



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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June 9, 2001

Scott G. Blair, Esq.
42 Charles Street
Hingham, MA 02043

Re: Prevailing Wage Rates For School Bus Drivers

Dear Mr. Blair:

Thank you for your letter dated May 14, 2001 arguing that the prevailing wage provisions of M.G.L. c. 71, §7A (the "statute") do not apply to "charter work," which is commonly held to mean pupil transportation other than trips between home and school. According to your definition, charter work may include special education trips, athletic events, field trips, and other school-related activities. Your letter was written on behalf of your client, First Student, Inc., a bus company currently engaged in a public contract with the Rockland School Committee for the transportation of pupils.

QUESTION

Are the prevailing wage provisions of the statute limited to school bus drivers transporting pupils between home and school, or are the prevailing wage provisions of the statute applicable to all school bus drivers transporting pupils under contracts between public school systems and private carriers?



ANALYSIS

A large part of your argument relies upon the assertion that the statute has been enacted as a limited reimbursement statute, applicable only to the transportation of pupils between home and school, and therefore the prevailing wage provisions are similarly limited. We do not agree. While paragraphs one and five of the statute establish a mechanism for public school systems to receive reimbursement from the Department of Education for certain transportation expenses, paragraphs two, three, and four establish the prevailing wage requirements that public school systems and contractors must follow on school bus contracts. These dual instructions, as illustrated below, have different scopes and must be administered accordingly.

First, your reliance on an Opinion of the Attorney General (1965) relative to the interpretation of M.G.L. c. 71, §7B is not relevant to the analysis of the prevailing wage provisions contained in M.G.L. c. 71, §7A or any other of the provisions of that section. Section 7B applies to the reimbursement to cities and towns for use of public transportation systems to transport pupils. Section 7A, on the other hand, deals solely with transportation contracts with private carriers. Accordingly, the language of Section 7B is not relevant to the issue before us. Moreover, Section 7B highlights the fact that not all transportation of pupils is subject to reimbursement by the state under Section 7A.

Second, I do not agree with your assertion that the statute has "never been applied" to charter work, and that the limited applicability to trips between home and school that you purport is an "industry-wide understanding." The Division of Occupational Safety ("DOS") responds to requests from cities and towns regularly for prevailing wage schedules to be included in contracts that cover charter work as well as trips between home and school. In fact, several awarding authorities have requested prevailing wage schedules for contracts involving charter work only, separate and apart from the contracts covering trips between home and school. Moreover, it is my understanding that prevailing wage rates were paid to school bus drivers for charter work in the Town of Rockland by your client's predecessor, Angle Bus Co.

Third, and most importantly, I do not agree with your assertion that the Legislature intended the prevailing wage provisions of the statute to be limited to reimbursable portions of public school bus contracts. It is not uncommon for the Legislature to include prevailing wage requirements that cover a specific category of workers within a section of the law that deals with a broad issue area requiring those workers to be engaged on a public contract. In this case, I believe the Legislature intended all school bus drivers employed under a contract between a public school system and a private employer to receive prevailing wage rates. Other examples of the Legislature's insertion of prevailing wage requirements in sections of laws dealing with broad issue areas include: certain printing contracts let-out by the Commonwealth under M.G.L. ch. 5, §1; the purchase of meat products by the Commonwealth under M.G.L. c. 7, §22 (18); the purchase of apparel by the Commonwealth under M.G.L. c. 7, §22 (19); and the wage rates paid to maintenance employees of public housing authorities under M.G.L. c. 121B, §29.

The presumption in each of the aforementioned sections, just like in the school bus statute, is that all workers engaged in the particular activity will be covered by the prevailing wage provisions. While the school bus statute begins by addressing the issue of reimbursement to cities and towns for the transportation of pupils under specific circumstances (between home and school), it goes on to prescribe prevailing wage requirements for workers who are employed under public contracts without limitation. The statute repeatedly refers to "contract(s)" in its reference to the scope of its prevailing wage requirements and does not limit that term in the manner suggested by your analysis.

Furthermore, the statute specifically requires awarding officials to provide DOS with "a list of jobs to be performed under the contract(s)." This instruction clearly indicates that the Legislature was aware that multiple "jobs" would be performed under the contracts for which it prescribed prevailing wage rates. Statutes are to be read as a whole, giving effect to all of its provisions. A court's construction of a statute must be made upon the whole statute, so that no clause, sentence or word shall prove superfluous, void or insignificant, if, by any other construction they may all be made useful and pertinent. Commonwealth v. Mendonca, 50 Mass.App.Ct. 684, 687 (2001), quoting Board of Appeals of Hanover v. Housing Appeals Committee in the Dept. of Community Affairs, 363 Mass. 339, 363 (1973). Since the statute specifies that a list of all jobs shall be provided and included in the prevailing wage schedule, those words should be given full effect by DOS in applying the statute.

Attached you will find a copy of an internal memorandum dated November 13, 1987 that provides a legal opinion on the setting of prevailing wage rates for school bus drivers. Responding to the question, "What do the rates cover?", the author opines that the statute only applies to the transportation of pupils between home and school, just as you argue. No analysis is provided, however, except to state that the statute "should be strictly construed." This memorandum carries very little weight for the following reasons: 1) it is a legal opinion and not a policy; 2) there is no evidence that it was adopted as an official policy; 3) there is no evidence that it was distributed to interested parties; 4) it was not signed, indicating that it may have only existed as an internal draft document; 5) prevailing wage schedules were not modified to reflect its position on the statute's coverage; 6) no useful analysis is provided in the section dealing with the statute's coverage; and 7) its statement on the statute's coverage has not been, in my observation, the common understanding in the industry, which indicates that the memorandum may have only been discussed among its recipients.

As the contract between your client, Ryder Student Transportation, and the Rockland School Committee illustrates, awarding authorities do not always provide adequate instruction to bidders and contractors on the applicability of prevailing wage rates to particular jobs included in the contract. In its request to DOS for a prevailing wage schedule for this contract, the Rockland School Committee simply requested rates for "school bus transportation" and did not provide any indication to DOS, to prospective bidders, or to the drivers, ultimately, that prevailing wage rates would be limited to the portion of the contract involving transportation between home and school.

To address this problem, DOS began including the following language on all prevailing wage schedules issued for school bus drivers beginning on April 10, 2001:

Prevailing wage rates apply to all drivers who operate school busses, including the transportation of students to and from school, special education transportation, school-related athletic events, field trips, and all other school-related activities. The statutory definition of a school bus in any vehicle with seating for nine or more passengers.

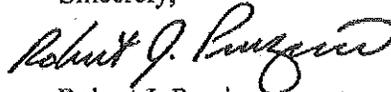
This language serves to connect the prevailing wage rates established for school bus drivers to all sections of contracts involving their services.

CONCLUSION

After careful consideration of your arguments, it remains the position of DOS that the statute was enacted to cover charter work as well as transportation between home and school.

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

Sincerely,



Robert J. Prezioso
Deputy Director

cc: Kathryn B. Palmer, General Counsel
Ronald E. Maranian, Program Manager
Daniel S. Field, Office of the Attorney General
William Compton, Superintendent, Rockland Public Schools