



The Commonwealth of Massachusetts

Executive Office of Labor

Department of Labor and Industries

Leverett Saltonstall Building, Government Center

100 Cambridge Street, Boston, 02202

Decision on Appeal of Local 3 of Wage Rates and Classifications for Maintenance/Repair Contract #8895 Boston Public Library

An appeal was received by the Department of Labor and Industries on September 12, 1988 from five members of Local 3, International Brotherhood of Firemen, Oilers and Maintenance Helpers. (hereafter Local 3) This appeal was received within five days of the first call or advertisement for bids on September 9, 1988.

A public hearing was scheduled for Monday, October 3, 1988. A notice of hearing was published in the Central Register on September 21, 1988.

Paul Bradford Brousseau was appointed Hearing Officer on September 16, 1988 and received a formal letter confirming his appointment from Commissioner James Snow on October 3, 1988.

On Monday, October 3, 1988 at 3 p.m. at the Department of Labor and Industries, Leverett Saltonstall Building, 100 Cambridge Street, Boston, Massachusetts, a public hearing was held in this matter.

A record of the hearing was made, twenty exhibits were received and testimony was taken from six individuals by the hearing officer.

FACTS:

The Department of Labor and Industries (hereafter DLI), Division of Technical Services received a request for Minimum Wage Rates from the Boston Public Library (hereafter BPL) for project #8895,

Preventive Maintenance of Heating, Ventilation, Air Conditioning Electrical Systems, Associated Equipment, and Plumbing. A bid opening was scheduled for June 15, 1988. (See Trustee Ex. #2)

Minimum Wage Rates were issued on or about May 20, 1988 by DLI. (See DLI Ex. #4)

On June 14, 1988 DLI's Deputy General Counsel Peter Waltonen called Kevin T. FitzPatrick, BPL, and informed him to cancel the bid opening scheduled for June 15, 1988 on project #8895. Mr. Waltonen told FitzPatrick that the Minimum Wage Rates were incorrect and new Minimum Wage Rates were to be issued by DLI. (See Trustee Ex. #7)

BPL notified listed bidders and the public that Minimum Wage Rates were deleted on August 22, 1988 on "advice received from the Commissioner of DLI of the Commonwealth of Massachusetts." (See Trustee Ex. #2)

Apparently, a dialogue over Maintenance/Repair between BPL and DLI resulted in correspondence and ultimately inclusion of Minimum Wage Rates in a proposal scheduled for bid opening on September 14, 1988. (See Trustee Ex. #2, 8, 9, BTE Ex. #3, DLI Ex. #4)

Maureen Tivnan of DLI stated it had compiled these Minimum Wage Rates pursuant to C. 149, S. 26 (See DLI Ex. #7) and had used Collective Bargaining Agreements from the Private Construction Industry to reach its decision. (See DLI Ex. #6) Ms. Tivnan stated that DLI had determined that the work involved repair thus bringing it within application of C. 149, S. 26.

On September 12, 1988, an appeal from five members of Local 3 employed by Building Technology Engineers, Inc. (hereafter BTE) at BPL was received by the DLI. (See DLI Ex. #2) This appeal was properly made upon Commissioner Snow of DLI pursuant to C. 149, S. 27A. The subject of the appeal was Minimum Wage Rates and Job Classifications. (See DLI Ex. #2)

FINDING:

All parties agreed the Commissioner of DLI has the power to set Minimum Wage Rates pursuant to C. 149, S. 26 and 27 as well as under other sections of C. 149 and the General Laws.

There was some discussion by Attorney Thomas Murtaugh, who represented BTE, that C. 149, S. 27H permits maintenance wage rates which might apply. Ms. Tivnan stated that C. 149, S. 27H does not apply in DLI's opinion. A reading of C. 149, S. 27H indicates that it covers maintenance and cleaning of public buildings or space rented by the Commonwealth and is inapplicable to this matter. (See C. 149, S. 27H, first sentence)

DLI has taken the position that repairs on a public work or public building require Minimum Wage Rates established under C. 149, S. 26 and applied pursuant to C. 149, S. 27. While it has been pointed out by Attorney Murtaugh that C. 149, S. 27D defines public construction but does not mention repair, a reasonable interpretation of "Alterations" (See C. 149, S. 27D, first sentence) would contain repair. Further, C. 149, S. 27D is not an exhaustive list and DLI is within its authority and discretion to include repair as public works or public construction.

Once established that C. 149, S. 26 permits DLI to set wage rates for repair, DLI's methodology must be examined pursuant to third proviso of C. 149, S. 26. Under this proviso, "If . . . a wage rate or wage rates have been established in certain trades or occupations, by collective bargaining agreements or understandings in the private construction industry between organized labor and employers, the rate or rates to be paid on said works shall not be less than rates so established."

As I find DLI's action in establishing this Minimum Wage Rate to be in accord with the requirements of C. 149, S. 26 and 27, this appeal is denied.


Hearing Officer

DATE: October 6, 1988