

Prevailing Wage Program Opinion Letter August 18, 2009

RE: Request Regarding Applicability of the Massachusetts Prevailing Wage Law to XXX Technicians Employed by XXXX, Inc.

I am writing in response to your request, on behalf of your client, XXXX, Inc. (XXXX, Inc.), for this Office's written opinion regarding the applicability of the Massachusetts Prevailing Wage Law, G.L. c. 149, §§26-27. Specifically, you have asked if the prevailing wage law applies to work performed by XXXX Technicians employed by XXXX, Inc. on public works project(s).

Your letter dated June 25, 2009 references at length this office's determination in connection with similar work performed by Building Automation Service Technicians (or "Control Technicians") employed by ZZZZ, Inc. (PW-2008-04-6.11.08). While you have not provided specific information about a particular public works project on which XXXX, Inc.'s XXXX Technicians are employed, you have provided a job description and, in your letter, have pointed to perceived distinctions between the XXXX Technicians employed by your clients and the Control Technician at issue in the ZZZZ letter.

The Massachusetts prevailing wage law applies to the construction of public works by the commonwealth, or by a county, town, authority or district. G.L. c. 149, §§26, 27. The term "construction" is defined, in pertinent part, as "additions to and alterations of public works." G.L. c. 149, §27D. When public awarding authorities contract for construction work, within the meaning of the statute, the Division of Occupational Safety (DOS) sets prevailing wage rates for these projects based on "collective agreements or understandings in the private construction industry between organized labor and employers." G.L. c. 149, §26. DOS also looks to these agreements and understandings to determine the appropriate job classifications under the prevailing wage law.

The work in question, as described in your letter and in the job description attached to your letter, involved the programming and downloading of software and installation and commissioning of electronic direct digital controls (DDC) for HVAC systems in buildings. There is no question that the installation of HVAC systems, including commissioning and re-commissioning and testing and balancing of the HVAC system is "construction" within the meaning of the statute and covered by the provisions of G.L. c. 149, §§ 26, 27. As this office pointed out in its June 11, 2008 letter (PW-2008-04-6.11.08) regarding Control Technicians:

installation or replacement of a system involves much more than simply installing a "system" and cleaning up. Such construction work is incomplete unless the owner has the assurance that the system purchased actually works as designed, and this assurance is provided by both the TAB and commissioning processes. (PW-2008-04-6.11.08).

With the exception of computer programming work performed off-site, we discern no significant difference between the work described in your letter and attached job description and the work at issue in the June 11, 2008 letter (PW-2008-04-6.11.08), in which this office determined that the work was covered by the prevailing wage law. In both scenarios, technicians use computer software to complete the final phase in the installation or replacement of an HVAC system, including commissioning, and both are specially trained in proprietary software specific to the controls for that system. In both scenarios, the work performed by the technician is essential to the proper functioning of the HVAC system as a whole.

The distinction you appear to make in your letter relates to whether the employees who have been specifically trained on the proprietary software and hardware installed by XXXX Inc.'s XXXX Technicians are union members. This distinction is irrelevant in the present analysis. Instead, the relevant question is whether the work performed on the job site falls within the scope of work that is

covered by a collective bargaining agreement. This office has determined that the work of commissioning and testing and balancing of HVAC systems, including the work performed by XXXX Technicians as described in your letter, is covered by a collective bargaining agreement. The proper classification is either *Pipefitter* or *HVAC mechanic*, which are the same rate of pay .

I hope this information is helpful. If you have any further questions, please feel free to contact me.

Sincerely,
Laura M. Marlin
Commissioner