COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
FAR No. _____

Appeals Court No. 2021-P-0227

Plymouth, ss.

JOSHUA REGO, JACK ALVES, BELMIRO DEBRITO, MICHAEL DEVITO, AND JOSE GOMES,

Plaintiffs-Appellees,

v.

ALLIED WASTE SERVICES OF MASSACHUSETTS, LLC,

Defendant-Appellant.

On Appeal From Plymouth Superior Court
Department of Trial Court

DEFENDANT-APPELLANT, ALLIED WASTE SERVICES OF MASSACHUSETTS, LLC'S APPLICATION FOR FURTHER APPELLATE REVIEW

Dated: March 28, 2022

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

Pursuant to Mass. R. App. P. 27.1, Defendant-Appellant Allied Waste Services of Massachusetts, LLC ("Allied") respectfully requests leave to obtain further appellate review of the Appeals Court's opinion issued in this case on March 7, 2022. A copy of the Appeals Court opinion is appended hereto. Add. 19.

The Court should take this case to decide an important question affecting the public interest, namely, whether the Department of Labor Standards ("DLS") has the authority under Mass. Gen. Laws ch. 149, § 27F to issue prevailing wage schedules that remain in effect for the duration of a contract for municipal trash hauling. Since at least 2009, DLS has publicly taken the position that it has such authority. Indeed, the prevailing wage schedule issued by DLS in this case, and incorporated into the contract between Allied and the Town of Marshfield, specifically states that the wage rates set forth therein shall remain in effect for the duration of the

project.

Joshua Rego and the other plaintiffs in this lawsuit argued that DLS lacked the authority to issue such a prevailing wage rate schedule. Instead, they argued that DLS was required to issue new rates for each year of a contract.

The Appeals Court acknowledged that Section 27F is ambiguous on this issue. Rather than simply rely on DLS's long-standing interpretation of Section 27F to resolve that ambiguity, the Appeals Court chose to rely on a position articulated by DLS for the first time in an *amicus* submission.

Specifically, DLS stated that the facts of this case are "anomalous" because the prevailing wage schedule did not contain increases for each of the five years of the contract at issue. Therefore, according to the Appeals Court, Allied's employees should have been paid at higher wage rates than those established by DLS and set forth in the contract.

The Appeals Court's conclusion is manifestly unfair to Allied, which relied on DLS's long-standing interpretation of Section 27F, and inconsistent with

the language and purpose of Section 27F. Accordingly, the Court should grant Allied's application for further appellate review.

II. A STATEMENT OF PRIOR PROCEEDINGS IN THE CASE

In 2019, Joshua Rego, Jack Alves, Belmiro Debrito, Michael Devito, and Jose Gomes (the "Plaintiffs") filed a complaint in Plymouth Superior Court alleging that Allied violated the Massachusetts Wage Act, Mass. Gen. Laws ch. 149, § 148, the Massachusetts Overtime Law, Mass. Gen. Laws ch. 151, § 1A, and the Massachusetts Prevailing Wage Law, Mass. Gen. Laws ch. 149, §§ 26 and 27. After the close of discovery, the parties filed cross-motions for summary judgment on the issue of liability with regard to all claims. Following oral argument, the Superior Court entered summary judgment for Allied on Plaintiffs' claim under the Massachusetts Wage Act and for Plaintiffs on their claims under the Prevailing Wage Law and the Overtime Law. Allied appealed and the Appeals Court affirmed, but for a different reason than that relied on by the Superior Court. Neither party sought a rehearing.

III. STATEMENT OF FACTS RELEVANT TO THE APPEAL

DLS is the agency responsible for administering Massachusetts' prevailing wage laws. Since at least 2009, DLS has stated that prevailing wage rate schedules issued by DLS for trash and/or recycling disposal "shall remain in effect for the duration of the contract term." Allied, other companies in the waste disposal industry, and municipalities across the Commonwealth have relied on DLS' long-standing interpretation of the prevailing wage law.

In this case, Allied responded to a request for proposals issued by the Town of Marshfield (the "Town") for municipal trash hauling and recycling. After the Town accepted Allied's bid, the Town requested and received a new, updated prevailing wage rate schedule from DLS.

During this process, a representative of DLS reminded the Town that "once a wage schedule is made part of a contract or project for trash hauling, they will remain in effect for the duration of the original contract term." Consistent with that reminder, the first page of the schedule issued by DLS stated as

follows: "The wage rates will remain in effect for the duration of the project . . ."

The Town and DLS subsequently entered into a contract (the "Contract"). Pursuant to that Contract, Allied agreed to provide trash hauling and recycling services to the Town for the period from July 1, 2015 through June 30, 2020. In Section 8-J of the Contract, the parties agreed that "the wage rates for workers under this Contract are to be paid at the rates established the Commissioner of the Massachusetts Department of Labor and Industries (see Appendix G)." Appendix G of the Contract is the two-page prevailing wage schedule previously issued by DLS, discussed above. There is no dispute that Allied paid workers the prevailing wage rates established by DLS.

During the summer of 2017, an Allied employee had a conversation with Debbie Sullivan, the Town's Solid Waste & Recycling Officer, regarding his wage rate. Sullivan, who had played no role in the negotiation of the Contract and had no knowledge of its terms, subsequently reached out to DLS. Despite having no

apparent authority to amend the Contract, or negotiate with Allied, on behalf of the Town, Sullivan took it upon herself to ask DLS for information about the current prevailing wage rates for drivers and laborers in the Town. DLS subsequently emailed Sullivan a two-page document identifying wage rates for drivers and laborers in the Town as of July 1, 2017, January 1, 2018, July 1, 2018, and January 1, 2019 (the "2017 Schedule"). The rates in the 2017 Schedule are higher than those in Appendix G.

Allied subsequently explained to Sullivan that the 2017 Schedule was invalid because the prevailing wage rates previously issued by DLS remained in effect for the duration of the Contract.

Sullivan then emailed DLS for clarification. In an email dated August 11, 2017, DLS stated that – consistent with Allied's representations to Sullivan – "once a trash schedule is made part of the project, that schedule and all the rates on it will remain in effect for the duration of the original contract term."

Sullivan then chose not to pursue the issue. Neither she nor any other Town employee ever asked DLS to amend the Contract to incorporate the 2017 Schedule. Accordingly, Allied continued paying its workers, including the Plaintiffs, the prevailing wage rates set forth on Appendix G.

IV. STATEMENT OF THE POINTS WITH RESPECT TO WHICH FURTHER APPELLATE REVIEW OF THE DECISION OF THE APPEALS COURT IS SOUGHT

A. Whether The Department Of Labor Standards Has The Authority To Issue Prevailing Wage Rate Schedules That Remain In Effect For The Duration Of A Contract For Trash And/Or Recycling Disposal

V. STATEMENT OF REASONS WHY FURTHER APPELLATE REVIEW IS APPROPRIATE

A. The Appeals Court Erred In Holding That The Prevailing Wage Rate Schedule Issued By The Department of Labor Standards Did Not Remain In Effect For The Duration Of Allied's Contract With The Town Of Marshfield

The Appeals Court erred in holding that Allied was not entitled to rely on the prevailing wage rate schedule issued by DLS. If allowed to stand, the Appeals Court's decision would undermine the legitimate interests of Allied and other trash hauling companies who have relied on DLS's historic

interpretation of Section 27F. Moreover, the Appeals Court's decision is based on a misinterpretation of Section 27F, flies in the face of DLS's historic interpretation of the statute, and is contrary to public policy. See Commonwealth v. Conaghan, 433 Mass. 105, 110 (2000) ("A statute is to be interpreted according to the plain and ordinary meaning of its words.").

First, as the Appeals Court noted in its decision, there is nothing in Section 27F *prohibiting* DLS from issuing a prevailing wage schedule that endures for the life of the contract. See Rowley v. Mass. Elec. Co., 438 Mass. 798, 802 (2003) ("If that was the legislative intent, the wording of the statute could have easily reflected it. It does not."). This stands in stark contrast to Section 27 of the Prevailing Wage Law, which provides that each year after the award of a multi-year public construction project, the municipality must request, and the general contractor must pay the rates set forth in, a new prevailing wage schedule from DLS. See Mass. Gen. Laws ch. 149, § 27.

Second, in the face of this ambiguity, the Appeals Court erred by not deferring to DLS's long-standing interpretation of Section 27F. See Goldberg v. Bd. of Health, 444 Mass. 627, 633-634 (2005) (deferring to administrative interpretation of an ambiguous statute was appropriate); Felix A. Marino Co., Inc. v. Comm'r of Labor & Indus., 426 Mass. 458, 461 (1998) (same).

DLS has long held that, under Section 27F, prevailing wage rates set forth in a contract for public trash disposal will "remain in effect for the duration of the contract term." Dep't of Labor Standards Notice To Awarding Authorities Regarding Rate Sheets For Trash Hauling Rates (Dec. 2009).[1] Given that DLS is the agency responsible for administering and interpreting the prevailing wage laws, this interpretation is entitled to "substantial deference." See Swift v. AutoZone, Inc., 441 Mass. 443, 450 (2004) ("In general, we grant substantial deference to an interpretation of a statute by the

[1] https://www.mass.gov/files/documents/2016/08/nx/notice-trash-hauling-rates.pdf

administrative agency charged with its administration.") (citation omitted).

In contrast, it is well established that "[a]n administrative interpretation developed during, or shortly before, the litigation in question is entitled to less weight than that of a long-standing administrative interpretation of administrative rules." Mullally v. Waste Mgmt. of Mass., Inc., 452 Mass. 526, 533 n.13 (2008) (quoting 1A N.J. Singer, Sutherland Statutory Construction § 31.6, at 730 (6th ed. rev. 2002)). Thus, the Appeals Court erred by adopting the DLS's interpretation of Section 27F that was first articulated in its *amicus* filing with that court.

Third, the DLS's original interpretation of Section 27F is consistent with the public interest. Indeed, the Legislature already has concluded that, at least in some circumstances, the DLS's position is consistent with the purpose of a prevailing wage statute. Specifically, Mass. Gen. Laws ch. 71, § 7A (which governs multi-year school bus contracts) expressly states that a prevailing wage schedule

issued by the DLS "shall continue to be the minimum rate or rates of wages during the life of the contract." Thus, the Legislature necessarily concluded that this provision was consistent with the overall purpose of the statute. Accordingly, the Appeals Court erred by suggesting that interpreting Section 27F to permit a comparable result would necessarily be contrary to the purpose of Section 27F.

Finally, the Appeals Court's opinion ignores another important purpose of the prevailing wage laws, namely, to encourage private contractors to engage in the performance of public works by establishing clear and fair expectations regarding wages. Cf., e.g., United States ex rel. Wall v. Circle C Constr., L.L.C., 697 F.3d 345, 354-355 (6th Cir. 2012) (noting that one of the purposes of the federal prevailing wage law is to "give local laborers and contractors fair opportunity to participate in building programs when federal money is involved") (citation omitted). By permitting the issuance of prevailing wage schedules that endure for the life of the contract, DLS places potential bidders on notice of their

obligations if they ultimately secure a public works contract. Without that certainty, contractors like Allied might be less likely to bid on important public works projects.

VI. CONCLUSION

For the foregoing reasons, Defendant-Appellant Allied Waste Services of Massachusetts, LLC, respectfully requests that this Honorable Court grant leave to obtain further appellate review of the Appeals Court's opinion issued in this case on March 7, 2022.

Respectfully submitted,

ALLIED WASTE SERVICES OF MASSACHUSETTS, LLC,

By its attorneys,

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Dated: March 28, 2022

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 27.1(b) and 16(k) of the Massachusetts Rules of Appellate Procedure

I, Christopher B. Kaczmarek, hereby certify that the foregoing Application for Further Appellate Review complies with the rules of court that pertain to the filing of Applications, including, but not limited to Mass. R. A. P. 20(a).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the monospaced font Courier New at size 12, not exceeding 10.5 characters per inch, and contains 6 total non-excluded pages.

/s/ Christopher B. Kaczmarek
Christopher B. Kaczmarek

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2022, I filed the attached Application for Further Appellate Review through the Court's Electronic Filing Service Provider (eFileMA/Tyler). Pursuant to Mass. R. App. P. 13(e), I further certify, under the penalties of perjury, that on this 28th day of March, 2022, I have made service of the foregoing document upon the attorney of record for each party by U.S. Mail and the Electronic Filing System:

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Respectfully submitted,

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ADDENDUM

4869-0589-5446.1 / 068119-1842

2022 WL 665290
Only the Westlaw citation is currently available.
Appeals Court of Massachusetts,
Suffolk.

Joshua REGO & others[1]

v.

ALLIED WASTE SERVICES OF MASSACHUSETTS, LLC.

1 Jack Alves, Belmiro Debrito, Michael DeVito, and Jose Gomes.

No. 21-P-227

Argued November 1, 2021.

Decided March 7, 2022.

Massachusetts Wage Act. Labor, Wages, Overtime compensation. Contract, Municipality. Municipal Corporations, Contracts, Refuse collection and disposal. Carrier, Solid waste removal. Solid Waste Management. Practice, Civil, Summary judgment, Attorney's fees.

Civil action commenced in the Superior Court Department on June 6, 2019.

The case was heard by Anthony M. Campo, J., on motions for summary judgment.

Attorneys and Law Firms

Christopher B. Kaczmarek, Boston, for the defendant.

Adam J. Shafran (Jonathon D. Friedmann also present), Boston, for the plaintiffs.

Ben Robbins & Martin J. Newhouse, Boston, for New England Legal Foundation, amicus curiae, submitted a brief.

Elizabeth N. Dewar, State Solicitor, for Department of Labor Standards, amicus curiae, submitted a brief.

Present: Milkey, Kinder, & Ditkoff, JJ.[2]

2 Following oral argument, Justice Sacks recused himself and was replaced by Justice Ditkoff.

Opinion

KINDER, J.

***1** The plaintiffs, all former employees of the defendant, Allied Waste Services of Massachusetts, LLC (Allied), brought the underlying action against Allied alleging violations of the Prevailing Wage Act (act), G. L. c. 149, § 27F; the Overtime Act, G. L. c. 151, § 1A; and the Wage Act, G. L. c. 149, § 148. On cross motions, a Superior Court judge granted summary judgment to the plaintiffs on their prevailing wage and overtime claims, and to Allied on the wage act claim. As to the prevailing wage claim, the judge reasoned that Allied's payment to the plaintiffs at the 2015-2016 prevailing wage rate for all five years of a contract (contract) between Allied and the town of Marshfield (town) despite a prevailing wage increase in 2017 "subvert[ed] the purpose of the [act]." On appeal Allied principally argues that the plaintiffs should have been paid at the 2015-2016 prevailing wage in each year of the five-year contract as set forth in the prevailing wage schedule attached to the contract. For the reasons that follow, we affirm the judgment, but for a different reason than that relied on by the Superior Court judge in his consideration of the prevailing wage claim.[3]

3 We acknowledge the amicus brief submitted by the New England Legal Foundation in support of Allied, and the amicus letter submitted by the Department of Labor Standards.

Background. We summarize the undisputed material facts. Allied provides trash hauling and recycling services to public and private customers. The plaintiffs were drivers and laborers employed by Allied. In 2015, Allied submitted the winning bid for the contract, to provide municipal waste and recycling services through June 2020. Section 8-J of the contract provided that, "[i]n accordance with [G. L. c. 149, § 27], the wage rates for workers under this [c]ontract are to be paid at rates established by the Commissioner of the Massachusetts Department of Labor and Industries (see Appendix G)." Appendix G to the contract is a two-page prevailing wage schedule issued by the Department of Labor Standards (department) that includes a schedule of wages for laborers and drivers for 2015 and 2016.[4] The schedule does not include the prevailing wages for 2017-2020. Appendix G also states that "[t]he wage schedule shall be made a part of the contract," and "[t]he wage rates will remain in effect for the duration of the project." Allied paid the plaintiffs the prevailing wages set forth in Appendix G throughout

the term of the contract. When one of the plaintiffs asked a representative of the town about his prevailing wage in 2017, the town obtained and sent to Allied and that plaintiff the 2017 prevailing wage rates, which were higher than those incorporated in the contract through Appendix G. Because the rates had increased, the plaintiffs requested a raise. Allied refused, relying on Appendix G and the department's previous published statement that "[p]revailing wage rates for trash/recycling disposal issued pursuant to [ ]G.L. c. 149, § 27F, shall remain in effect for the duration of the contract term."

4 The Department of Labor and Industries became part of the Executive Office of Labor and Workforce Development. See St. 1996, c. 151, § 111; G. L. c. 23, § 1. The Department of Labor Standards is an agency within that office. See Lighthouse Masonry, Inc. v. Division of Admin. Law Appeals, 466 Mass. 692, 693 n.3, 1 N.E.3d 752 (2013). While section 8-J of the contract states that prevailing wage rates are set by the commissioner of the Department of Labor and Industries, those rates are actually established by the Department of Labor Standards. Hereinafter, the term commissioner means the director of the Department of Labor Standards. See G. L. c. 149, § 1.

***2** Discussion. "We review the allowance of a motion for summary judgment de novo to determine whether the moving party has established that, viewing the evidence in the light most favorable to the opposing party, 'there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law' " (citation omitted). Scarlett v. Boston, 93 Mass. App. Ct. 593, 596-597, 107 N.E.3d 1179 (2018). See Mass. R. Civ. P. 56 (c), as amended, 436 Mass. 1404 (2002). The parties agree that there is no genuine issue of material fact and that the case should be decided as a matter of law.

We begin with the statutory framework. The act, G. L. c. 149, §§ 26-27H, is a comprehensive legislative enactment that provides a mechanism for setting and enforcing minimum wage rates for workers employed on public works projects. Municipal refuse collection and disposal are included in the term "public works" as that term appears in G. L. c. 149, § 27F. See Perlera v. Vining Disposal Serv., Inc., 47 Mass. App. Ct. 491, 495, 713 N.E.2d 1017 (1999). The purpose of the act is to "achieve parity between the wages of workers engaged in public construction projects and workers in the rest of the construction industry." Mullally v. Waste Mgt. of Mass., Inc., 452 Mass. 526, 532, 895 N.E.2d 1277 (2008). The commissioner determines what those wages should be. See Construction Indus. of Mass. v. Commissioner of Labor & Indus., 406 Mass. 162, 171-172, 546 N.E.2d 367 (1989).

At the center of this dispute is the interplay between two sections of the act. Section 27 of G. L. c. 149 requires the commissioner to classify the jobs usually performed on public works projects and determine the rate of wages to be paid for each job. Section 27 also requires that those prevailing wage rates be updated annually, and that the general contractor obtain those updated rates from the awarding authority. G. L. c. 149, § 27. Further, § 27 states that "[s]aid schedule shall be made a part of the contract for said works and shall continue to be the minimum rate or rates of wages for said employees during the life of the contract." Id.

Although the contract between Allied and the town refers to G. L. c. 149, § 27, the parties agree that a different section of the act, G. L. c. 149, § 27F, is controlling here, because the trash-hauling contract involves the use of trucks or other equipment in a public works project. Section 27F requires that a contract to use trucks or equipment for public works must contain "a stipulation requiring prescribed rates of wages, as determined by the commissioner, to be paid to the operators" of the trucks or equipment. G. L. c. 149, § 27F. Like § 27, § 27F provides that "[s]aid rates of wages shall be requested of said commissioner by said public official or public body, and shall be furnished by the commissioner in a schedule." G. L. c. 149, § 27F. However, unlike § 27, § 27F does not state that these actions must occur annually. Nor does it state that the rates will continue for the life of the contract. Thus, § 27F does not expressly state that the department may issue a prevailing wage schedule that remains in effect for the duration of the contract, nor does it prohibit such action. We agree with Allied that § 27F is ambiguous on this point.

When a statute is ambiguous, we defer to the interpretation of the agency charged with administering the statute, if "the agency's resolution of that issue may be reconciled with the governing legislation" (quotation and citation omitted). Goldberg v. Board of Health of Granby, 444 Mass. 627, 633, 830 N.E.2d 207 (2005). See Felix A. Marino Co. v. Commissioner of Labor & Indus., 426 Mass. 458, 460-461, 689 N.E.2d 495 (1998). The agency charged with administering the prevailing wage act is the department. See Niles v. Huntington Controls, Inc., 92 Mass. App. Ct. 15, 21-22, 81 N.E.3d 805 (2017). Thus, we turn to the department's interpretation of § 27F, bearing in mind that we review the interpretation of a statute de novo, see Donis v. American Waste Servs., LLC, 485 Mass. 257, 260, 149

N.E.3d 361 (2020), "according to the intent of the Legislature, as evidenced by the language used, and considering the purposes and remedies intended to be advanced." Glasser v. Director of Div. of Employment Sec., 393 Mass. 574, 577, 471 N.E.2d 1338 (1984).

***3** The department stated in an amicus letter filed in response to our postargument request "that prevailing wage [rate] sheets issued pursuant to [§] 27F at the outset of a contract govern for the full contract term." However, the department further stated that "such wage [rate] sheets do not set just one prevailing wage rate for each position for the duration of a multi-year contract; rather, wage [rate] sheets include rates for each year of the contract, with the rates typically increasing every six to twelve months." This is because the commissioner is required to set wages based on collective bargaining agreements, "which themselves typically contain preset automatic wage increases over the course of the contract." See Niles, 92 Mass. App. Ct. at 18-19, 81 N.E.3d 805.

Here, the prevailing wage schedules supplied to the town and forwarded to Allied before execution of the contract were limited to 2015 and 2016, even though the contract had a five-year term. Those prevailing wage schedules, which were attached to the contract, did not reflect the increased prevailing wages for 2017-2020. The department acknowledged in its amicus letter that the contract in this case did not reflect increased prevailing wages for 2017-2020, but concluded that this was an anomalous situation, and based on "the unusual circumstances of this case, the plaintiff-employees here were entitled to the prevailing wage rates set forth in the wage [rate] sheet issued in 2017." This interpretation is consistent with the act's purpose of achieving parity between workers on public projects and workers in the private sector. See Mullally, 452 Mass. at 532, 895 N.E.2d 1277. We note, however, that it is inconsistent with the language of the department's prevailing wage schedule incorporated in the contract as Appendix G, and the department's notice to awarding authorities dated December 2009, both of which stated that the listed wage rates would remain in effect for the duration of the contract term. While this may be an anomalous situation, the department should clarify its position so that awarding authorities and contractors are on notice that the prevailing wage rates may increase over the term of a contract, and contractors are required to pay those increased rates, even if the rates are not referenced in the contract.

Allied principally argues that it paid the plaintiffs pursuant to the prevailing wage schedule in Appendix G of the contract, which states specifically that "wage rates will remain in effect for the duration of the project, except in cases of multi-year public construction projects." According to Allied, it was entitled to rely on this language in Appendix G, particularly where G. L. c. 149, § 27F, does not explicitly require annual updates to the prevailing wage schedule. Moreover, Allied argues, the department's opinion regarding the merits of a case, as opposed to its interpretation of a statute, is owed no deference. We are not persuaded. "[T]he prevailing wage law is a strict liability statute." Lighthouse Masonry, Inc. v. Division of Admin. Law Appeals, 466 Mass. 692, 698-699, 1 N.E.3d 752 (2013). "[A]n employer's reason for the violation is irrelevant." Id. at 699, 1 N.E.3d 752. It is undisputed that Allied agreed to pay its workers the prevailing wage at rates established by the commissioner, and that, for 2017-2020, the workers were paid at a rate below the prevailing wage established for those workers by the commissioner. The employees should not be penalized because the town and Allied failed to ensure that the contract included prevailing wage schedules for each contract year. See Donis v. American Waste Servs., 95 Mass. App. Ct. 317, 325, 125 N.E.3d 759 (2019), S.C., 485 Mass. 257, 149 N.E.3d 361 (2020). Where the department agrees that the plaintiffs should have been paid the higher prevailing wage for the years 2017-2020, and payment of that higher prevailing wage is consistent with the legislative purpose of the act, we discern no error in the judgment in favor of the plaintiffs on their prevailing wage claim.[5]

5 The plaintiffs' overtime claim is derived solely from their prevailing wage claim. That is, they were undercompensated for overtime because they were paid at the wrong prevailing wage. Because Allied makes no independent argument with respect to the overtime claim, we do not separately address it.

***4** The plaintiffs have requested an award of attorneys' fees and costs associated with this appeal. See G. L. c. 149, § 27F (prevailing employee "shall also be awarded the costs of the litigation and reasonable attorneys' fees"). The plaintiffs may submit, within fourteen days of the date of issuance of the rescript in this case, a petition for appellate fees and costs, together with supporting documentation, as discussed in Fabre v. Walton, 441 Mass. 9, 10-11, 802 N.E.2d 1030 (2004). The defendant shall have fourteen days thereafter to respond. See NTV Mgmt., Inc. v. Lightship Global Ventures, LLC, 484 Mass. 235, 248, 140 N.E.3d 436 (2020).

Judgment affirmed.

All Citations

--- N.E.3d ----, 2022 WL 665290

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