

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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May 2, 2003

Mr. Stephen J. Isaac, President
Electrical Engineering & Service Co., Inc.
289 Centre Street
Holbrook, MA 02343

Re: Applicability of Prevailing Wages for Testing of Newly Installed Electrical Distribution Equipment.

Dear Mr. Isaac:

I am responding to your letter dated February 28, 2003 to the Division of Occupational Safety ("DOS"). Your letter is a follow-up correspondence in response to my applicability determination for electrical equipment testing, dated February 25, 2003. You have asked once again for DOS to provide you with a letter stating that you are exempt from the prevailing wage rate requirements when providing start-up testing of electrical distribution equipment.

DOS will not issue a letter saying you are "exempt" from anything under the prevailing wage law, G.L. c.149, sections 26-27H. The statute provides no mechanism for such an exemption.

In your letter you state that the work involved requires acceptance testing in the installation of new electrical distribution equipment to assure proper reliability of the equipment prior to energization. You also correctly state that the installation of new electrical distribution equipment is covered under the prevailing wage law. (See G.L. c.149, section 27D)

DOS has previously determined that the testing and balancing of HVAC systems, when conducted as part of a construction or alteration project, would require payment of prevailing wage rates. (See letter to Camerlango dated November 12, 1999). DOS has also previously

determined that the payment of prevailing wages is not required for fire alarm testing when performed as part of a service contract. It should be noted that the payment of prevailing wages is required for repairs performed to fire alarm systems while testing takes place (See letter to Moschos dated May 27, 1999).

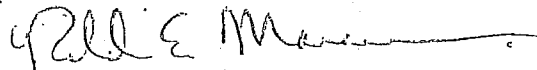
The aforementioned determination letters establish a consistent application of the prevailing wage law to the task of testing building systems. Testing performed during construction or alteration projects, whether in-process or as the final phase of the work, is covered by the prevailing wage law. Conversely, testing performed on existing systems is not covered by the prevailing wage law. If repairs (which constitute construction or alteration work) to an existing building system are made, whether as a result of testing or otherwise, prevailing wage rates apply to the repairs and associated testing.

Consistent with that rationale, the testing of electrical equipment installed as part of a construction or alteration project is covered by the prevailing wage law. These tests are essentially the final phase of installation, as distinguished from tests performed on a system that is operating, to "assure proper reliability of the equipment prior to energization" as stated in your letter.

Electrical Engineering & Service Company, Inc., and other contractors, are required to comply with the requirements of the prevailing wage law when testing electrical equipment installed as part of a public construction or alteration project.

I trust this letter answers your question thoroughly. Feel free to contact me if you have questions about other prevailing wage matters.

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
Office of the Attorney General