

Opinion Letter

March 13, 2014

RE: Tree Work

The Department of Labor Standards (“DLS”) issues this Opinion Letter in response to requests for guidance under the Massachusetts Prevailing Wage Law, G.L. c. 149, §§ 26 and 27, regarding the proper occupational classification for tree trimming, tree removal and other associated tree work.

The prevailing wage law applies to the construction of public works by the Commonwealth, or by a county, town, authority or district. G.L. c. 149, §§ 26 and 27. The term “construction” includes “additions and alterations” of public works, including the repair and replacement of public works. See G.L. c. 149, § 27D. Section 27F requires that any lease, rental or other arrangement under which a truck or other vehicle or equipment is to be engaged in public works contains a stipulation requiring that prevailing wages, as determined by the DLS, be paid to the operators of such trucks, vehicles or equipment. When public awarding authorities enter into agreements subject to §§ 26 and 27, DLS sets prevailing wage rates based on “collective agreements or understandings in the private construction industry between organized labor and employers.” G.L. c. 149, §26. DLS also looks to these agreements and understandings to determine the appropriate job classifications under the prevailing wage law. When two unions lay claim to the same craft jurisdiction, in this case, tree trimming, DLS must look further into existing agreements to make a determination about the proper prevailing wage rate to be paid for a particular task.

Tree trimming and tree removal projects are covered by the prevailing wage law. See Letters to Fengler, Asplundh, January 25, 1995, February 28, 1996, November 1, 1999, February 2, 2005; Letter to Ferriter, Taunton, May 16, 1990. Public works projects involving tree-trimming and tree removal are “construction” under the prevailing wage law. Tree trimming and tree removal work may, but does not have to, be part of a broader construction project in order to be prevailing wage; it is, by definition, construction in and of itself and thus the construction classifications apply. Certain tree trimming work, as will be explained in more detail below, falls under non-construction 27F classifications.

DLS has historically held that the wholesale removal of standing trees, including all associated trimming of branches and limbs, is “construction” within the meaning of c. 149, § 27D, and thus the classification “Laborer: Tree Remover” applies to this task. The Laborers’ collective bargaining agreements (between the Laborers’ and the Associated General Contractors of Massachusetts, Inc. and the Building Trades Employers’ Association of Boston and Eastern Massachusetts, Inc.; Construction Industries of Massachusetts, Inc.; Construction Industry Association of Western Massachusetts, Inc.; and the General Contractors’ Association of Pittsfield, Massachusetts), claim jurisdiction and trade autonomy over, “...site preparation and right-of-way for clearance for construction of any structures or the installation of traffic and transportation facilities such as highways, pipelines, electrical transmission lines, dam sites and reservoir areas, access roads, etc.” as well as “Clearing, cutting, trimming and slashing of brush or trees by hand or with mechanical cutting methods.”^[1] The occupational classification Laborer: Tree Remover applies to all tree removal work, regardless of where the tree is located.

Since 2008, DLS has made a distinction on the rate sheets between tree trimming “on or around utility lines” and tree trimming “not on or around utility lines,” based on job tasks in various collective bargaining agreements. As described in more detail below, the language “on or around utility lines” is not a reference to distance or size; rather it refers to the purpose of the work being performed and to the control of the equipment. This type of work is also classified by reference to collective bargaining agreements.

The International Brotherhood of Electrical Workers (IBEW) and Lewis Tree Services, Inc. are parties to five agreements that recognize IBEW Local 42 as the representative of, “All employees of the Employer...engaged in tree trimming work, brush cutting work, or chemical spraying work and mechanics on the property of...[the Employer]”^[2]. Similarly, the Commercial Agreement between Northeastern Line Constructors Chapter National Electrical Contractors Association, Inc., and Local Union No. 42 of the IBEW covers: “...all commercial construction and maintenance work termed as Outside Electrical Work as defined in the International Brotherhood of Electrical Workers Constitution.”^[3] According to the IBEW Constitution, “trimmers” and “maintenance men” are among the job classifications within the category of Outside and Utility Workers.^[4] These workers are engaged in the “operation, maintenance and repair of equipment owned or operated by utility employers.”^[5] In accordance with the IBEW Local 42 agreement with the National Electrical Contractors Association, Inc., “utility electrical work” is defined as, “...work performed for electrical, telephone and telegraph utility companies, municipally-owned utility companies, R.E.A. cooperatives, railroads and coal mining companies...”^[6]

The proper occupational classifications for trimming trees when done for an electrical, telephone and telegraph utility company, a municipally-owned utility company, R.E.A. cooperative, railroad or coal mining company for the purpose of operating, maintaining, or repairing the utility company’s equipment, are Tree Trimmer or Tree Trimmer Groundman. These classifications are defined as follows:

1. The Tree Trimmer rate is paid for tree work done: (a) for an electrical, telephone and telegraph utility company, R.E.A., cooperative, railroad or coal mining company, (b) for the purpose of operating, maintaining, or repairing the utility company’s equipment, and (c) by a person who (i) is using hand or mechanical cutting methods and (ii) is **not** on the ground.
2. The Tree Trimmer Groundman rate is paid for tree trimming work done: (a) for an electrical, telephone and telegraph utility company, R.E.A., cooperative, railroad and or coal mining company, (b) for the purpose of operating, maintaining, or repairing the utility company’s equipment, and (c) by a person who (i) is using hand or mechanical cutting method(s) and (ii) is on the ground.

Several other specific questions have been raised with regard to tree work around utility lines, which we address as follows:

Q: Does the type of tool or method used for the tree work “on or around utility lines” change the classification?

A: Once the determination is made that the work is being done (a) for an electrical, telephone, and telegraph utility company, R.E.A., cooperative, railroad and or coal mining company and (b) for the purpose of operating, maintaining, or repairing the utility company’s equipment, the classification of Tree Trimmer and Tree Trimmer Groundman is based on whether the work is performed on or off the ground, not on the type of tool used.

Q: What is the definition of “utility lines”? Does it include water, gas, sewer, electrical, telephone, cable, drainage, solar, wind, steam, or fiber optics?

A: In accordance with the IBEW Local 42 agreement with the National Electrical Contractors Association, Inc., “utility electrical work” is defined as, “...work performed for electrical, telephone and telegraph utility companies, municipally-owned utility companies, R.E.A. cooperatives, railroads and coal mining companies...”^[7] Tree work performed on or around “utility lines,” involves equipment that is owned, operated or maintained by these entities.

Q: What is the definition of “around”? Would around include 10 feet, 100 feet, 1,000 feet? Does it depend on the size, pressure, or voltage of the utility line being worked “on or around”?

A: “On or around utility lines” is not a reference to distance or size. The language refers to the purpose of the work and to the control of the equipment. If a person is performing tree work: (a) for an electrical, telephone and telegraph utility company, R.E.A. cooperative, railroad or coal mining company, and (b) for the purpose of operating, maintaining, or repairing the utility company’s equipment, the worker shall be paid at the Tree Trimmer or Tree Trimmer Groundman rate.

Additional questions have been raised about classification of other tree-related work. When the work involves whole tree removal or the primary purpose of the tree work is not the operation, maintenance or repair of utility company equipment, the work is paid at the Laborer: Tree Remover classification, regardless of where the work is performed. Jobs that fall under the Laborer: Tree Remover classification include:

1. Tree-trimming that is **not** “on or around utility lines”, as defined above, regardless of tools or method used;
2. The wholesale removal of trees, along with any associated trimming of branches and limbs, regardless of the trees’ location;
3. Any grinding of stumps from the wholesale removal of trees, regardless of location.

Finally, depending upon the tasks being performed, the appropriate occupational classification for other tree-related works may be under the “Rental of Equipment” or “27F” prevailing wage schedule (i.e. Laborer, Other Power Driven Equipment – Class II, etc.):

1. Grinding or loading of stumps from fallen trees that is not associated with purposeful wholesale tree removal, such as from trees that fall in a storm
2. Chipping, cutting and loading fallen branches or an entire tree(s) that is not associated with purposeful wholesale tree removal

As of the date of this letter, the prevailing wage schedules will be updated with the following language:

Tree trimmer: This classification applies only to tree work done: (a) for a utility company, R.E.A. cooperative, or railroad or coal mining company, and (b) for the purpose of operating, maintaining, or repairing the utility company’s equipment, and (c) by a person who is using hand or mechanical cutting methods and is **not** on the ground. This classification does not apply to wholesale tree removal.

Tree trimmer groundman: This classification applies only to tree work done: (a) for a utility company, R.E.A. cooperative, or railroad or coal mining company, and (b) for the purpose of operating, maintaining, or repairing the utility company's equipment, and (c) by a person who is using hand or mechanical cutting methods and is on the ground. This classification does not apply to wholesale tree removal.

Laborer: tree remover: This classification applies to all tree work associated with the removal of standing trees, and trimming and removal of branches and limbs when the work is not done for a utility company for the purpose of operation, maintenance or repair of utility company equipment.

Workers performing various tasks under more than one classification must be compensated at the applicable prevailing wage rate for all hours worked. I hope this information has been helpful. Should you have further questions, please do not hesitate to contact the Department of Labor Standards.

Sincerely,

Heather Rowe

Director

[1] (1) Building and Site Construction Agreement between: the Massachusetts & Northern New England Laborer's District Council of the Laborers' International Union of North America AFL-CIO and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc. and Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., Section 12: "Excavations and Foundations; Site Preparation and Clearance; Transportation and Transmission Lines." (2) Agreement between the General Contractors' Association of Pittsfield, Massachusetts and the Massachusetts and Northern New England Laborers' District Council in behalf of Local Union 473, Pittsfield, Massachusetts of the Laborers' International Union of North America AFL-CIO, Section 12: "Excavations and Foundations; Site Preparation and Clearance; Transportation and Transmission Lines." (3) Building & Site Construction Agreement between Construction Industry Association of Western Massachusetts, Inc. and Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL-CIO acting for and in behalf of Laborers' Local Union 596 Holyoke, Massachusetts, and Laborers' Local Union 999, Springfield, Massachusetts. (4) Heavy and Highway Agreement between the Labor Relations Division of Construction Industries of Massachusetts, Inc. and Massachusetts & Northern New England Laborers' District Council of the Laborers' International Union of North America AFL-CIO, Section 13, "Excavations and Foundations; Site Preparation and Clearance; Transportation and Transmission Lines."

[2] Agreement between Lewis Tree Service, Inc. (Employees Working on the Property of NSTAR Electric & Gas) and Local Union 42 International Brotherhood of Electrical Workers, Article 2, Section 2.01(B); Agreement between Lewis Tree Service, Inc. (Employees Working on the Property of United Illuminating) and Local Union 42 International Brotherhood of Electrical Workers, Article 2, Section 2.01(B); Agreement between Lewis Tree Service, Inc. (Employees Working on the Property of Northeast Utilities) and Local Union 42 International Brotherhood of Electrical Workers, Article 2, Section 2.01(B); Agreement between Lewis Tree Service, Inc. (Employees Working on the Property of National Grid, USA) and Local Union 42 International Brotherhood of Electrical

Workers, Article 2, Section 2.01(B); Agreement between Lewis Tree Service, Inc. (Employees Working on the Property of a Municipal Contract) and Local Union 42 International Brotherhood of Electrical Workers, Article 2, Section 2.01(B).

[3] Commercial Agreement between Northeastern Line Constructors Chapter National Electrical Contractors Association, Inc. and Local Union No. 42 of the International Brotherhood of Electrical Workers, Scope, page C-2.

[4] IBEW Constitution, as amended September 2011 at Vancouver, BC Canada, Article XXVI – Jurisdiction, Sec. 4. http://ibewminuteman.com/ibew_constitution/article-26.php

[5] *Ibid.*

[6] Commercial Agreement between Northeastern Line Constructors Chapter National Electrical Contractors Association, Inc. and Local Union No. 42 of the International Brotherhood of Electrical Workers, Scope, page C-3.

[7] Commercial Agreement between Northeastern Line Constructors Chapter national Electrical Contractors Association, Inc. and Local Union No. 42 of the International Brotherhood of Electrical Workers, Scope, page C-3.