

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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February 4, 2002

Robert Lamarre
Office of the Attorney General
Fair Labor and Business Practices Division
200 Portland Street
Boston, MA 02114

Re: Applicability of the Prevailing Wage Law to the Installation of Wire and Cable

Dear Mr. Lamarre:

This letter responds to your request for a determination of whether the prevailing wage law applies to the installation of wire and cable as part of a project for the construction of a new public school in the Town of Norwell (the "project").

The specific question is whether the installation of wire and cable as components of voice, data, and video systems ("cable pulling") falls within the definition of "construction" as that term is defined under the prevailing wage law, which reads, in relevant part, "... the words 'construction' and 'constructed' as applied to public buildings and public works shall include additions to and alterations of public works ..." See M.G.L. ch. 149, § 27D.

As part of your request, it is reported that the Town of Norwell will award a sub-contract for the project, separate from the main contract awarded for the construction of a new school. Please note that the organization of the contracts is not relevant to whether cable pulling or other categories of work fall within the statutory definition of "construction" under the prevailing wage law. Contracts for construction may be all-inclusive or separated by sub-trade, depending on the requirements of the public bidding laws and the preference of awarding officials, but the content of those contracts cannot define the scope of the prevailing wage law. It is also important to note that, conversely, "construction" contracts may contain components that would not require payment of prevailing wage rates. For example, a contractor required to provide nighttime



security at a site as part of a contract for construction of public works would not be required to pay prevailing wage rates to employees providing security services.

The question of whether cable pulling is a construction activity has been addressed in a bid protest decision dated April 20, 1992 in which the Department of Labor and Industries, the predecessor agency to the Division of Occupational Safety ("DOS"), determined that pulling cable through already existing conduits and attaching wire to terminals on a project for the construction of the Hampden County Jail and House of Correction did not require payment of prevailing wage rates. With due deference to that decision, this response and determination will establish a guidepost for awarding officials and contractors to follow when cable pulling is part of any public works construction project.

While it is generally held that running electrical wires in a public building, whether done during new construction or done as an addition or alteration to an existing building, is a "construction" activity, it has been disputed whether running cable for voice, data, and video systems through conduit that has already been installed is part of "construction" or "alteration." Arguments have been made that running cable through existing conduits is not, technically, an "alteration" to the building; also that voice, data, and video systems are not essential components of any building.

While it may be true that voice, data, and video systems are not essential parts of a building, it cannot be said that non-essential building components are outside the scope of the prevailing wage law. The necessity of a building system or an alteration cannot dictate whether the work involved is covered by the prevailing wage law, M.G.L. ch. 149, §§ 26 -27D. The statute is focused, rather, on whether trade activities are "construction," "addition," or "alteration," which determine whether employees performing the work must be paid prevailing wage rates.

Cable pulling is an activity that contributes to the "construction" of a public building (such as a new school in the Town of Norwell) whenever the cables are components of a permanent building system that successive occupants may utilize. Whether cables are pulled through conduits, crawl spaces, between walls, above suspended ceilings, or affixed to rafters, their installation requires payment of prevailing wage rates if the cabling begins and ends with attachments to jacks and other permanent building components. The specific work of fishing cables through conduits and other spaces is one of several activities that tradespeople must perform in order to install – or construct – voice, data, and video systems in buildings and other structures. It would be illogical to assert that the cable pulling component of this work is not construction because that activity involves the installation and assembly of raw materials and component parts of what will become a permanent building system.

Though you have not requested a determination of whether the prevailing wage law would also apply to cable pulling in existing buildings and structures, such "alteration" activities would also fall within the ambit of the law for the same reasons given in the preceding paragraph. The cable pulling component of any installation or repair project involving voice, data, or video systems in existing buildings would alter the public work and therefore require

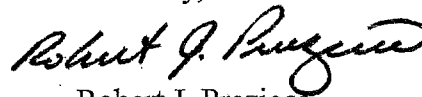
payment of prevailing wage rates.

(For additional clarity please be advised that cables and wires that run from jacks and outlets to office machines are not permanent parts of buildings and their installation does not require payment of prevailing wage rates.)

Prevailing wage rates are required to be paid to all workers who install voice, data, and video cables as components of permanent building systems on all public works construction and alteration projects for which a wage schedule is issued on or after the date of this letter.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Prezioso". The signature is written in a cursive style with a large, prominent initial "R".

Robert J. Prezioso
Deputy Director

cc: Ronald E. Maranian, Program Manager
Kathryn B. Palmer, General Counsel
Daniel Field, Office of the Attorney General