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# Elevator Mechanics Union Can Contest Prevailing Pay Rate

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By DAVID SIMS | [0 comments](#)

Elevator Repair Mechanics belonging to Local 1 of the International Union of Elevator Constructors have won the right to challenge City Comptroller William C. Thompson's prevailing wage rate decision for their members, arguing that he made his decision based on rates from a collective-bargaining agreement with a bargaining unit smaller than their own.

Manhattan State Supreme Court Justice Joan B. Lobis ruled that Mr. Thompson's decision was "arbitrary and capricious" and "not supported by substantial evidence" Mr. Thompson, who sets the prevailing wage rates for various trades on an annual basis, used the rates set forth in the collective bargaining agreement of the International Brotherhood of Electrical Workers Local 3, the other city union representing elevator workers.

## Argued for Union's Primacy

But Local 1 President Lenny Legotte argued that his own collective-bargaining agreement, which had higher rates of pay, should have been used as the model, because it represents the majority of elevator repair and maintenance workers here.

Justice Lobis ordered that a hearing be held to determine which union has more workers belonging to the specific titles addressed by Mr. Thompson's decision. "I believe this is the first time that a judge has expressly held that, where there's more than one union in the private sector that represents a trade, the collective bargaining agreement rates of the union with more members are the prevailing rate" said Dan Bright, Local 1's attorney. "This is a big win, because it takes the decision out of the Comptroller's hands; the judge will decide which union has more members doing the work in question"

In her decision, Justice Lobis said that "historical practice" had been for the Comptroller to use the predominant union's rates to decide the prevailing wage, and that Local 1 had been deemed the predominant union for these trades by the U.S. and New York State Departments of Labor.

## Calls Survey 'Flawed'

She then stated that the Comptroller's decision that IBEW Local 3 was the larger union was based on a "flawed survey" conducted in 2006, "which omitted employment data from the seven largest elevator contractors in New York City, each of which is a signatory to a [collective-bargaining agreement] with Local 1." "Of the 78 contractors mailed survey kits that were identified by Local 1 as employing its members, only 12 responded to the Comptroller's survey. In contrast, 20 of the 27 contractors identified as employing Local 3 members returned the survey" Justice Lobis explained. "It strains credulity for the Comptroller to have concluded that the survey response was an accurate measure of each union's membership"

Local 1's official tally is that it has 1,608 members to Local 3's 1,331 members in this title. Its members in this title make \$38.46 an hour, with fringe benefits of an additional \$21.67 an hour. Local 3 members make between \$30.63 to \$34.75 an hour, with fringe benefits of \$19.16 to \$20.86 an hour. Justice Lobis will announce the coming trial date at a conference in April, Mr. Bright said.