THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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March 10, 2000

Norma R. Collins, Purchasing Agent
Town of Franklin
150 Emmons Street
Franklin, MA 02038-2036

Re: Prevailing Wage Applicability to Owner-Operators

Dear Ms. Collins:

Thank you for your letter requesting clarification of the applicability of MGL Ch. 149, §§ 26-27H ("the prevailing wage law") to work performed by owner-operators. As you know, the Division of Occupational Safety ("DOS") is the agency charged with administering the prevailing wage law and making applicability determinations in accordance with it.

It is DOS' position that legitimate owner-operators or independent contractors, unless they are transporting gravel or fill to a public works site or removing it from such site, are not subject to the prevailing wage law.

The prevailing wage law clearly addresses the activities within its scope—public works construction (§ 26-27E), the rental of equipment (§ 27F) or moving of office furniture (§ 27G) by the Commonwealth and its political subdivisions, and the cleaning of state office buildings (§ 27H)—from the context of the employment relationship. The statute uses the term "employer" and "employee" throughout its text. Here are two of several textual examples of this statutory focus:

> Ch. 149, § 27 provides that the prevailing wage schedule by DOS "shall be made a part of the contract for said [public] works and shall continue to be the minimum rate or rates of wages for said *employees* during the life of the contract." (Emphasis added).
>
> The section further states "[a]ny *employer* engaged in the construction of such works who does not make payments to [benefits plans], where such payments are included in said rates of wages, shall pay the amount of said payments directly to each *employee* engaged in said construction." (Emphasis added).

DOS has historically interpreted the statutory language in accordance with its plain meaning and, as such, has not, with the exception of the aforementioned gravel or fill work, required legitimate owner-operators or independent contractors to pay themselves the prevailing wage for public works construction in which they engage.

Our position is buttressed by the language of the Legislature's 1973 amendment to the prevailing wage law, which specifically encompassed into the statute's scope the transport or removal of gravel or fill to or from public works sites (§27). The language of the amendment stipulates that this particular work is covered "...regardless of whether such persons are...independent contractors or owner-operators." The Legislature thus sought to expressly include entities without employees for this particular activity. It is a well-settled principle of statutory construction that an express legislative inclusion of one thing is, generally, an implied exclusion of other things omitted from the statute. As such, DOS believes the Legislature did not intend the prevailing wage law to govern owner-operators or independent contractors in any public works construction unrelated to the aforementioned gravel or fill work.

In conclusion, it is plain that both the language and legislative intent of the prevailing wage law exclude from its scope legitimate owner-operators and independent contractors, unless engaged in the aforementioned gravel or fill work. Except for such work, it is only employees that must be paid the prevailing wage on public works construction projects.

Thank you for your request for clarification on this point. If I may be of further assistance to you on this or other matters, please do not hesitate to contact me.

Sincerely,

Benjamin B. Tymann
Program Manager

cc: Robert J. Prezioso, Deputy Director, DOS
Linda Hamel, General Counsel, DOS
Francis X. Flaherty, Chief, Fair Labor and Business Practices Division, AGO