

April 6, 2004

Michael Winters, Project Manager
Consigli Construction Co., Inc.
197 Main Street
Milford, MA 01757

Dear Mr. Winters:

I am writing in response to your request for this Office's written opinion regarding the applicability of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, §§26-27. Specifically, you have asked if a prevailing wage schedule issued by the Division of Occupational Safety (DOS) to the Town of Brookline is still in effect.

As I understand it, The Town of Brookline put out a bid for additions and renovations to the Lawrence Elementary School in April of 2002. Included in that bid package, was a prevailing wage schedule issued by DOS on February 8, 2002. The Town awarded the contract to E.J. Sciaba Contracting Co., Inc. (Sciaba) with a required completion date of October 31, 2003. In July 2003, the Town terminated Sciaba and requested that Sciaba's surety, American Manufacturers Mutual Insurance Company (AMMIC), arrange for completion of the project. AMMIC issued a request for proposals and selected your company, Consigli Construction Co., Inc. (Consigli). AMMIC and Consigli entered into an Assignment and Assumption Agreement, and Consigli signed a contract for completion with the Town of Brookline. The project is due to be completed in July of this year, and Consigli has been paying its workers the wage rates prescribed in the February 8, 2002 schedule. You have asked for confirmation that this prevailing wage schedule is still valid and in effect for the project.

Prior to awarding a contract for construction of public works, an awarding authority covered by the state prevailing wage law, G.L. c. 149, §§26-27, must request a prevailing wage schedule from DOS. The Town complied with this requirement and was issued a wage schedule which, pursuant to G.L. c. 149, §27, "shall be made part of the contract for said works and shall continue to be the minimum rate or rate of wages for said employees during the life of the contract." At the point where AMMIC, as surety, stepped in, the contract work was not yet complete. AMMIC, and Consigli as its contractor, were obligated to perform the principal's, Sciaba's, original contractual obligations. One of those contractual obligations is the requirement to pay wage rates as prescribed in the February 8, 2002 schedule. Therefore, this wage schedule is still in effect for the project.

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

Sincerely,

Lisa C. Price
Legal Counsel

cc: Robert J. Prezioso, Deputy Director, DOS
Kathryn B. Palmer, General Counsel, DOS
Daniel S. Field, Division Chief, Office of the Attorney General, Fair Labor &
Business Practices Division