

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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August 8, 2003

Karla E. Zarbo, Esq.
Assistant Attorney General
Office of The Attorney General
200 Portland Street
Boston, MA 02114

Re: Determination of Classification for Replacement of Water-Cooled Refrigeration Equipment.

Dear Attorney Zarbo:

This letter responds to your request for a determination as to the applicable occupational classification for workers who replace water-cooled refrigeration equipment for walk-in coolers and freezers on a public construction project in Danvers, Massachusetts.

You describe the following types of activities in your letter:

1. The workers remove old refrigeration equipment, old walk-in freezer boxes remain.
2. The workers install pipe to ground mounted outdoor condensing units on exterior mounting pads, which include cutting a hole in exterior of mechanical room.
3. The workers install new evaporators, drain lines and controls.

You also state that the workers do not perform any electrical wiring.

The Division of Occupational Safety ("DOS") issues prevailing wage schedules, which include occupational classifications and rates of wages, for public works construction projects based on "collective bargaining agreements or understandings in the private construction industry between organized labor and employers." (See M.G.L. ch. 149, § 26)

All work described in 2 and 3 above falls under the occupational classification of **Plumber & Pipefitter**. (See the attached collective bargaining agreement between the United

Employers Association of the Plumbing-Heating-Cooling Industry and Local Union No. 138 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada). Please see Article IV, Pages 2 and 3 of that agreement.

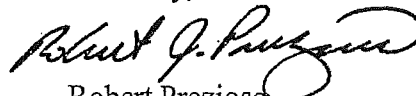
The remaining task, number 1, associated with the removal of old refrigeration equipment, appear to fall within an area of overlap between the plumber/pipefitter and laborers' unions. Please refer to the Plumber/Pipefitter collective bargaining agreement above and the Laborers' collective bargaining agreement between the Massachusetts Laborers' District Council of the Laborers' International Union of North America AFL-CIO and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc. and Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc. (See Article XXIII, Section 5).

To DOS, overlap between the jurisdictional language of two collective bargaining agreements represents, at worst, a dispute between two or more private parties (i.e. unions), and at best, a tacit understanding between two unions that each will claim jurisdiction over the same activity. DOS has no statutory authority under the prevailing wage law to choose between the higher or lower wage rate in classifying workers engaged in activities that fall under the jurisdictional ambit of two different unions, and certainly is not authorized to attempt to resolve jurisdictional disputes or eliminate understandings between different unions. The language of the statute speaks only of the requirement that workers' pay rates "shall not be less than" (emphasis added) the rates established by "collective agreements or understandings in the private construction industry between organized labor and employers". See G.L. c. 149, § 26. In this case, the rate established by the Plumber & Pipefitter collective bargaining agreement is higher.

This determination is based on the information that you have provided. If any of the factual information provided by you has changed, please inform me as soon as possible.

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

Sincerely,



Robert Prezioso
Deputy Director

cc: Kathryn Palmer, DOS General Counsel