



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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JANE C. EDMONDS
Director
ROBERT J. PREZIOSO
Deputy Director

March 13, 2003

David M. Mandel
Ropes & Gray
One International Place
Boston, MA 02110-2624

Re: School Bus Contract; Prevailing Wage; Shawsheen Valley Regional Vocational
Technical School District

Dear Mr. Mandel:

This letter responds to your request dated January 27, 2003 concerning the issuance of prevailing wage rates for school bus drivers working under a contract to provide services to the Shawsheen Valley Regional Vocational Technical School District ("Shawsheen").

The Division of Occupational Safety ("DOS") issues prevailing wage schedules pursuant to Mass. Gen. L. ch. 71, § 7A to public school systems that hire private contractors to transport students. In doing so, we follow the methodology set forth in the statute that requires, in short, a collective rate to be set for drivers working under contracts with cities and towns located inside the M.B.T.A. jurisdiction and for individual, or town-by-town, rates to be set for drivers working under contracts cities and towns located outside the M.B.T.A. jurisdiction.

Shawsheen is a regional school district comprised of five towns. Three of those towns (Bedford, Burlington, and Wilmington) are located inside the M.B.T.A. jurisdiction and two (Billerica and Tewksbury) are located outside. On December 6, 2002, DOS issued a wage schedule to Shawsheen based on the prevailing wage rates established for cities and towns located inside the M.B.T.A. jurisdiction.

Your letter asserts that DOS should not have issued that wage schedule, but rather should have looked to the individual town of Billerica, which is outside the M.B.T.A. jurisdiction,

because the school building is located in that town, a plurality of the school's students reside in that town, and the school bus drivers are employed in Billerica (presumably to the exclusion of the other towns in the district, according to your argument) because the busses are garaged in that town.¹ We do not agree for the reasons set forth below.

The concept of a "district" cannot be defined by the dominant characteristics of a component town to the exclusion of the other towns. Regional school districts, as defined by Mass. Gen. L. ch. 71, §§ 15 - 16I, have the same characteristics as school departments in individual cities and towns except that the statute establishes formulae for sharing their boundaries, governance, and budget among the member cities and towns. It would therefore be inappropriate, in this case, to ignore the existence of four towns in the Shawsheen district and focus exclusively on the town of Billerica for the reasons you offer.

In keeping with the established concept of a "district," DOS looks to the combined populations of the member towns when evaluating whether a district falls under the threshold of 16,000 for requiring prevailing wage rates for school bus drivers. See Mass. Gen. L. ch. 71, § 7A, ¶ 2. It would be inappropriate to calculate the population of a district any other way because the statute that defines the characteristics of a regional school district, Mass. Gen. L. ch. 71, § 14B et seq., clearly allows for the establishment of new, regional governmental units comprised of the "member towns." Shawsheen is an autonomous governmental unit comprised of its five member towns that partially exists inside the M.B.T.A. jurisdiction. Therefore, it falls within the prevailing wage methodology set for other governmental units within that boundary.

If DOS were to base its determination on your argument that a plurality of Shawsheen's students live in Billerica – and that an overwhelming majority live in Billerica and Tewksbury, the two towns that fall outside the M.B.T.A. jurisdiction – then we would be ignoring the existence of the other towns in the district. In this case, you offer enrollment figures to support your claim that DOS should look to Billerica to set rates and not to the other towns. However, uneven enrollment distribution within a school district can hardly be used as a justifiable public policy position to refute the statutory concept of a "district" by favoring one or two of Shawsheen's towns over the others. It would be inappropriate to set policy for the district based on the enrollment of the larger towns to the exclusion of the smaller towns.

Your letter also asserts that school bus drivers are employed in the town of Billerica because the school is located in Billerica and the bus routes begin and end in Billerica where the vehicles are garaged. This view ignores the fact that drivers who work under Shawsheen's

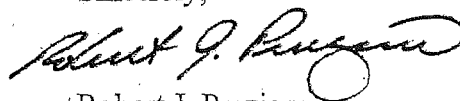
¹ In determining the prevailing wage rates to be paid to school bus drivers in cities and towns outside the M.B.T.A. jurisdiction, the statute instructs DOS to look to operative collective bargaining agreements, such as those between unions and school bus companies or common carriers, in those cities and towns. There are no such collective bargaining agreements in the Town of Billerica. Therefore, the net effect of basing Shawsheen's prevailing wage rates on the Billerica alone would be to set no rate at all.

contract are employed in the district, and not just in the town of Billerica. The transportation contract is established, and the drivers are hired, to serve the five towns that comprise the district, not just the town of Billerica. The statute uses the term "employed by the bidder" repeatedly, as you cite in your letter, which refers to Shawsheen, the governmental unit doing the bidding, which, in this case, is not the town of Billerica as you suggest.

After careful reconsideration, DOS's determination is final. The prevailing wage schedule issued to Shawsheen on March 12, 2003² will remain the applicable wage rates for the upcoming contract.

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

Sincerely,



Robert J. Prezioso
Deputy Director

cc: Kathryn B. Palmer, General Counsel
Ronald E. Maranian, Program Manager
Daniel Field, Office of the Attorney General
Melanie L. Hagman, Shawsheen Valley Regional Vocational Technical School District

² Please note: The wage schedule issued on March 12, 2003 is an updated wage schedule. It replaces the wage schedule issued on December 6, 2002 which contained a clerical error.