

## **Prevailing Wage Program Opinion Letter August 15, 2011**

**PW-08-15-11**

Re: Field Engineer Prevailing Wage Classification Clarification

This letter responds to your request to the Department of Labor Standards (“DLS”) for clarification of the application of the Massachusetts Prevailing Wage Law, c. 149, §§ 26 and 27, to workers who perform field engineer work on public works highway projects in the Commonwealth. Our analysis follows.

The prevailing wage law applies to the construction of public works by the commonwealth, or by a country, town, authority or district. G.L. c. 149, §§ 26 and 27. The term “construction” includes “additions and alternations of public works, including the repair and replacement of public works. See c. 149, § 27D. When public awarding authorities contract for construction work, within the meaning of the statute, DLS establishes prevailing wage rates that are not less than the rates that “have been established in certain trades and occupations by collective agreements or understandings in the private construction industry between organized labor and employers.” c. 149, §26. DLS also looks to these agreements and understandings to determine the appropriate job classifications under the prevailing wage law.

The DLS’ [\[1\]](#) long-standing administrative interpretation reflects that the work of field engineers (surveying) performed under construction contracts let by awarding authorities in the Commonwealth is “construction” work within the meaning of c. 149, § 27D and, therefore, is subject to the prevailing wage law. See, e.g. Letter to Lancome, dated July 19, 1996; Letter to Lancome, dated December 19, 1997; Letter to Yodanis, dated May 12, 1999, Letter to O’Reilly, dated November 4, 1999 and Letter to Goulet, dated December 5, 2002.

The field engineer classification includes construction layout activities and survey work, such as: establishing grid lines, checking and measuring concrete forms to ensure that they are plumb, determining proper elevation of roofing-type structures for concrete slabs, establishing and measuring as-built locations for all necessary utilities, the establishing of benchmarks for foundations, right of way clearances, grades and elevations and providing reference points for all other trades. Letter to Lancome, dated December 19, 1997; Letter to Lancome, dated July 19, 1996 and Letter to Yodanis, dated May 12, 1999. Conversely, field engineering work for the purposes of providing pre-construction survey data for design and engineering purposes is not subject to the prevailing wage law. Letter to Lancome, dated July 19, 1996.

The field engineer classifications (Field Engineer – Instrument Person; Field Engineer – Rod Person and Field Engineer Chief of Party) are determined by reference to the collective bargaining agreement known as the “Field Engineer Technical Engineers Agreement between the International Union of Operating Engineers, Local 4E, and the Association of Independent Employers.” Significantly, the collective bargaining agreement does not provide a basis upon which to exclude highway or road work from the scope of coverage under the prevailing wage law. The agreement provides as follows with respect to this issue: “Building and heavy

construction work, where referred to in this agreement, is defined as work performed within the scope of the project construction agreement, including verification of location and elevation when necessary.” See Article II. Although “highway” or “road” work are not called out as expressly covered by the agreement, the tasks of verifying location and elevation and establishing benchmarks, rights of way, clearances, and grades are not meaningfully distinguishable when performed on a highway or road project as opposed to e.g., a bridge or tunnel project. Notwithstanding that fact, a review of the opinion letters cited herein suggests some ambiguity with respect to the application of the prevailing wage law to “building” work, “heavy” work and highway or road work. DLS understands that contractors for public entities employ field engineers on highway and road projects for the purposes of performing construction lay out activities. Moreover, there is no rational basis upon which to exclude such work from application of the prevailing wage law. Accordingly, DLS takes this opportunity to clarify that, going forward, the field engineer classifications apply to building work, “heavy” work and highway or road work.<sup>[2]</sup>

If you have any questions, please do not hesitate to contact me.

Sincerely,

Patricia A. DeAngelis

General Counsel

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<sup>[1]</sup> Prior to April, 2011, the Department of Labor Standards was known as “the Division of Occupational Safety.” See Article 87 of the Amendments to the Constitution, “An Act Reorganizing the Executive Office of Labor and Workforce Development.”

<sup>[2]</sup> Effective the date hereof, DLS will amend the wage schedules so that classifications for field engineers will read as follows: *Field Eng. – Inst. Person (Bldg., Site, Heavy and Highway)*; *Field Eng. – Rod Person (Bldg., Site, Heavy and Highway)*; *Field Eng. – Chief of Party (Bldg., Site, Heavy and Highway)*.