



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

ANGELO BUONOPANE  
Director

ROBERT J. PREZIOSO  
Deputy Director

February 4, 1998

Dean Robinson, Esq.  
300 Centerville Road, Suite 305  
Warwick, RI 02886

SUBJECT: ACME BOILER RENTAL

Dear Mr. Robinson:

I have reviewed your letter dated January 20, 1998 concerning whether the Massachusetts prevailing wage law, M.G.L. c. 149, ss. 26-27D, is applicable to certain work performed by your client, Acme Boiler Rental Incorporated (Acme). According to your letter and our subsequent telephone conversation, my understanding of the facts are as follows:

1. Acme provides portable rental boilers for emergency purposes.
2. Public authorities, on occasion, will call upon Acme to provide temporary boiler services when experiencing disruption/failure of normal service.
3. When called, Acme will deliver a suitable boiler to the appropriate site, which is typically housed in a temporary shed located outside of the building experiencing a service outage.
4. To connect the portable boiler, Acme installs one or two temporary pipes running from the portable unit to the main boiler located inside the affected building. These pipes are affixed to the failed unit in order to provide temporary service.
5. Once repairs are done to the main boiler and normal service is restored, Acme unhooks the portable boiler and transports the unit back for storage.

M.G.L. c. 149, s. 26 requires the Director of the Department of Labor and Workforce Development, Division of Occupational Safety (DOS) to set hourly wage rates which must be paid to "mechanics and apprentices, chauffeurs and laborers" who are employed "in the construction of public works." Section 27D of the above-referenced law defines "construction" and, consequently, the applicability of prevailing wage requirements to construction, additions and alterations of public buildings and public works.

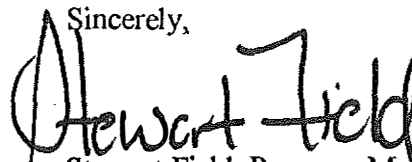
In this case, Acme does alter a public work, specifically a building, in the performance of contracted work. A heating system is an integral part of any building. The temporary connection to a failed boiler system of a remedial source of heat creates a temporary addition to a public work. Also in your letter, you argue that the temporariness of the work does not create a presumption triggering the provisions of the prevailing wage law. However, the temporary nature of the work is not guiding in questions regarding prevailing wage applicability. The work performed by Acme is analogous to many instances where temporary work is performed to provide uninterrupted operation of a public work, such as temporary ramps during building renovation or repair.

Given the facts surrounding your inquiry, the work performed at the site of a public work, namely the installation/disassembly of the temporary boiler, requires the payment of prevailing wage rates. Also, the construction of a shed to house the temporary boiler requires payment of prevailing wage rates.

This determination is based on the facts contained in your January 20<sup>th</sup> letter, our subsequent conversation and is confined to this particular situation. If additional facts concerning the work in question come to your attention, please notify me immediately so that I may consider such information in a reassessment of this decision.

If you have any questions concerning this matter, do not hesitate to call me.

Sincerely,

A handwritten signature in black ink that reads "Stewart Field". The signature is written in a cursive, slightly slanted style.

Stewart Field, Program Manager  
Mass. Div. of Occupational Safety

cc: Robert Prezioso, Deputy Director  
Mass. Div. of Occupational Safety

Linda Hamel, General Counsel  
Mass. Div. of Occupational Safety

Barbara Piselli, Division Chief  
Attorney General's Office of Fair Labor