

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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DEPUTY DIRECTOR

June 4, 2002

Mr. Bruce M. Trager
Assistant Attorney General
Office of The Attorney General
200 Portland Street
Boston, MA 02114

Re: Determination of Classification: Laborers' Classification or Pipefitters' Classification.

Dear Mr. Trager:

Your letter dated April 16, 2002 to Robert J. Prezioso of the Division of Occupational Safety ("DOS") has been forwarded to me for a response. This letter responds to your request for a determination of whether the Laborers' occupational classification or Pipefitters occupational classification is the proper occupational classification for the following tasks:

1. Unload equipment and materials such as tools, pipes, baseboards, unit ventilators.
2. Dismantle existing ventilator units that are to be replaced by new units.
3. Install hangers to hang pipe.
4. Make connections on the ground (connecting pipe while standing on ground).
5. Hand connected pipe to the fitters.
6. Remove ceiling tiles to gain access to pipes.
7. Move ladders for the pipefitters.

The work described above is located at the Ahern School in Foxboro, the Holliston High School, the Wayland Middle School, and the Westminster High School. I obtained this information through a telephone conversation with you on Wednesday, May 8, 2002.

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. The question

before us is whether, on the aforementioned projects, the "Laborer" classification (established by the collective bargaining agreement between The Labor Relations Division of Construction Industries of Massachusetts, Inc. and Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL-CIO, effective June 1, 2000 – May 31, 2004) or the "Pipefitters" classification established by the collective bargaining agreement between the United Association of Pipefitters and Apprentices of Boston and Vacinity, Local 537 and New England Mechanical Contractors Association Incorporated, effective September 1, 1999 – August 31, 2002) should be used on this project.

Based on a review of the aforementioned collective bargaining agreements, tasks 3, 4, and 5 fall squarely within the craft jurisdiction of the plumber and pipefitter unions. Generally, all persons performing connection and installation work associated with piping on public works, HVAC projects should be classified as "HVAC (Pipe)" workers in accordance with the prevailing wage schedule issued for the project.

The remaining tasks, numbers 1, 2, 6, and 7, associated with HVAC projects appear to fall within an area of overlap between the plumber/pipefitter and laborers' unions. It is unclear, however, based on the broad language of those collective bargaining agreements, whether such tasks fall exclusively within the craft jurisdiction of the plumber/pipefitter agreement or whether they fall within the broad scope of the Laborers' agreement as well.

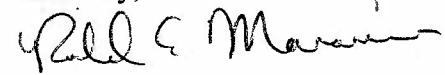
To DOS, overlap between the jurisdictional language of two collective bargaining agreements represents, at worst, a dispute between two or more private parties (i.e. unions), and at best, a tacit understanding between two unions that each will claim jurisdiction over the same activity. DOS has no statutory 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 M.G.L. ch. 149, § 26. In this case, the rate established by the plumber/pipefitter collective bargaining agreement is higher.

DOS cannot and will not support the position in the context of a criminal proceeding that the employer is required by law to pay the higher or highest rate to a worker whose activity on the job is covered by collective bargaining agreements for two or more unions.

Copies of the relevant portions of the Laborers' and Pipefitters' collective bargaining agreements are attached for your reference.

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 Palmer, DOS General Counsel
Robert D. O'Toole, Pipefitters' Association Local Union 537
Kevin Cotter, Plumbers & Pipefitters Local Union 12
Edward Rohan, Plumbers & Pipefitters Local Union 104
William Ciepiela, Plumbers / Steamfitters Local Union 104 Western
Anthony Russo, Plumbers & Pipefitters Local Union 138
William Turner, Plumbers & Pipefitters Local Union 51
Mike Coonan, Plumbers & Pipefitters Local Union 4
Paul J. McNally, Mass. Laborers' District Council