

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
DIVISION OF OCCUPATIONAL SAFETY

ARGEO PAUL CELLUCCI  
GOVERNOR

JANE SWIFT  
LIEUTENANT GOVERNOR

ANGELO BUONOPANE  
DIRECTOR

ROBERT J. PREZIOSO  
DEPUTY DIRECTOR

May 18, 1999

Dianne Canavan  
City of Everett  
484 Broadway  
Everett, MA 02149

SUBJECT: EVERETT MUNICIPAL EMPLOYEES/PREVAILING WAGE

Dear Ms. Canavan:

This letter responds to your letter dated May 6, 1999 concerning the Massachusetts prevailing wage law, as prescribed by M.G.L. c. 149, ss. 26 through 27D, and certain construction work that will be performed by employees of the City of Everett. Specifically, you requested clarification of the prevailing wage law with respect to municipal employees performing work on three upcoming projects, and secondly, if the prevailing wage law applies to those municipal employees, whether a separate allocation must be made by the city to accommodate any difference between the employees' regular rate of pay and the prevailing wage rate.

M.G.L. c. 149, s. 26 requires 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. Generally speaking, the prevailing wage law does not apply to public employees 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."

With respect to the work being performed at each of the three projects, my understanding of the facts are as follows:

(1) The Ferry Street Fire Station renovation project will be put out to competitive bid by the City of Everett. However, the wiring and electrical work will be performed by municipal employees. Funding for this project was not included as a capital item in the city's current fiscal budget. Rather, the project is being funded from the previous fiscal year's free cash account. Furthermore, during our recent telephone conversation, you confirmed that the project's cost will exceed one thousand dollars.

Since the work performed by municipal employees at the Ferry Street Fire Station renovation project appears to meet the two above-referenced preconditions, those employees will be subject to the prevailing wage law.

As for your second inquiry, whether the difference between the employees' regular rate of pay and the prevailing wage should be funded from the city's payroll or funded by project's allocation, please be aware that the prevailing wage law is silent on that issue. However, you should review applicable municipal finance law with legal counsel. Also, the City of Everett, as the employer, is entitled to deduct from the hourly prevailing wage rate the city's contribution (share) to any health and welfare, pension and/or supplemental unemployment plan. No other deductions may be made from the prevailing wage rate.

(2) The second project, installation of stadium lighting, is being funded by donations that were accepted by the city and held in a special account. The city will contract for the purchase and installation of the poles and lights. The final wiring work, however, will be performed by municipal employees.

Since the wiring work performed by municipal employees in this particular situation cannot be considered "construction, addition to or alteration of public buildings", municipal employees performing wiring work will not be subject to the prevailing wage law.

(3) The final project, construction of a concession stand and bathrooms at the Lynde Street playground will be accomplished through private donations of building supplies, and construction work will be performed by voluntary labor. Municipal employees may perform various construction work on an as-needed basis, including any plumbing and electrical work. Furthermore, the city, because of the donation of materials and labor, has not made any appropriation, special or otherwise, for this work.

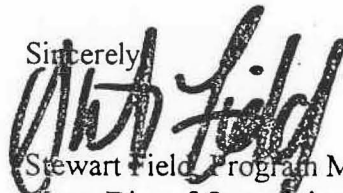
Although construction of the concession stand and bathrooms can be considered "construction...of public buildings", the city has not made a "special appropriation." Consequently, municipal employees performing wiring and plumbing work will not be subject to the prevailing wage law. Nor would the prevailing wage law apply to any individuals who volunteer their labor.

This determination is based on the facts contained in your May 6<sup>th</sup> letter and is confined to this particular situation. If additional facts concerning the projects in question come to your attention, please notify me immediately so that I may reassess this decision.

Pursuant to M.G.L. c. 149, s. 27A, you have the right to appeal this determination within five days by providing written notice to Mr. Robert Prezioso, Deputy Director, Massachusetts Division of Occupational Safety, 100 Cambridge Street, 11<sup>th</sup> Floor, Boston, MA, 02202.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Stewart Field", written over the typed name.

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