

CONCLUSION

the Chiefs of Party, Instrument who will be hired to perform the work it will not be engaged "in the works." The Commissioner would have authority had DLI issued prevailing wage t. Therefore, DLI's prior wage upheld.

DEPT. OF LABOR AND INDUSTRIES

By: Spencer C. Demetros
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COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Department of Labor and Industries

In Re: WAGE DETERMINATION APPEAL

LAKEVILLE REDI-MIX, INC. AND
A. GRAZIANO, INC.

Appearance for Appellants:

Philip DeMoranville
Lakeville Redi-Mix, Inc.
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Appearance for Department of Labor and Industries:

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DECISION OF THE DEPARTMENT OF LABOR AND INDUSTRIES

JURISDICTION

Pursuant to Mass. Gen. Laws ch. 149, § 27A, the undersigned, as designee of the Commissioner of the Department of Labor and Industries ("DLI"), conducted a hearing on February 21, 1995 at DLI's offices at 100 Cambridge Street, Room 1107, Boston, MA. The subject of the hearing concerned an appeal brought by Lakeville Redi-Mix, Inc. and A. Graziano, Inc. (collectively the "Appellants") contesting certain wage determinations made by DLI

for a sidewalk construction and repair public works project to be performed in the Town of Plymouth.

The issue presented is whether truck drivers providing ready-mix concrete to the public works site are subject to the prevailing wage requirements of Mass. Gen. Laws ch. 149, §§ 26-27H.

STATEMENT OF FACTS

On or about December 1, 1994, DLI issued minimum wage rates and classifications of employment, pursuant to Mass. Gen. Laws ch. 149, §§ 26-27H, as requested by the Town of Plymouth for the construction and repair of sidewalks to be located in Plymouth. On January 25, 1995, the Town of Plymouth advertised a request for bids, which incorporated the wage rates issued by the Department. On January 28, 1995, the Appellants filed a request for hearing pursuant to ch. 149, § 27A contending that truck drivers who will be hired to haul ready-mix concrete to the public works site do not aid in the application of the concrete they deliver, but are mere suppliers, and are therefore not subject to the prevailing wage requirements of ch. 149, §§ 26-27H.

During the hearing, Philip DeMoranville provided the following testimony concerning the job duties of ready-mix concrete haulers. Ready-mix drivers haul the ready-mix material to the work site in liquid form. Prior to application, the ready-mix material does not possess the properties of concrete but becomes concrete only after it has been applied and had an

opportunity to cure.

When a ready-mix hauler arrives at a work site, he is directed where to position his truck by the masons working on the project. The ready-mix material is deposited from the truck in one of two ways. The material is either applied directly into a form or mold through a chute extending from the back of the ready-mix truck, or the concrete is loaded into pump trucks through the chute and deposited into the form or mold by the pump truck. In either case, the rate of flow of the concrete from the ready-mix truck has to be regulated by the ready-mix operator from inside the cab of the truck. Since the mason is the person who oversees the installation of the concrete, the driver must take direction from the mason as to the flow rate of the ready-mix and the positioning of the truck.

The extent to which the truck driver must maneuver the truck while depositing the ready-mix at the work site varies, depending on the nature of the project. If a relatively large concrete structure is to be constructed, the driver backs up to the form and unloads the entire load of ready-mix therein and then leaves the site to pick up another load. However, as in the present case, where a sidewalk is to be constructed, the ready-mix hauler slowly drives the truck along the strip where the sidewalk is to be laid, while a worker outside of the truck directs the truck driver to ensure that he does not steer off course.

The amount time that the ready-mix hauler stays on the work site for each load also varies, depending on the amount of ready-

mix to be applied and the nature of the project. Typically, the ready-mix hauler remains on the work site for anywhere from five minutes to one hour per load.

ANALYSIS

Mass. Gen. Laws ch. 149, § 26 requires the Commissioner of DLI to set hourly wage rates which must be paid to "mechanics and apprentices, teamsters, chauffeurs and laborers" who are employed "in the construction of public works." There is no dispute that ready-mix drivers are "teamsters" and that the sidewalk construction and repair job proposed by the Town of Plymouth is a public works construction project. The salient issue is whether the work performed by the ready-mix haulers is sufficiently connected to the public works project to make such work subject to the prevailing wage requirements of the statute.

The Supreme Judicial Court had occasion to answer that very question with respect to bituminous concrete haulers in Construction Industries of Massachusetts v. Commissioner of Labor and Industries, 406 Mass. 162 (1989) ("CIM"). In that case, the court stated that, if there exists a "significant nexus between the work [the] teamsters perform and the site of the project," then DLI has authority to issue a wage rate for that job classification. Id. at 168. The CIM court determined that bituminous concrete haulers are an integral part of the road construction project and are not mere "materialmen." The court held that "[w]hen the performance of a statutorily specified job [bituminous concrete hauling] has a significant connection with

the construction project, then that job falls within the domain of the posted wage law statute." Id.

The CIM court cited the following three factors in support of its conclusion that bituminous concrete haulers indeed have a significant "nexus" or "connection" to the public works site:

1. The bituminous concrete haulers spend a "great deal of time," approximately five to fifteen minutes per load, on the work site. Id. at 164, 168.
2. While on site, the bituminous concrete haulers work with the road crew and take direction from workers at the site in applying the material to the road surface. Id. at 168.
3. The activity the bituminous concrete haulers perform -- depositing the material into a spreader and working in concert with the spreader operator who applies the material to the road surface -- is an integral part of the road construction process. Id. at 164, 168.

Applying the CIM court's analysis to the facts elicited at the hearing on the instant appeal, it is clear that ready-mix haulers have as much -- if not more -- of a connection with the sidewalk construction project at issue as the bituminous concrete haulers had with the road construction project in the CIM case. First, ready-mix haulers may spend up to an hour per load on the work site as compared to fifteen minutes per load for bituminous concrete haulers. Second, the ready-mix drivers work with, and take direction from, the masons for virtually the entire time that they are on the work site.

Finally, there is a striking similarity between the actual process of depositing and applying ready-mix concrete and bituminous concrete and the extent to which they are integral to

the project at issue. In fact, in sidewalk construction, the ready-mix driver performs a major role in ensuring that the sidewalk is constructed properly. In addition to regulating the flow rate of the material, in cases in which a pump truck is not used, the ready-mix driver must also ensure that the truck is moving at the proper speed and in the right direction.

For the foregoing reasons, ready-mix concrete drivers have a significant nexus to the public works site and therefore are subject to the requirements of the prevailing wage statute. Accordingly, the appeal is denied and the wage rates for the instant project are upheld.

Dated: February 24, 1995

DEPT. OF LABOR AND INDUSTRIES

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