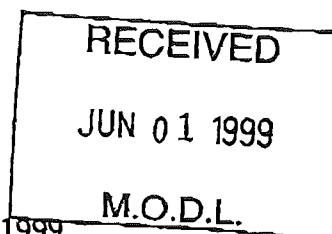




THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY

ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR



ANGELO BUONOPANE
DIRECTOR

ROBERT J. PREZIOSO
DEPUTY DIRECTOR

May 27, 1999

D. M. Moschos, Esq.
Mirick, O'Connell, DeMallie & Lougee, LLP
1700 Bank Boston Tower, 100 Front St.
Worcester, MA 01608-1477

Dear Mr. Moschos:

Your letter dated May 13, 1999 to Robert J. Prezioso, Deputy Director of the Division of Occupational Safety (DOS), has been forwarded to me for a response. In it, you argue that the work performed by your client, Simplex Time Recorded, Inc. (Simplex), is not subject to the prevailing wage law (M.G.L. c. 149, ss. 26-27H). Among the documents you forwarded to DOS is the contract between the Massachusetts Port Authority (Massport) and Simplex. The contract specification includes many services to be performed by your client, including but not limited to testing and inspecting fire alarm systems, performing service calls on an as-needed basis and providing the labor for repairs to equipment...(more). In fact, the term "repair" appears throughout the contract.

M.G.L. c. 149, s. 26 requires 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 public works "construction" broadly and includes additions to and alterations of public buildings and public works. DOS considers repairs to a public work, defined as specific and/or sporadic actions taken to mend, restore or otherwise bring an item back to operating condition, to be subject the prevailing wage law. On the other hand, actions which do not result in the addition to or alteration of a public building and/or a public work, such as testing a fire alarm system, are not subject to the prevailing wage law.


With respect to your client's contract with Massport, as stated in your letter and in a memorandum forwarded to you from Ulysses Shields of Simplex, an estimated 36% of man hours under the contract will be devoted to "parts replacement", an action tantamount to a repair. Consequently, a person employed by Simplex who performs fire alarm repairs at Massport-owned facilities is subject to the prevailing wage law under the classification of *Fire Alarm (repair/maintenance)*. The remaining work, i.e. system testing and shut down, is not subject to the prevailing wage law.

As for the affidavit of David Boragine, recalling an August 11, 1997 conversation with me during which I opined that Simplex's contract was not subject to the prevailing wage law, this determination is not inconsistent with that conversation. According Mr. Boragine's affidavit, Simplex was "performing test(s) and inspections...", and made no mention of repair obligations in the contract. Had I been aware of the repair provisions in the contract, my answer to Mr. Boragine's question would have been different.

This determination is based on the facts contained in your May 13th 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 Robert J. Prezioso, Deputy Director, Massachusetts Division of Occupational Safety, 100 Cambridge Street, 11th Floor, Boston, MA, 02202.

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

Sincerely,

Stuart 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