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To: Terence P. McCourt
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From: Spencer C. Demetros *SCD*
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Re: Prevailing Wage; Trash Hauling

Date: June 20, 1995

Set forth below are responses to the questions posed in your June 9, 1995 memorandum to me concerning prevailing wage rates for trash hauling:

1. How are wage rates determined by DLI when there are two applicable collective bargaining agreements in the same jurisdiction with different wages and/or benefits?

In the majority of cases, there is a single collective bargaining agreement for a given trade governing a particular geographical area, so the scenario described in Question 1 does not occur too frequently. Depending on the facts presented, a fair approach, which we have used in the past, is to take a weighted average of the rates specified in the two applicable collective bargaining agreements based on the number of employees governed by each contract.

The legal justification for using a weighted average is discussed in a memorandum I wrote to the file on April 13, 1994. A copy of the memorandum is attached hereto.

2. Section 27F states that "rates of wages shall include payments to health and welfare plans," and DLI's rate sheets include a cash component and a health and welfare component. If an employer makes health and welfare payments greater than the minimum specified in DLI's rate sheet, does it violate the prevailing wage law for the employer to pay less than the DLI specified cash component provided that the total amount paid is equal to or greater than the cash plus benefits contained in the rate sheet?

Although there is no written policy on the issue presented in Question 2, we have taken the position that, with respect to the 27F trash hauling rates, an employer may make health and welfare payments greater than those specified on the Department's rate sheets. However, an employer may not pay less than the base cash wage rate specified for each hour of work by an employee. In other words, the employer cannot receive credit for the amount paid into a health and welfare plan above what is specified on the 27F rate sheet for health and welfare.

I believe that if the total rate is going to be broken down into its components on the wage schedule, the prevailing wage law requires that each such component be treated as a minimum. This rule is consistent with the practice in other jurisdictions which separate the benefits portion of the rate from the base rate. The Attorney General's Division of Fair Labor and Business Practices seems to be in agreement with us on this position.

3. Are the health and welfare plans in section 27F defined as Taft-Hartley plans, any type of health and welfare plan contained in an applicable collective bargaining agreement, or defined otherwise?

The statute is silent as to the type of health and welfare plan which the Commissioner of the Department may consider when establishing the wage rates. I am aware of no requirement that the plans be "Taft-Hartley" plans or plans described in specific collective bargaining agreements. Therefore, it is my understanding that employers may contribute to any bona fide health and welfare plan for purposes of the prevailing wage requirements under 27F. I believe the Commissioner would be exceeding her authority by instituting a requirement that the health and welfare contributions be made to a limited class of plans where no such requirement exists in the statute.

4. Should the rate determined in section 27F include payments made to pension plans?

The rates issued pursuant to section 27F do not include payments to pension plans because 27F specifies only that the rates "shall include payments to health and welfare plans." In contrast, section 26 states that the construction rates shall include "[p]ayments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans." Since the legislature specifically included mention of pension plans in section 26 and excluded mention in 27F, there is an implication that the legislature intended for the rates issued under 27F to include only hourly base pay and contributions to health and welfare plans.

If you have any other questions regarding these matters, do not hesitate to call me.