

IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
CENTRAL PANEL BUREAU

GINGERICH ROOFING SOLUTIONS, LLC	)	
Ben Gingerich	)	
[REDACTED]	)	Appeal No. 24IWDM0016
[REDACTED]	)	IWD No. 687646
	)	
Appellant,	)	
	)	
v.	)	
	)	
IOWA WORKFORCE DEVELOPMENT,	)	DECISION
	)	
Respondent.	)	

INTRODUCTION

Iowa Workforce Development (IWD) completed an investigation and determined that an employer-employee relationship existed between Gingerich Roofing Solutions, LLC (Gingerich LLC) and nine of its workers. After Gingerich appealed, IWD transferred the case to the Iowa Department of Inspections, Appeals, & Licensing, Division of Administrative Hearings, for a contested case hearing. The hearing in this matter was held on July 8, 2024, at 9:00 a.m. by telephone conference call. Appellant Gingerich LLC was represented by Mr. Nick Sailer at the hearing. Gingerich called Mr. Ben Gingerich, Mr. Lavon Bontrager, and Mr. Steve Knebel as witnesses. Mr. Jeffrey Koncsol represented IWD. Field Auditor Deborah Pendleton appeared and testified on behalf of IWD. The administrative record and or exhibits (denominated as Case File filings 1 through 20 in the electronic docket record) submitted by IWD were admitted into the record pursuant to Iowa Code § 17A.14 and Iowa Admin. Code r. 871-26.15(17A,96).¹ Appellant's exhibits A and B were also admitted, without objection. *Id.* The issue certified for hearing is "[w]hether an employer-employee relationship existed between Gingerich Roofing Solutions, LLC, and/or other workers performing services for Gingerich Roofing Solutions, LLC." (Notice of Hearing).

FACTUAL BACKGROUND

Gingerich LLC is a limited liability company, owned by Mr. Ben Gingerich, which started residential roofing in 2021. It should be noted that Gingerich is now a baptized member of the Old Order Amish Church and he was not a baptized member when Gingerich LLC started. Additionally, most of Gingerich LLC's workers were members of the Amish faith.

Gingerich LLC came to the attention of IWD when it found a 1099-NEC (non-employee compensation) form issued to Gingerich LLC in the course of auditing another business.

¹ The IWD exhibits will be referenced by the page numbers in the lower right-hand corner.

(Record p. 25). In March of 2023, IWD found online advertising for Gingerich LLC. IWD then conducted a search showing that Gingerich LLC was actively registered with the Iowa Secretary of State's Office in 2019, and was also registered as a contractor in 2022. (Record pp. 41-48).

That same month, IWD sent Gingerich LLC a Pre-Audit Questionnaire (PAQ). (Record pp. 29-31). The PAQ responses stated Gingerich LLC was a roofing contractor and Mr. Ben Gingerich was the "sole proprietor." According to the PAQ responses, none of its workers received typical fringe benefits of employment, e.g. expense reimbursement, health insurance, etc. The PAQ response also stated three biological brothers to Ben Gingerich worked for Gingerich LLC.

Gingerich LLC also submitted a "Services Provided" form. (Record p. 33). There were 10 workers listed on the form. Other than Ms. Bergmann² and Mr. Knebel, an accountant and a driver respectively, the form stated the remaining eight workers performed roofing work and were paid per day. Moreover, of the two exceptions, only Ms. Bergmann was paid per service while Mr. Knebel was paid per day. According to the form, other than Ms. Bergmann (who advertised her services to the general public), the driver and the workers were found through the Amish community, presumably by word of mouth.

The form also inquired whether any of the listed workers operated a business. Most of the 10 workers operated other businesses. Some of the businesses listed were: a grocery store; an engine service; a welding service; farming; an accounting and tax service; a tree trimming business; a driver; and several contract construction workers for Amish businesses.

It was also noted on the form:

All Amish workers are covered by Amish Care which covers workers who are injured on the job. The Amish do not take any sort of government aid such as Iowa Disability and Federal Social Security or Disability, i.e., there would never be a disability claim by an Amish worker. They are exempt from paying Medicare and SS tax. Steve Knebel is already on SSDI.

On January 11, 2024, IWD issued a findings letter. (Record pp. 34-35). IWD determined that nine of the 10 workers at issue should be classified as "employees," and not as "independent contractors." The lone exception was Gingerich LLC's accounting and tax services person, Ms. Bergmann.

The IWD determination was derived from a review of various factors. Some of the factors weighed in favor of the workers being classified as independent contractors. For instance, the workers would provide their own hand tools for a Gingerich LLC work project.

² It is noted that the form cuts off the entire name for Ms. Bergmann. At the hearing it was determined that Ms. Bergmann was married to Mr. Knebel and her legal name may be Ms. Bergmann-Knebel. (Record p. 33). However, Ms. Bergmann also professionally goes by just "Bergmann" as a surname. (Record p. 37). To keep the record simple, the accountant will simply be referred to as Bergmann.

Likewise, the workers had some flexibility in their work schedule.

However, IWD found the following factors weighed in favor of the of the workers being classified as employees. The workers were paid on a regular basis. They performed work duties in the regular service of Gingerich LLC – their labor was not specialized and distinct; rather it was general labor necessary for Gingerich LLC’s roofing business. The workers did not have a significant financial interest in Gingerich LLC (e.g., they had no ownership interest). The workers did not have their own business insurance nor worker’s compensation insurance for work they performed for Gingerich LLC. At least one tool, a coat sprayer, and the materials, e.g. metal, needed for a given roofing project were provided or ordered by Gingerich LLC. The business, Gingerich LLC, could terminate or discharge workers without incurring liability. The workers could also terminate the work relationship without incurring liability. There was a continuous relationship, sometimes for months or years, between Gingerich LLC and the workers, indicative of an employer and employee relationship. The workers did not invoice Gingerich LLC for work in order to receive pay nor did the workers advertise their services to the general public. The workers did not realize a profit or loss from a given project; rather, they were simply paid for the personal services they rendered. The workers could not reassign the work to other workers or businesses.

On January 21, 2024, Gingerich LLC authored a response to the IWD findings letter through its accountant, Ms. Bergmann. (Record pp. 36-38). The letter stated that Mr. Knebel, the driver, files a Schedule C tax form for his services (to report income or loss reported from a sole proprietorship business) to the Internal Revenue Service. Further, several other workers ran full-time businesses and only helped Gingerich LLC if they were needed (with income reported on a separate Schedule C or with their business tax returns).

Additionally, the letter informed IWD that, other than the driver Mr. Knebel, the workers are Amish. As such, they do not look to others for help or support outside the Amish community in accordance with their faith. Instead, Amish community members rely on each other for support. They do not accept government aid and claim exemption from federal welfare, unemployment, social security, Medicare, and Medicaid (and attached Form 4029 for support).

On January 23, 2024, Auditor Pendleton emailed a response to Ms. Bergmann stating she was unaware of any religious exemption under the Iowa Code. (Record pp. 39-40). Further, more specific information for the workers was requested.

Additionally, IWD obtained a number of canceled checks from Gingerich LLC to Mr. Knebel for various amounts. Some of the checks’ memo lines reflected payment for things like an oil change, vehicle parts, license plate registration tags, fuel, and work. (Record pp. 49-55).

On February 19, 2024, IWD issued a Notice of Employer Status and Liability form. (Record pp. 19-20). IWD found Gingerich LLC was liable for unemployment tax contributions dating back to 2021. On March 4, 2024, IWD issued its “Unemployment Insurance Tax Audit Results.” (Record pp. 15-18). The wage adjustment amount for unemployment insurance was calculated at \$15,967.06 for nine workers (again, excluding Ms. Bergmann, the accountant).

On March 27, 2024, Gingerich LLC submitted its appeal of the IWD determination. (Record pp. 8-14). The appeal stated Mr. Knebel was paid weekly depending on how much he would work because Amish members do not drive. Knebel was the registered owner of the vehicle and work was performed under his name. The parties agreed to reimburse Knebel directly for fuel costs. Knebel provided driving services for Gingerich LLC on a regular and consistent basis because he was reliable. Further, Knebel also provided driving services to others and could hire an assistant or delegate the work.

The appeal also claimed the other workers were independent contractors, and not employees, because they controlled the details and means of their work even though they followed a general construction plan. The workers worked under their own names, not Gingerich LLC. The workers did not have insurance under their own names because it contravened their Amish religion. The workers provided their own tools, except the coat sprayer and a dump trailer. Only two of the workers worked for Gingerich LLC for months at a time, while the other workers only provided work for less than two weeks out of a given year. The workers could end the work relationship with Gingerich LLC because the Amish religion did not permit filing lawsuits. The workers also did not advertise – rather, the Amish community knew to hire them if needed. The workers did not register as contractors with the State of Iowa. The workers did not have contracts or invoices because of the use of printers was prohibited by their Amish religion. The workers could assign their work. Finally, the workers demanded 1099 forms for their payments.

IWD received the appeal on March 29, 2024. (Record pp. 5-7). At the hearing, Ms. Pendleton testified for IWD. In June of 2023, IWD mailed individual questionnaires to the workers to gain more information, but did not receive any responses. So, Pendleton utilized the “Services Provided” form as best she could. Pendleton did not consider the Amish religion to be relevant. Payment on a per-day basis indicated to Pendleton that Gingerich LLC had control over the labor for the day and made regular payments to the workers (typical of an employment relationship for a time interval, rather than payment based on a particular job or project). Sometimes the workers were paid once per month, or weekly, or biweekly – it varied. The workers’ labor was part of the Gingerich LLC roofing business – there was integration between the labor provided and the roofing business. The work was performed for Gingerich LLC. Moreover, just because the workers operated other businesses, that did not preclude a finding that the workers should have been classified as employees for Gingerich LLC. None of the workers’ other business were part of the roofing trade. Further, payment was made to the individual workers, not to the worker’s business. For Knebel, he was a worker who primarily drove for Gingerich LLC per day. He was reimbursed for fuel, an oil change, etc., meaning he was not at risk for suffering a profit or loss. Gingerich provided transportation for the workers, another indicator of Gingerich LLC’s right to direction and control.

None of the worker’s had their own business registration or insurance indicative of an independent contractor (if the construction worker makes more than \$2,000.00, they are supposed to register with the state). Gingerich LLC provided the materials and some tools (indicative of an employee and not an independent contractor). Pendleton found there was a continuing relationship between workers and Gingerich LLC, even though the length of employment (or duration of time) can be as short as one hour to qualify as an employee. The

lack of a contract showed workers could quit without incurring liability indicative of an employment relationship. Likewise, no workers would face a profit or loss based on the outcome of a Gingerich LLC job or project. There were no invoices or bids which would be indicative of an independent contractor. There was no evidence that the workers could bring, supervise, or pay an assistant, which is indicative of an independent contractor. The right to direction and control of the work is the primary factor considered and the evidence was that Gingerich LLC provided such supervision and control. There was no evidence that workers refused work for Gingerich LLC. Pendleton acknowledged her understanding that Amish people do not utilize motorized vehicles.

Mr. Ben Gingerich testified for his company, Gingerich LLC. He is a member of the Old Order Amish Church. They mainly provide roofing services (and may provide pole building services). Gingerich LLC hires workers for roofing from the Amish community. Gingerich himself would solicit the roofing jobs. He would bid the roofing job and then try to find workers to complete the job. Gingerich LLC is only concerned with the final results of a project. The workers know what to do and will consult with the consumer or client (usually a homeowner) if a question arises – Gingerich himself would not supervise the work nor necessarily serve an intermediary for the workers and the client. The workers would have autonomy on whether they wanted to work (they could refuse) and setting their own hours (without consequences). Gingerich LLC would pay for whatever work was completed if the worker left early.

Gingerich LLC coordinates transportation to work sites for the workers. Knebel provides the transportation and Gingerich LLC coordinates it to make it easy, although the workers were not required to use Knebel (and they could be provided more pay if they did not use Knebel and needed alternate transportation). Gingerich LLC would use a different driver if Knebel was unavailable (or if he declined to do so). It was unclear from the testimony by Gingerich himself whether Gingerich LLC or the workers would determine when to leave for a worksite and when to return home. Knebel wanted Gingerich LLC to pay him directly for vehicle maintenance for Knebel's convenience.

Insurance is forbidden for Amish members, unless required by law, so Gingerich LLC has liability insurance. Although Gingerich LLC advertised on the internet prior to Gingerich himself being baptized into the Old Amish Order, he would not do so today and simply had not removed the advertising prior to becoming a member. Gingerich LLC did provide the coat sprayer (for flat roofs), but the workers would provide their own tools, usually drills or saws, outside of that. Gingerich LLC would pay the workers an amount earned on a daily basis depending on the work they provided. However, the actual pay would be paid after completing a project (which could last anywhere from one week to a month). Workers could provide an apprentice or their own assistant (but no one ever did) and the worker would be responsible for oversight of any assistant(s). Gingerich himself would sometimes be on the worksite with the workers, sometimes not. The roofs are typically metal and another company brings the metal to the worksite as contracted to do so by Gingerich LLC. Gingerich himself would usually call the workers and tell them what needed to be done for a particular job (or they would know from the homeowner). Workers could decline a project. Gingerich himself would tell what he would pay for the work, but it could be negotiated. A worker could, or could not, be driven back earlier than other workers, it depended. Pay was calculated by days worked on a project. Payment for

materials brought by a worker would be factored into the amount pay. If there was a problem, it would be up to the worker to fix the error and the worker would be paid for correcting the work. Gingerich LLC did not reimburse workers for tools for a job. Gingerich LLC did provide bonuses to the workers from time to time for finishing a project early and provided a paid lunch break (although it did not provide meals).

Mr. Lavon Bontrager testified. He is a member of the Old Order Amish Church. He worked as a roofer. He had no written contract with Gingerich LLC; rather, the parties would operate by their word, and they did not issue invoices to one another. Gingerich LLC did not dictate how roofing was conducted or how to carry out the work. The workers did not report progress on a particular work project. There were no repercussions for failing to work on a given day. Although he only provided roofing work for Gingerich LLC, he was not exclusive to that business and could work for another roofing company. Bontrager was not required to give notice before quitting. Gingerich LLC also provided some tools to use in case tools were forgotten (sharing tools is common in the Amish community), but workers were not required to use Gingerich LLC tools. Bontrager stated workers would be paid whenever demanded. Gingerich LLC would inform Bontrager about a roofing job orally or by a call, and the amount of pay. Bontrager never declined because of the pay. The pay rate was usually per day worked. Workers would receive paid breaks. He never brought assistants to work. However, he could decline work if he had something else scheduled. Knebel would drive based on Gingerich LLC's instructions. Gingerich himself would generally set deadlines for a project. Workers would directly deal with homeowners and did not hold themselves out as Gingerich LLC. Bontrager never received reimbursement for his tools. He does not provide the work materials (that was done by Gingerich LLC). Gingerich LLC does not provide training for the workers. Bontrager is not a registered contractor. Upon arrival at a worksite, Bontrager stated that "sometimes" Gingerich himself will determine how to proceed on the project. Gingerich himself has never corrected how Bontrager performed his work.

Mr. Steve Knebel testified. He is not a member of the Old Order Amish Church. He provides transportation services for Gingerich LLC. There is no written contract between Knebel and Gingerich LLC; rather, the relationship is based on trust so written invoices were not used. Gingerich did not direct how Knebel drove nor dictate the route. Gingerich LLC would call Knebel to coordinate transportation, not the workers. Knebel does not advertise to the general public – his service is known by word of mouth. He provides rides to anyone, but the Amish constitute 95 percent of his business (mostly for Gingerich LLC). Gingerich himself personally bought a truck, but it is titled in Knebel's name and Knebel pays the insurance for it. That truck is only used for Gingerich LLC. Knebel would use another vehicle for non-Gingerich LLC transportation purposes. If Gingerich LLC refused to hire Knebel, it would not be liable for any damages to him. Knebel could decline to provide Gingerich LLC driving services without notice (but Knebel stated he would provide notice out of common courtesy). Gingerich pays Knebel at the end of each week, based on the number of days. Knebel picks up the workers, transports them to worksite, waits, and drives them home. Gingerich LLC pays Knebel for maintenance of the vehicle. Gingerich LLC set Knebel's pay rate as a daily rate, regardless of mileage actually driven. The vehicle maintenance costs are separate from Knebel's pay and, as mentioned, the truck is used solely for Gingerich LLC. Gingerich LLC would have to find alternate transportation if Knebel was unavailable.

Gingerich LLC did not offer salaries, insurance, paid time off, or retirement benefits to the workers. Additionally, the workers were issued Internal Revenue Service 1099 forms for their pay. The payment records reflected that the eight roofers IWD thought to be misclassified as independent contractors had different pay records – there were varying amounts that appear to be paid at different intervals or different times. (Record p. 26). The amounts paid to workers varied wildly. Over the course of two years, only two of the roofers made significant money (a total over \$100,000.00).³ The next highest earner over that two-year period was \$7,944.00. Bontrager was one of the high-earners.

Ultimately, IWD sought unemployment insurance contribution payments or taxes from Gingerich LLC in the amount of \$15,967.06 (not including possible interest and penalties). (Record p. 15).

CONCLUSIONS OF LAW

IWD oversees the unemployment compensation fund in Iowa, which is governed by Iowa Code chapter 96. Iowa Code § 96.9(1). IWD has the duty to administer Iowa Code chapter 96 and authority to adopt administrative rules “pursuant to chapter 17A prescribing the manner in which benefits shall be charged against the accounts of several employers for which an individual performed employment during the same calendar quarter.” Iowa Code § 96.7(2)(a)(4). IWD has adopted rules found at 871 Iowa Administrative Code chapter 23.

IWD initially determines all issues related to the liability of an employing unit or employer, including the amount of contribution, the contribution rate, and any successorship matters. Iowa Code § 96.7(4)(a). *There is an initial presumption that a worker is an employee.*

Services performed by an individual for remuneration are presumed to be employment unless and until it is shown to the satisfaction of the department that the individual is in fact an independent contractor. Whether the relationship of employer and employee exists under the usual common law rules will be determined upon an examination of the particular facts of each case.

Iowa Admin. Code r. 871-23.19(6)(96).

An individual or business bears the burden of proving the individual or business is exempt from coverage under Iowa Code chapter 96. Iowa Code § 96.1A(15) (“... An employing unit shall not be deemed to employ an independent contractor[.]”); Iowa Admin. Code r. 871-23.55(1)(96) (“The burden of proof in all employer liability cases shall rest with the employer.”); *see also* Iowa Admin. Code r. 871-23.55(2)(96).

³ Some of the people (and amounts) attributed in the IWD case synopsis (Record p. 26) do not appear to completely align with the information contained in the individual 1099 forms submitted by Gingerich LL (Exhibits A and B).

“If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a[n] . . . independent contractor, or the like.” Iowa Admin. Code r. 871-23.19(7)(96). “[W]hether a person is an independent contractor or an employee is a ‘factual determination based on the nature of the working relationship and many other circumstances, not necessarily on any label used to identify the parties in the contract.’” *Pennsylvania Life Ins. Co. v. Simoni*, 641 N.W.2d 807, 813 (Iowa 2002) (quotation omitted). In other words, if the relationship of employer and employee exists, the parties' designation or description of the worker as an independent contractor is immaterial and of no consequence.

An employer is defined as “any employing unit which in any calendar quarter in either the current or preceding calendar year paid wages for service in employment.” Iowa Code § 96.1A(14)(a). “‘Wages’ means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash.” Iowa Code § 96.1A(40)(a). An employing unit includes any individual or organization that has in its employ one or more individuals performing services for it in Iowa. Iowa Code § 96.1A(15). The term “employment” is defined to include service “performed for wages or under any contract of hire, written or oral, express or implied.” Iowa Code § 96.1A(16)(a). Further, employment includes service performed by “[a]ny individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.” Iowa Code § 96.1A(16)(a)(2).

“In the unemployment compensation context, it is well settled that the right to control the manner and means of performance is the principal test in determining whether a worker is an employee or independent contractor.” *Gaffney v. Dep't of Emp. Servs.*, 540 N.W.2d 430, 434 (Iowa 1995) (citations omitted).

The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools, equipment, material and a place to work to the individual who performs the services. In general, if an individual

is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor. . . .

Iowa Admin. Code r. 871-23.19(1)(96).

Here, the factors listed under the first subpart of this administrative rule are difficult to apply. It appears Gingerich LLC had the right to control the roofing of a structure, subject to the authority of the property owner. It also appears that Gingerich LLC could make the workers correct errors or changes – although there is no evidence that this occurred. This superficially supports IWD’s conclusion that the workers were employees. Iowa Admin. Code r. 871-23.19(1)(96) (“It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so.”).

Yet, it is hard to determine how much of the supervision resided with Gingerich LLC versus the control wielded by the workers or homeowner of the property.⁴ It appears the workers were left to their own discretion, generally, for this type of hard, yet basic, manual labor. Nonetheless, to the extent some limited right to control the roofing was involved, Gingerich LLC appears to have had such control. This factor tips (barely) in favor of IWD’s determination.

Next, Gingerich LLC and the roofers worked by mutual consent – apparently both sides had the right to terminate the work relationship. Under the administrative rules, when an entity has a right to terminate a worker, it is indicative of an employer-employee relationship, and not an independent contractor relationship. Conversely, if the termination constitutes a breach of contract subjecting the “discharging person” to damages liability, then the relationship points to an independent contractor. *Id.*

Here, there was, at most, an oral contract. *Compare* Iowa Code § 622.32. Nonetheless, it seems a worker could quit whenever he or she wanted to, regardless if the project was completed, and would be paid for that day’s work.⁵ Frankly, this factor, alone, is meaningless, on this record. Whether a worker is a fully registered, bonded, and licensed independent contractor or, alternatively, an employee, either worker can quit or be terminated. On the whole, this factor favors neither party.

The more focused inquiry is whether Gingerich LLC and the workers could end a work relationship without breaching a contract and potentially be liable for damages. The Administrative Code rules states “[w]here such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor.” Appellant’s testimony was that he hired the workers based a verbal contract or agreement for a set daily rate of pay per project. If the worker did not actually work (whether by termination or by choice), it appears the worker was owed no wages

⁴ Although most of the Gingerich LLC work was on homes, the work also included commercial roofing.

⁵ It is noted that, typically, Gingerich LLC and the workers agreed to a daily amount verbally and it was only paid at the end of the project.

and there is no liability.⁶ Under such circumstances, this factor weighs in favor of the workers being employees.

From the record, Gingerich LLC provided the materials (the metal) for roofing from a third party and the coat sprayer (with possibly a dump trailer). Nonetheless, the workers provided their own other tools for the work. See *Connolly Bros. Masonry v. Dep't of Emp. Servs., Div. of Job Serv.*, 507 N.W.2d 709, 711 (Iowa Ct. App. 1993) (“the fact that the workers used the tools and equipment of the employer, especially if they are of substantial value, tends to show the workers were employees.”). This factor favors the workers as independent contractors.

Additionally, IWD has also adopted a number of other factors to consider in determining whether a worker is an independent contractor or employee.

The nature of the contract undertaken by one for the performance of a certain type, kind, or piece of work at a fixed price is a factor to be considered in determining the status of an independent contractor. In general, employees perform the work continuously and primarily their labor is purchased, whereas the independent contractor undertakes the performance of a specific job. Independent contractors follow a distinct trade, occupation, business, or profession in which they offer their services to the public to be performed without the control of those seeking the benefit of their training or experience.

Iowa Admin. Code r. 871-23.19(2)(96).

The workers would travel to a third-party construction worksite for roofing, and Gingerich LLC would coordinate the transportation. The nature of the business was not one where workers would arrive to Appellant’s place of business to conduct the business activity. *Id.* This consideration points both ways. Primarily, the workers’ labor was purchased for a specific job. Although the workers were hired for a specific roofing project, this is not a “distinct” trade. The workers were paid a set daily wage, not a piece-work payment. Those considerations favor IWD’s position. However, the workers were hired for one project at a time, whenever and wherever it arose, and were not hired to work continuously (in fact, the majority of the workers operated other businesses). Only two of the roofing workers even earned more than \$8,000.00 over a two-year period. (Record p. 26). This factor slightly favors IWD.

Independent contractors can make a profit or loss. They are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed. Independent contractors often have significant investment in real or personal property that they use in performing services for someone else.

⁶ This factor, apparently, presumes that independent contractors will only work when a contract is in place.

Iowa Admin. Code r. 871-23.19(3)(96). The record seems to indicate the workers did not make a profit or loss on any particular roofing project. Gingerich LLC paid for their transportation, their does not appear to be any unreimbursed expenses, and there were no fixed or ongoing costs. This factor favors the workers as employees.

Employees are usually paid a fixed wage computed on a weekly or hourly basis while an independent contractor is usually paid one sum for the entire work, whether it be paid in the form of a lump sum or installments. The employer-employee relationship may exist regardless of the form, measurement, designation or manner of remuneration.

Iowa Admin. Code r. 871-23.19(4)(96). The pay was calculated on a daily basis (for an amount that could be negotiated, but never was renegotiated). Yet, the payments were made, apparently, on completion of a project, regardless of the period of time required for completion. The workers did not submit formal bids for their work nor did they send invoices to Appellant. Some of these considerations are simply inapplicable given the unique Amish religion and culture. This factor slightly favors finding the workers were independent contractors.

“The right to employ assistants with the exclusive right to supervise their activity and completely delegate the work is an indication of an independent contractor relationship.” Iowa Admin. Code r. 871-23.19(5)(96). Both Gingerich himself and Bontrager testified this would be permitted (but was never done). On this record, the workers could have hired assistants and, if they had done so, the workers would be responsible for the assistant pay. This favors a finding that the workers were independent contractors.

Gingerich LLC called his workers independent contractors. That designation is not determinative pursuant to Iowa Admin. Code r. 871-23.19(7)(96). However, it is also not completely immaterial under the rule *when coupled with other facts*, e.g. Appellant issued 1099 forms to applicable workers. *Bauder v. Emp. Appeal Bd.*, 752 N.W.2d 33 (Iowa Ct. App. 2008) (Table) (“The board considered the parties' designation of Bauder as an independent contractor as one of several factors among those set forth in the administrative rules that indicated she was not an employee. It also found the manner in which she was paid, the 1099 income tax forms issued by Farm Bureau designating her income as “nonemployee compensation,” and the limited control exercised by Farm Bureau over her ‘work activities ... to the extent ... required by law’ established her status as an independent contractor. “).

There are other considerations. Gingerich LLC offered no set hours of work for the workers – indeed, it appears the workers would determine when they would stop work for the day. Further, the work involved no traditional hallmarks of employment, e.g. health insurance or retirement planning, no salary or paid time off. To the extent IWD would point out those are not listed as factors to be considered under the applicable statutes or Iowa Administrative Code rules, it is noted that these types of inquiries were made by IWD itself in its own questionnaire. (Record p. 30).

In *Louismet v. Bielema*, 457 N.W.2d 10, 12–13 (Iowa Ct. App. 1990), the Court found

the workers were employees and not independent contractors.

They were subject to the daily control and direction of Louismet's supervisory personnel. . . . They were required to work specific hours, use a time clock, and were subject to termination. . . . Louismet furnished the place to work and provided the workers with tools and equipment to use. . . . The workers were not retained at a fixed price to perform a specific job. Instead, they performed their work continuously and their labor was purchased on an hourly basis. . . . The workers did not have a right to employ assistants or delegate their work.

Here, some of the factors in *Louismet* favor IWD's position, e.g. daily pay calculation and transportation. *Compare Connolly Bros. Masonry*, 507 N.W.2d at 711 ("We note that Connolly specified the time workers were to appear for work and assigned each worker a job for the day."). Some factors do not, e.g. time clock, furnishing tools. *Id.*, ("the fact that the workers used the tools and equipment of the employer, especially if they are of substantial value, tends to show the workers were employees.").

Additionally, the absence of the workers advertising themselves, through traditional advertising or via social media, is not surprising and not particularly probative given their Amish faith and culture. Yet, the workers also stated that their availability to work was known in the Amish community.

It appears none of the workers had insurance or registered themselves as contractors with the State. (Record p. 13). Generally, the absence of insurance is more indicative that the workers were employees. Here, however, it is unclear whether insurance for general or business liability by the workers lends much probative evidence given the Amish faith. Apparently, the workers are part of "Amish Care," their own form of worker's compensation insurance.

Further, at the hearing, a contractor registration with IWD was discussed. *See* Iowa Admin. Code r. 875-150.3(91C) ("Before performing any construction work in this state, a contractor shall be registered with the division."); Iowa Admin. Code r. 875-150.2(91C) ("'*Contractor*' means a person who engages in the business of construction as the term is defined in 871-23.82(96), for purposes of the Iowa employment security law, including subcontractors and special trade contractors."); Iowa Admin. Code r. 871-23.82(2)(k)(96) ("The term 'construction' includes, but is not limited to: . . . Roof spraying, painting or coating—contractors [and] Roofing work, including repairing--contractors"). Gingerich LLC was a registered contractor. (Record p. 13). There is no evidence that any of Appellant's workers were registered contractors.

In the end, the control of the work and the type of work appear to be the dispositive factors, at least on this record, for the roofers. "It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so." Iowa Admin. Code r. 871-23.19(1)(96). "In general, employees perform the work continuously and primarily their labor is purchased, whereas the independent contractor

undertakes the performance of a specific job. Independent contractors follow a distinct trade[.]” Iowa Admin. Code r. 871-23.19(2)(96). Other factors also support a finding that the workers were employees – no contractor registration, no individual insurance (with the possible exception of “Amish Care”). It is acknowledged that some factors favor an opposite outcome – the workers generally used their own tools, they could decline work when they wanted, and they had the ability to hire assistants. As noted, Gingerich LLC had the burden of proof in this matter. Accordingly, all of the roofing workers should be treated, on this record, as employees.

However, Mr. Knebel, the driver, performed different work – transportation. Although Gingerich LLC coordinated travel, apparently Knebel would be responsible for the driving and controlled how it was to be done. To the extent the workday ended, the workers determined when Knebel would drive them, not Gingerich LLC. Although the unique reimbursement method makes this case closer, Knebel did drive for others, not just Gingerich LLC. Accordingly, Knebel was an independent contractor, on this record.

ORDER

IWD’s decision that an employer-employee relationship existed between the individuals identified during the audit is **AFFIRMED IN PART** and **REVERSED IN PART**. Specifically, the decision is affirmed with regard to the eight roofing workers. The decision is reversed with regard to worker Knebel. IWD is directed to take all steps necessary to effectuate this decision.

IT IS SO ORDERED.

Dated August 2nd, 2024.

Copy to:

cc: Nick Sailer, for Appellant, nsailer@robertseddy.com (by AEDMS)
Jeffrey Koncsol, IWD Jeffrey.Koncsol@iwd.iowa.gov (by AEDMS)
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APPEAL RIGHTS

A presiding officer's decision constitutes final agency action in an employer liability contested case.

a. Any party in interest may file with the presiding officer a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing.

b. Any party in interest may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.

Iowa Admin. Code r. 871-26.17(17A,96)

Case Title: GINGERICH ROOFING SOLUTIONS, LLC V. IOWA
WORKFORCE DEVELOPMENT
Case Number: 24IWDM0016
Type: Final Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'F. Guddall', written in a cursive style.

Forrest Guddall, Administrative Law Judge