



OFFICE OF THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF LABOR AND INDUSTRIES

LEVERETT SALTONSTALL BUILDING  
100 CAMBRIDGE STREET, ROOM 1107  
BOSTON, MASSACHUSETTS 02202-0003

August 29, 1994

Richard P. Early, Jr.  
Vice President

Early and Sons, Inc.  
58 South Kimball Street  
Bradford, MA 01835

Frederick W. Marino  
President

Felix A. Marino Co., Inc.  
32 Corwin Street  
P.O. Box 431  
Peabody, MA 01960

Re: Prevailing Wage Issues

Dear Messrs. Early and Marino:

Robert Prezioso and I were pleased to meet with you on August 16, 1994. This letter addresses the two issues which were raised at the meeting.

The first issue was whether firms which repair roadways following the installation of cable underneath such roadways for non-public companies -- such as private utility companies or cable television companies -- must pay their employees prevailing wage pursuant to Mass. Gen. Laws ch. 149, §§ 26 and 27.

It is the determination of the Department of Labor and Industries that the work described is not "public construction" and is therefore not subject to the prevailing wage requirements of the statute. Although roads are "public ways," the pavement patching you described is repair work of such public property necessitated by excavation and installation of cable performed solely for the benefit, and at the direction, of private entities. Such services are procured exclusively with private monies and the firms undertaking those projects contract directly with the private entities. This determination is based on the assumption that the firms performing the pavement patching are merely restoring them to their condition prior to the excavation work and not improving their condition.

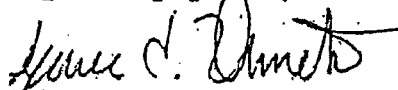
The second issue raised was whether the process of pavement patching developed by Felix A. Marino Co., Inc. ("Marino") is

sufficiently different from traditional paving and patching operations to render the existing prevailing wage job classifications inapplicable to employees of Marino thus necessitating the establishment of new job classifications.

Before the Department makes a final determination on this issue, we would like to observe a portion of the process you described in our meeting. Please call Robert Prezioso at 727-8519 to discuss times and places at which the paving operation will be performed so that we may watch the process as it is occurring.

If you have any questions regarding these matters, do not hesitate to call Robert or me.

Very truly yours,



Spencer C. Demetros  
General Counsel, DLI

cc: Robert Prezioso