

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
WWW.STATE.MA.US/DOS

JANE SWIFT
GOVERNOR

ANGELO R. BUONOPANE
DIRECTOR

ROBERT J. PREZIOSO
DEPUTY DIRECTOR

May 20, 2002

Ms. Grace Taylor
New England Farm Workers' Council
1628-1640 Main Street
Springfield, MA 01103

Re: Applicability of Prevailing Wages regarding Restoration and Renovation of Historic Six-Story Office Building.

Dear Ms. Taylor:

This letter responds to your request dated May 2, 2002, of the Division of Occupational Safety ("DOS") to determine whether the Massachusetts Prevailing Wage Law, M.G.L. ch. 149, §§ 26 to 27H applies to the restoration/renovation of an historic, six-story office building located at 217-225 High Street in Holyoke, Massachusetts.

As stated in your letter, the New England Farm Workers' Council is a private non-profit (501 (c) (3)) organization that acquired the property at 217-225 High Street in Holyoke in December of the year 2000. You also state that the work involving the property's exterior facade will be restored through a matching grant from the Massachusetts Historical Commission and that the interior renovations are funded, in part, from the U.S. Department of Commerce, Economic Development Administration. In regards to the funding, I spoke to you on May 15, 2002, at which time you informed me that the New England Farm Workers' Council's own funds would match the Massachusetts Historical Commission matching grant and that the New England Farm Workers' Council's own funds along with the U.S. Department of Commerce, Economic Development Administration, would fund the interior renovations. You stated that no other sources of funding are involved with this project.

Additionally, you state that the use for all but the first floor of the six-story structure will be for professional offices with potential tenants to include human service providers and possibly

a lawyer and/or architect and the first floor will house a luncheon restaurant. You stated to me in our telephone conversation on May 15, 2002, that there were no agreements for occupancy by any state, city, or town governments.

Under M.G.L. ch. 149 Section 26, prevailing wage rates are required to be paid to "mechanics and apprentices, teamsters chauffeurs and laborers" in the "construction" of "public works" by "the Commonwealth, or by a county, town, authority or district." Therefore, to determine whether the prevailing wage law applies to a particular project, DOS considers the following questions: 1) Is the project being undertaken by "the Commonwealth, or by a county, town authority or district?" (M.G.L. ch. 149 section 26); 2) Does the project involve a "public work?" (M.G.L. ch. 149, sections 26 and 27); 3) Is the project "construction" as that term is applied to "public works" throughout the prevailing wage statute? (M.G.L. ch. 149, sections 26 - 27D).¹

For the reasons set forth below, it is the determination of this office that the requirements of the prevailing wage law do not apply to the New England Farm Workers' Council upcoming project.

New England Farm Workers' Council is not a public agency covered by the prevailing wage statute. The prevailing wage law sets forth requirements for public agencies when they engage in the construction, addition, or alteration of public works. Section 26 reads, in relevant part:

In the employment of mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works *by the commonwealth, or by a town, authority or district, or by persons contracting or subcontracting for such works...*[Emphasis added.]

The New England Farm Workers' Council is a private, not-for-profit corporation. In this case it is neither an agency of the Commonwealth nor a county, town, authority, or district.

There is no "public work" involved. In addition to its requirement that the project must be undertaken by a public agency, the prevailing wage law also requires there to be a "public work" involved. Although this term is not defined in the prevailing wage statute, or any other Massachusetts statute, "public works" must include, at a minimum, real property such as land

¹ Section 27D expands the definition of the term "construction" to also include "additions to and alterations of public works, the installation of resilient flooring in, and the painting of, public buildings and public works; certain work done preliminary to the construction of public works, namely, soil explorations, test borings and demolition of structures incidental to site clearance and right of way clearance; the demolition of any building or other structure ordered by a public authority for the preservation of public health or public safety."

and buildings owned by a public agency. In this case, the New England Farm Workers' Council is the sole owner of the six-story building with an attached two-story annex as you stated in our telephone conversation on May 15, 2002. DOS has consistently taken the position in its decisions rendered pursuant to M.G.L. ch. 149, section 27A, its letter determinations, and its issuance of prevailing wage schedules that the term "public works" excludes work done on and to private property.

Another factor relevant to the question of whether a project is "public works" is whether public money is involved. Though the property's exterior facade will be restored through a matching grant from the Massachusetts Historical Commission, and the interior renovations will be funded, in part, by a grant from the U.S. Department of Commerce, Economic Development Administration; the property is not public property and as such not considered "public works."

This project is not "construction of public works." While this project will irrefutably involve "construction" work, the restoration and renovation of the building is not "public work" and New England Farm Workers' Council is not a public agency, as established above, which places the project outside the scope of the prevailing wage law. As a general precept of prevailing wage analysis: whether or not a project falls within the definition of construction under the prevailing wage law only needs to be contemplated if it has been established that the project involves a "public work" and will be undertaken by a public agency.

This determination is based on the above-mentioned facts and would require further review if the information provided to me were found to be in error or if the underlying facts were amended.

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

Sincerely,



Ronald E. Maranian
Program Manager

cc: Robert J. Prezioso, DOS Deputy Director
Kathryn B. Palmer, DOS General Counsel
Daniel S. Field, Office of Attorney General



A P/C Affiliated Corporation
1628-1640 Main Street
Springfield, MA 01103

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MAY 03 2002

DIV. OF OCCUPATIONAL SAFETY
BOSTON OFFICE

May 2, 2002

Ron Maranian
Commonwealth of Massachusetts
Division of Occupational Safety
399 Washington Street
Boston, MA 02108

Dear Mr. Maranian:

At your request, I am writing this letter to supplement the Request for Prevailing Wage Rates submitted to your office by the New England Farm Workers' Council. The New England Farm Workers' Council is a private non-profit (501(c)(3)) organization, that acquired the property at 217-225 High Street in Holyoke in December 2000.

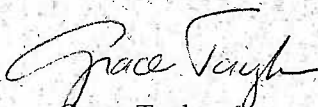
The property's exterior façade will be restored through a matching grant from the Massachusetts Historical Commission. The interior renovations are funded, in part, by a grant from the U.S. Department of Commerce, Economic Development Administration.

The structure is a six-story office building with an attached two-story annex. It is in good condition but is in need of mechanical upgrading (heating, electrical, plumbing, elevator, etc.). Internal changes will be minor, involving new carpeting, painting, carpentry and bringing doorways and stairs up to code. A sprinkler system will be installed.

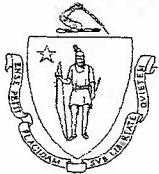
The building was formerly a bank. New use for all but the first floor of the six-story structure will be for professional offices. Potential tenants include human service providers and possibly a lawyer and/or architect. The first floor will house a luncheon restaurant.

I have enclosed an extra copy of our original request for Prevailing Wage Rates form. Please let me know if there is any additional information that you need. The renovation plans and specifications are currently being reviewed by the two named funding sources.

Sincerely,


Grace Taylor

REQUEST FOR PREVAILING WAGE RATES



The Commonwealth of Massachusetts
DIVISION OF OCCUPATIONAL SAFETY
399 Washington St., 5th Floor, Boston, MA 02108-5223
(617) 727-3492



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MAY 03 2002

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BOSTON OFFICE

Type or print clearly. Be sure to answer all questions. Incomplete requests will be returned to you.

INFORMATION ABOUT THE PROJECT:

1. Name of the Awarding Authority: Check One: ☐ City ☐ Town ☐ County ☐ District ☐ State Agency
New England Farm Workers' Council (non-profit agency)
2. Responsible Department Within Awarding Authority _____
3. Brief Description of the Project Restoration/renovation of historic, six-story office building. Minor changes internally, updating of mechanicals, facade restoration.
4. Town(s) in which the Work Will Be Performed Holyoke
5. Street Address of the Project 217-225 High Street
6. Name of Project or Building (Optional) Ball Block
7. Contract or Bid Number (Optional) _____
8. Estimated Cost \$900,000.00
9. Approximate Start Date May 2002 Approximate End Date October 2002

INFORMATION ABOUT THE AWARDING AUTHORITY:

PUBLIC AWARDING AUTHORITY

Contracting Officer Contact person is Grace Taylor

Name of the Awarding Authority New England Farm Workers Council

Address 1628-1640 Main Street

City Springfield

State MA

Zip Code 01103

Telephone Number (413) 272-2200

Date Submitted 4/2/02

Prevailing wage rates may be sent to engineers or architects who are preparing bid specifications for a public awarding authority. However, complete information about the public awarding authority (above) must be given.

COMPLETE BELOW IF YOU ARE AN ENGINEER OR ARCHITECT WORKING AS AN AGENT OF THE AWARDING AUTHORITY

Name _____

Firm Name _____

Address _____

City _____

State _____

Zip Code _____

Telephone Number _____

Date Submitted _____

Check One: ☒ Send wage rates to the awarding authority. ☐ Send wage rates to the architect or engineer.

MAIL YOUR REQUEST to the address at the top of this form and please mark the envelope "Wage Rate Request." Requests by facsimile transmission will not be accepted. This form may be reproduced.