Prevailing Wage Program Opinion Letter March 18, 2010

PW opinion-03-16-10

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RE: Calculation of Prevailing Wage Rates for Apprentices: Rescission of DOS Opinion Letter, dated July 14, 2000, to Kyle Meleski

I write to advise you of a change in the calculation of the prevailing wage rates for apprentices who perform work on public work projects subject to the Massachusetts Prevailing Wage Law, G.L., c. 149, §§ 26 and 27. It has come to my attention that in a letter, dated July 14, 2000, to Kyle Meleski ("Meleski Letter") DOS instructed employers to calculate the wage rates for apprentices in a manner that is not consistent with §§ 26 and 27. *Please be advised that the Meleski Letter is hereby rescinded*. Prevailing wage rate schedules issued this date forward will include apprentice wage rates published in a manner that is consistent with the law. Our reasoning follows.

Analysis

The Massachusetts Prevailing Wage Law authorizes the commissioner of DOS to make determinations regarding the application of the prevailing wage law and to set the wage rates for workers, including apprentices, on public works projects. Pursuant to G.L. c. 149, § 26, prevailing wage rates established by DOS may not be less than wage rates "established in certain trades and occupations by collective agreements or understandings in the private construction industry between organized labor and employers." The statute further provides that payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreements or understandings between organized labor and employers be included in the wage rates. *§§ 26 and 27.* Accordingly, in determining the prevailing wage rates for apprentices and other workers on public works projects, the commissioner must first look to the applicable collective bargaining agreements between unions and employers, including payments by employers into the enumerated plans.

The collective bargaining agreements containing apprenticeship programs establish a lower wage rate than journeymen employed in the same trade. The lower rate for apprentices established by the collective bargaining agreements is generally expressed as a percentage of the journeyman's base wage without accounting for any contributions on behalf of the apprentice to health and welfare plans, pension plans and supplementary unemployment plans. As required by §§ 26 and 27, the wage determinations for apprentices must reflect these wage rates, and include contributions to the enumerated benefits. To date, DOS has published apprentice wages using the same percentages set forth in the collective bargaining agreements.

The Meleski Letter provides as follows with respect to the calculation by employers of the prevailing wage rates for apprentices:

When calculating the wages of apprentices on prevailing wage jobs, Employers should deduct the hourly benefit contribution made by them [sic] from the total rate and then apply the apprenticeship step.

By way of example, the letter further provides:

If the total rate on a prevailing wage schedule is $25 per hour, the hourly benefit contributions paid by the employer on behalf of the apprentice (health, pension and supplementary unemployment insurance

only) are $5 per hour and the apprenticeship step is 50%, then the apprentice's gross hourly wage would be $10 per hour.

This formula does *not* reflect the prevailing wage rate for apprentices, when viewed in light of the law's requirement that such rates (1) be no less than the wage rates established by applicable collective bargaining agreements and (2) include contributions by employers to health and welfare, pension and supplementary unemployment plans. *See, G.L. c. 149, §§ 26 and 27*. Because of the differences among contractors in the benefits provided to apprentices, reducing the prevailing wage rate by the amount contributed before applying the percentage has resulted in substantial discrepancies between the rates actually paid pursuant to collective bargaining agreements and the rates paid by contractors who are not subject to those agreements. Accordingly, the formula is not valid and may no longer be used to calculate the prevailing wage rates for apprentices. [1]

As of the date of this letter, in order to eliminate the need to determine the base rate (without allowable benefits) before applying the percentage, DOS will begin publishing on the prevailing wage schedules, the actual apprentice wage rates *including the enumerated benefits* as established by the applicable collective bargaining agreement. To the extent that the employer actually contributes, on behalf of the employee, to a health and welfare, pension or supplementary unemployment plan, the employer may deduct the amount contributed from the apprentice wage rate published on the prevailing wage schedule, just as they may for journeyman. As of the date of this letter, the minimum prevailing wage rate for apprentices shall be the rate published on the prevailing wage schedule. Although for a period of time the percentages may still appear on the wage schedules, for projects that include wage schedules issued from this date forward, contractors should no longer calculate the apprentice rate based upon the percentage, but instead shall pay no less than the wage rate listed on the schedule.

This change is consistent with the plain language of the prevailing wage statute which requires that prevailing wage rates (1) be no less that the wage rates established by the applicable collective bargaining agreements and (2) include contributions by employers to health, pension and supplementary unemployment plans.

I hope this information has been helpful to you. Please call me with any questions.

Sincerely,
Laura M. Marlin
Commissioner

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[1] The Supreme Judicial Court recently affirmed that "the commissioner has fairly broad policy-making authority because the Legislature delegated the details of how the prevailing wage law should be applied…" *Teamsters Joint Council No. 10 v. Director of the Dept. of Labor & Workforce Dev., 447 Mass. 100, 109 (2006)*; *see also, Construction Indus. of Mass. v. Commissioner of Labor & Indus., 406 Mass. 162 at 168 (1989)*.