractor, shall pay out, use or appropriate any moneys or funds described in § 3502 of this title until they have first been applied to the payment of the full amount of all moneys due and owing by the contractor *to all persons* (including surveyors and engineers) furnishing labor or material (including fuel) for the erection, construction, completion, alteration or repair of, or for additions to, such building, whether or not the labor or material entered into or became a component part of any such building or addition and whether or not the same were furnished on the credit of such building or addition or on the credit of such contractor.[93]

Additionally, the Wage Payment and Collection Act, 19 *Del. C.* § 1105, imposes civil liability on prime contractors for the wages owed by their subcontractors:

> Whenever any person shall contract with another for the performance of any work which the contracting person has undertaken to perform, the person shall become *civilly liable* to employees engaged in the performance of work under such contract for the payment of wages, exclusive of liquidated damages, as required under this chapter, whenever and to the extent that the employer of such employees fails to pay such wages, and the employer of such employees shall be liable to such person for any wages paid by the employer under this section.[94]

When interpreting Chapter 11's language, this Court concluded:

> It is clear that the General Assembly intended to establish a broad liberal public policy favoring full and prompt payment to employees.

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93 DEL. CODE ANN. tit. 6, § 3503 (2018) (emphasis added).

94 DEL. CODE ANN. tit. 19, § 1105 (2018) (emphasis added).

> It is also clear that this chapter was intended to apply to instances where formerly the right of the employee was to recover by an action at common law. Applying this policy, the Court concludes that Chapter 11 applies to the amount of compensation to which an employee is entitled to be paid for his services without distinction as to the source of the right of employee to receive a particular amount of wages, whether that source is direct contract between employer and employee, contract between employer and a third party under which employee is a beneficiary, or statute.
>
> . . .
>
> Nothing in the chapter shows an intention to exclude workers on public projects from the benefits of the chapter. In general, the law provides greater protection for those who work on public projects than for other workers. It must be concluded that the General Assembly did not intend to deprive workers on public projects of a new protection adopted for workers generally. The Court concludes that wages required to be paid by virtue of a contract provision inserted in compliance with 29 Del.C. s 6913 are 'wages' within the meaning of Chapter 11 of Title 19, Delaware Code, and as such their payment may be enforced as provided in the latter statute. It is noted also that 19 Del.C. s 1105 makes the general contractor civilly liable for payments of wages due employees of a subcontractor.[95]

Accordingly, the focus of 6 *Del. C.* § 3503 and 19 *Del. C.* § 1105 is on the work performed pursuant to a contract rather than the contractual employer-employee relationships.

Further, 6 *Del. C.* § 3504 provides sanctions for a prime contractor's failure to pay funds owed to subcontractors:

> Failure of a contractor, or of an agent of a contractor, to pay or cause to be paid, in full or pro rata, the lawful claims of all persons, firms,

[95] *State ex rel. Christopher v. Planet Ins. Co.*, 321 A.2d 128, 133 (Del. Super. Ct. 1974).

> association of persons or corporations (including surveyors and engineers), furnishing labor or material (including fuel), as required by § 3503 of this title, within 30 days after the receipt of any moneys or funds for the purposes of § 3502 of this title, shall be prima facie evidence of the payment, use or appropriation of such trust moneys or funds by the contractor in violation of the provisions of this chapter.[96]

The Court finds that the PWL is but one more part of the overall statutory scheme established through 6 *Del. C.* §§ 3503, 3504 and 19 *Del. C.* § 1105 to provide broad protection to the subcontractor's employees.

As already stated, the language of § 6960 closely parallels the Davis-Bacon Act, and so too does its analogous underlying policy considerations, namely prevention of all employees' wages, earned on public projects, from reverting back to contractors.[97]

In *Mid-Western Mirror & Glass, Inc. v. Jenkins & Blaine Const. Co*., the federal district court considered a similar issue of whether payments could be withheld from a contractor or subcontractor even though its own employees were not those being denied the proper minimum wages under the Davis-Bacon

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96 DEL. CODE ANN. tit. 6, § 3504 (2018).

97 *See N.L.R.B. v. Int'l Bhd. of Elec. Workers, Local 48, AFL CIO*, 345 F.3d 1049, 1054 (9th Cir. 2003) ("The purpose of the Davis-Bacon Act is to protect workers from receiving substandard wages on government jobs . . . One of the underlying policies of the Davis-Bacon Act is to prevent employees' wages, earned on public projects, from reverting back to contractors."); *see also Jock*, 404 A.2d 518, 521 (Del. Super. Ct. 1979) ("The language of 11 Del.C. s 1336(b) closely parallels that of the federal wiretap statute, 18 U.S.C. s 2511(1)(a), and so, too, should its underlying policy considerations be analogous, namely, the protection of individual privacy from electronic intrusion.").

Act.[98] The court recognized that "[o]ne of the enforcement provisions is that accrued payments may be withheld from the contractor as necessary to pay laborers and mechanics employed by the contractor or any subcontractor."[99] And so that court determined that the wording of the Davis-Bacon Act and its interpretation by the courts "do not require that the amount being withheld should only come from the payments due the immediate employer of the employees who are owed backwages."[100] In order to give effect to the PWL's similar purpose, this Court finds DDOL's ordered withholding of wage deficiency amounts from KKG is authorized under the PWL.[101]

C. LEGISLATIVE HISTORY OF DELAWARE'S PWL

Where the text of a statute is clear, as it is here, the Court need not go on to consider the act's legislative history to divine the legislature's intent.[102]

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98 1987 WL 47835, at *2 (D. Kan. Sept. 17, 1987).

99 *Id*. (citing 40 U.S.C. § 276a; *Clevenger Roofing & Sheet Metal Co. v. United States*, 8 Cl.Ct. 346 (1985); *Unity & Bank Trust Co. v. United States*, 5 Cl.Ct. 380 (1984); and *Fry Bros. Corp. v. Dept. of Housing & Urban Development*, 77 L.C. 47,154 (D.N.M. 1975)).

100 *Id*.

101 *See Seth v. State*, 592 A.2d 436, 440 (Del. 1991) ("[W]hen statutory language is both clear and consistent with other provisions of the same legislation and with legislative purpose and intent, a court must give effect to that intent because it is for the legislature, and not the courts, to declare the public policy of the State.").

102 *Arnold v. Soc'y for Sav. Bancorp, Inc.*, 650 A.2d 1270, 1287 (Del. 1994).

Nevertheless, examination of the PWL's legislative history only confirms the plain meaning of the text.[103]

Prior to 1994, Delaware's prevailing wage law—then 29 *Del. C.* § 6912—read as follows:

> Every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and a further stipulation that *there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work* the difference between the rates of wages required by the contractor to be paid laborers and mechanics on the work and rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractor, or their agents.[104]

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[103] *See Mass. Ass'n of Health Maint. Orgs. v. Ruthardt*, 194 F.3d 176, 184 (1st Cir. 1999) ("Although textual analysis resolves the statutory construction issue, we sometimes have looked to legislative history to confirm textual intuitions.").

[104] *See* DEL. CODE ANN. tit. 29, § 6912 (1993) (emphasis added).

Amendments in 1994 led to the current version of Delaware's PWL.[105] Those 1994 changes included striking out § 6912 in its entirety.[106] While the substituted text still substantially reflected the contract specification requirements of the Davis-Bacon Act, the text—which is now found in the current § 6960[107]—did not similarly use the words "contractor" and "subcontractor."[108] Rather, the term "the employer" was substituted throughout § 6960, including where the pre-1994 law had read "there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work."[109] The synopses of the house bills amending the prevailing wage law do not explain specifically why these terms were changed.[110] Still, the legislature expressed an intent to continue to require prime contractors to pay wages for which their subcontractors failed to

[105] 69 DEL. LAWS ch. 295 (1994).

[106] *Id.* at § 1.

[107] *See* 69 DEL. LAWS ch. 601, §§ 7–8 (1996) (assigning the entirety of then-§ 6912's prevailing wage requirement as newly designated § 6960 with no alteration of its language).

[108] 69 DEL. LAWS ch. 295, § 1 (1994).

[109] *See id*.

[110] *See* Del. H.B. 528 syn., 137th Gen. Assem. (May 1994); Del. H.A. 1 to H.B. 528 syn., 137th Gen. Assem. (June 1994).

pay.[111] The substitution of the more generalized word "employer" in § 6960 certainly cannot be reasonably inferred as expressing some intent to remove protections for subcontractor employees.[112] The General Assembly simply would have never stripped the subcontractor's employees of any practical protection in this way.

As Justice Scalia aptly stated, a legislative body "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."[113] Here, there is absolutely nothing to indicate that the General Assembly intended to fundamentally alter this wage protection scheme to strip key safeguards from subcontractor's employees via a narrowly-drawn use of the word "employer." To interpret it as such would defeat the clear underlying purposes of the PWL's statutory scheme.

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[111] Del. H.A. 1 to H.B. 528 syn., 137th Gen. Assem. (June 1994) ("This Amendment requires that an employer must have known that he/she was violating the prevailing wage law in order for statutory penalties to be imposed; provides that prime contractors who are required to pay wages which their subcontractors failed to pay have not 'violated' the Act for debarment purposes: changes the contract manager's responsibility from financial liability for unpaid wages to responsibility for monitoring the payment of prevailing wages on the project.").

[112] Rather, these changes clarify and broaden § 6960's protection of all employees under the public construction contract—from prime through and to any tier of subcontractor thereunder. *See Jenkins & Blaine Const. Co*., 1987 WL 47835, at *2 (noting the potential issue of whether a first tier subcontractor is liable for a second tier subcontractor's violation of the Davis–Bacon Act).

[113] *Whitman v. American Trucking Ass'ns,* 531 U.S. 457, 468 (2001).

No, the PWL must be read as a whole "in a manner that avoids absurd results."[114] And even if the words "employer" and "employed" in the PWL were found ambiguous—which they are not—this is a remedial statute that favors protection of all workers on a public works project, regardless of their employer. The Court must avoid the absurd result that KKG would urge but that is contrary to the PWL's purpose and plain meaning.[115]

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** KKG's motion for partial summary judgment and instead: (1) **GRANTS** summary *judgment* in the DDOL's favor upon Count I in the form of a declaration that the challenged Withholding Orders are lawful under the PWL; (2) the Court also **GRANTS** partial summary judgment in favor of the DDOL on its Counterclaim, except to the extent that Counterclaim seeks recovery for KKG's alleged direct administrative violations of the PWL. That aspect of the Counterclaim shall be left to another day.

IT IS SO ORDERED.

/s/ *Paul R. Wallace*

Paul R. Wallace, Judge

Original to Prothonotary
cc: All Counsel via File and Serve

[114] *Ingram v. Thorpe*, 747 A.2d 545, 547 (Del. 2000).

[115] *Del. Bay Surgical Servs., P.C. v. Swier*, 900 A.2d 646, 652 (Del. 2006) ("If uncertainty does exist, the statute must be construed to avoid 'mischievous or absurd results.'") (quoting *Moore v. Wilmington Housing Auth.*, 619 A.2d 1166, 1173 (Del. 1993)).