



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

February 27, 2003

Mr. William F. Holloway, Controller
George T. Wilkinson, Inc.
280 Libbey Parkway
P.O. Box 890147
East Weymouth, MA 02189-0003

Re: Prevailing Wage Applicability; Heating System Maintenance and / or Repair Service Calls.

Dear Mr. Holloway:

This letter responds to your request for clarification of the applicability of the prevailing wage law, Mass. G.L. c.149, §§ 26 – 27D, to the various maintenance or repair items listed below:

- 1.) Blown Fuse (Replace)
- 2.) Defective Building Temperature Control (Replace)
- 3.) Defective Blower Wheel (Replace)
- 4.) Water Leak (Gasket) (Replace)
- 5.) Low Water Condition in Boiler (Reset or Replace Feed Valve)
- 6.) Defective Boiler Feed Pump (Replace)
- 7.) Ran out of oil! (Client to re-order)
- 8.) Defective Ignition (Clean or Replace)
- 9.) Defective Oil Pump (Clean or Replace)
- 10.) Other Pump or Boiler parts (Clean or Replace)

In my determination letter to you dated November 15, 2002 it describes in great detail that any activities performed by your company that involve the addition to or alteration of public buildings or public works are covered by G.L. c.149, §§ 26 – 27D. This means that installing parts, fixing pipes, and conducting other activities that alter

existing heating systems are covered by the statute. Your statement that none of the items listed in numbers 1-10 represents an addition, alteration or performance improvement to an existing system is incorrect. Please reread my November 15, 2002 determination.

Based on the information you have provided, it seems obvious that items 2, 3, 4, and 6 involve the alteration of public works. For item 5, the replacement of the feed valve involves alteration of public works. For items 8, 9, and 10, the replacement of defective parts involves alteration of public works. It does not appear that items 1 and 7 involve alteration of public works.

It should be noted that the comments you cite by Carol Chandler (document dated 10/22/98) are incorrect as they relate to this matter. Item #10 of Ms. Chandler's comments refers to the distinction made by the Attorney General's office, between "maintenance" and "repair" work on prevailing wage projects. Please note that the Attorney General's office has no authority to make determinations on the applicability of the prevailing wage law. That authority rests exclusively with the Division of Occupational Safety. More importantly, the answer provided is incorrect. Regardless of whether a project is purported to be "maintenance" or "repair," the statute requires prevailing wage rates to be paid if the project involves "construction" or the "alteration of public works." As indicated above, several items on your list involve the alteration of public works even though they may be part of a "maintenance" or "repair" project.

I hope this letter sufficiently answers your questions.

Sincerely,



Ronald E. Maranian
Program Manager

cc: Robert J. Prezioso
Deputy Director
Division of Occupational Safety

Kathryn B. Palmer
General Counsel
Division of Occupational Safety

Daniel Field
Division Chief
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