



The Commonwealth of Massachusetts
Department of Labor and Workforce Development
Division of Occupational Safety

ANGELO BUONOPANE
Director

ROBERT J. PREZIOSO
Deputy Director

February 11, 1997

Mr. Joseph P. Hannon, Esq.
252 Elm Street
P.O. Box P-150
South Dartmouth MA 02748

Dear Mr Hannon,

This letter responds to your letter of January 24, 1997, in which you inquire whether the prevailing wage provisions of M.G.L. c. 149 apply to an arrangement contemplated by the Towns of Pepperell and Groton ("Pepperell" and "Groton", respectively) under which Pepperell would, using its regular employees, install and maintain a lateral sewer system in Groton.

It is clear that, were Groton to contract with a private contractor to perform the work of installing a sewer system, the prevailing wage provisions would apply to that part of the agreement with the contractor which addressed construction of the system, because such a project would entail the "employment of mechanics and apprentices, teamsters...and laborers" in the "construction of public works" under M.G.L. c. 149 § 26. In addition, if Groton entered such a contract with a private contractor, M.G.L. c. 149 § 27F, which regulates the wages of operators of certain vehicles engaged in public works, might also apply. The unique question posed by the proposed Pepperell-Groton agreement is whether the fact that the labor required by Groton will be provided by Pepperell's regular employees rather than by a private contractor affects the applicability of the prevailing wage provisions.

To our knowledge, no case law, statute or regulation addresses this issue. I assume for purposes of analysis that the proposed agreement will constitute a valid inter-municipal agreement under M.G.L. c. 40, § 4A. Under this provision, the equipment and employees of a governmental unit which are involved in activities on behalf of a second municipality are "deemed to

be engaged in the service and employment of such unit, notwithstanding such service, activity or undertaking is being performed in or for another governmental unit or units." Although this language does not explicitly refer to the prevailing wage statutory scheme, it suggests that the Pepperell employees involved in the construction of Groton's sewer system must be treated as if they were working in the service of Pepperell, even though, in fact, they will be working in and on behalf of Groton.

Regular employees of a municipality like Pepperell are not subject to the prevailing wage provisions set forth in M.G.L. § 26 unless (1) they are involved in the "construction, addition to or alteration of public buildings" and (2) the project has been funded by a "special appropriation of more than one thousand dollars." M.G. L. c. 149 § 26. You informed us in your letter and in a telephone conversation with Stewart Field of this office that the sewer installation project will not involve the construction, addition to or alteration of any public building, including a pumping station. Therefore, it is the determination of this Division that, based on the facts presented, the Pepperell employees who will work on this project are not to be subject to the prevailing wage statute.

At this point, we are relying on your representations about the project because you have informed us that no description of the specifics of the project (the so-called "scope of work") has been drafted. You have agreed to provide us with the scope of work when it is completed. We expect that it will be detailed and complete, and we reserve the right to change our opinion about the applicability of the prevailing wage statute pending our review of that document. In addition, we expect that you will inform us if, in the future, the scope of work is amended to include the construction, addition to or alteration of a public building, so that we can revisit the prevailing wage issue if necessary.

Please feel free to contact me at (617)-727-3452 if you have any further questions about this matter.

Very truly yours,



Linda M. Hamel, Esq.
General Counsel
Division of Occupational
Safety