



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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February 20, 2002

Jocelyn B. Jones
Office of the Attorney General
Fair Labor and Business Practices Division
200 Portland Street
Boston, MA 02114

Re: Prevailing Wage Rates: School Bus Drivers

Dear Ms. Jones:

This letter responds to your request to Kathryn B. Palmer, General Counsel of the Division of Occupational Safety ("DOS"), for a determination of whether the prevailing wage law governing school bus drivers on public contracts, M.G.L. ch. 71, § 7A, covers: 1) mandatory, pre-departure vehicle safety checks within a driver's scheduled shift; 2) the time between which a driver drives his bus from the garage and when he or she picks up the first student passenger; and 3) the time between which a driver has dropped off his or her last student passenger and returns the bus to the contractor's garage.

The language of the statute clearly states that school bus drivers are required to receive prevailing wage rates for the work they perform as employees of contractors hired to provide for the transportation of pupils in cities and towns where section 7A applies. The question is whether the scope of the statute is limited to the time drivers spend on routes only, or whether the activities mentioned above – driving to and from the garage and performing vehicle safety checks – also fall within the scope of the statute. Section 7A reads, in relevant part:

Prior to awarding a contract, the school committee in a city or in a town having a population of sixteen thousand or over shall request the commissioner of labor and industries to determine the rate of

wages to be paid to each person *to be employed by the bidder under said contract*, and shall forward to the commissioner a list of jobs to be performed under the contract. [Emphasis added.] [Note: The Department of Labor and Industries was renamed the Division of Occupational Safety by Chapter 151 of the Acts and Resolves of 1996.]

We believe the specific clause “under said contract” establishes parameters for employees receiving prevailing wage rates that extend beyond the specific time drivers spend on their routes and include activities performed under the contract that are directly associated with the transportation of pupils. The clear intent of Section 7A is to cover drivers during their employment on contracts between bus companies and public school systems.¹

Had the intent of Section 7A been to cover drivers on routes only – and not for the time spent traveling to and from garages and performing vehicle safety checks – we suspect the legislature would have used more specific language, such as the language it used in the prevailing wage statute governing workers on public construction projects, M.G.L. ch. 149, §§ 26 -27D, which requires payment of prevailing wage rates at the work site only.² The absence of such language limiting applicability of prevailing wage rates to the time drivers spend on routes indicates that the term “contract” was used deliberately to ensure drivers receive the prescribed rate of pay for the time they spend working on the transportation-related activities of all public school bus jobs.

The time that bus drivers spend performing vehicle safety checks and traveling to and from garages is covered by Section 7A if directly associated with the transportation of pupils under a public school bus contract.

To ensure clarity on future contracts, DOS will insert the following language on all prevailing wage schedules issued for public school bus contracts beginning on the date of this letter:

Prevailing wage rates must be paid to school bus drivers for all activities directly associated with the transportation of pupils. In addition to time spent on routes, this includes time spent

¹ In a letter dated June 9, 2001 DOS ruled that in addition to covering trips made between home and school, Section 7A also covers special education trips, athletic events, field trips, and trips for other school-related activities that are performed under public contracts for the transportation of pupils.

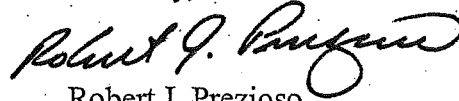
² A specific provision in the prevailing wage statute governing construction projects extends the applicability of prevailing wage rates to the time workers spend off-site when performing a very specific task: hauling gravel or fill to or from a public works site. This provision emphasizes that the legislature knowingly established parameters indicating specifically where and when workers must receive prevailing wage rates.

performing vehicle safety checks, fueling, and travel between routes and garages, parking lots, and other places where buses are stored.

This language will serve to better inform drivers, contractors, and awarding officials of the parameters of Section 7A.

If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Prezioso". The signature is written in a cursive style with a large, looping "P" at the end.

Robert J. Prezioso
Deputy Director

cc: Kathryn B. Palmer, General Counsel
Ronald E. Maranian, Program Manager
Daniel S. Field, Office of the Attorney General