

10/11/97

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 96-1640-F

**NOTIFY**

ATTORNEY GENERAL OF THE  
COMMONWEALTH OF MASSACHUSETTS,  
Plaintiff

vs.

*notice sent*

5-23-97

WASTE MANAGEMENT OF MASSACHUSETTS, INC.,  
Defendants

LAA  
PTH  
RTC  
EPH

MEMORANDUM AND ORDER ON  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

*1/2*

In this matter, the Attorney General of the Commonwealth of Massachusetts seeks a declaratory judgment determining that the Town of Burlington's contract awarded to Vining Disposal Service, Inc., (whereunder Vining Disposal Service uses trucks to collect and haul trash to a sanitary landfill,) involves the performance of "public works" which requires the payment of "prevailing wage rates" to its employees, pursuant to G.L. c. 149 § 26-27H.<sup>1</sup>

After hearing and consideration of the submissions of the parties, plaintiff's motion is ALLOWED.

Although the term "public works" is undefined in the statute, and has been held in connection with other statutes such as G.L. c. 30 § 39M & 39M-P, to cover only such activities as

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<sup>1</sup>The Attorney General has standing to bring this action on behalf of the Department of Labor and Industries, c. 149 § 2, and on its own behalf, c. 149 § 27.

involve the physical construction or maintenance of public facilities, see Thorn Transit Svstems-Int'l, Inc. v. M.B.T.A., 40 Mass. App. Ct. 650 (1996), and Courts in other jurisdiction have similarly followed that limited definition, see, e.g., Long Island Light Cove v. Ind. Comm'r, 40 A.D. 2nd. 1003, 338 N.Y.S. 2nd. 751, 754 (App. Div. 1972), Aff'd, 34 N.Y. 2nd. 725, 357 N.Y. 2nd. 493 (1974), the Massachusetts Appeals Court, in Commonwealth v. W. Barrington, Co., Inc., 5 Mass. App. Ct. 16 (1977) specifically held that the term "public works", as used in § 27F, should not be limited to employees engaged in public works involving "construction". The Court pointed out that the legislature did make other sections of G.L. c. 149 specifically applicable to "construction of public works" (§ 26, 27 and 27C) and "public works to be constructed" (§ 26, 27 and 27A, emphasis added) and found that:

"in the light of this explicit background . . . the Legislature selected the unqualified words 'public works' which are found in § 27F. If the intention was that the prescribed wage provision of that section should be limited in their application to employees engaged in public works involving 'construction', the new section would have been completely unnecessary".

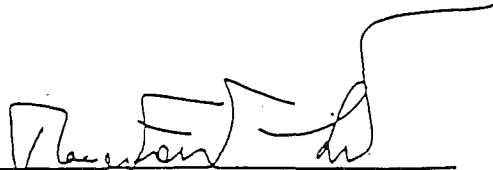
The Court went on to hold that the sweeping of public ways by motorized equipment was a function commonly performed under the direction of departments of Public Works in cities and towns, so that G.L. c. 149, § 27F was applicable even though no physical construction of public facilities was involved. As the same considerations apply to the trash hauling and collection involved

here, the Court will allow plaintiff's motion. Accord: Town of Mattapoisett v. Director of the Division of Industrial Safety (Plymouth superior Court, "Memorandum of Decision and Order on Defendant's Motion for Summary Judgment," May 25, 1990, Nixon, J.).

-ORDER

Accordingly, it is ordered that summary judgment shall enter for the plaintiff and that Waste Management of Massachusetts shall comply in all respects with the requirements of Chapter 149 § 27F. The Court declares moreover, that, in determining prevailing wage rates, Waste Management may deduct only its contributions towards "health and welfare" plans, as defined in c. 149, § 181<sup>2</sup> and may not deduct payments made towards any other benefits for said employees.

If the parties cannot agree on the amount, if any, owed for past wrongful deductions, the parties will schedule a hearing for assessment of damages.

  
Thayer Fremont-Smith  
Justice of the Superior Court

DATED: May 24, 1997

<sup>2</sup>The Court concludes that premiums for payment for medical, dental, life, disability, pensions and social security benefits are within the preview of c. 149, § 181, whereas payments for vacation, holiday and personal day accrual, uniforms and safety boots, are not.