84 Mass.App.Ct. 1133
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.
Appeals Court of Massachusetts.
YANKEE TECHNOLOGY, INC.
v.
COMMISSIONER OF the DIVISION OF OCCUPATIONAL SAFETY. 1
No. 13–P–432.

|

February 5, 2014.
By the Court (GRASSO, KAFKER & GRAHAM, JJ.).
MEMORANDUM AND ORDER
PURSUANT TO RULE 1:28

The plaintiff, Yankee Technology, Inc. (Yankee), appeals from a Superior Court judgment in favor of the defendant, now known as the director of the Department of Labor Standards (DLS), dismissing Yankee's complaint. As we agree with the judge that neither certiorari nor a declaratory judgment action is authorized to review the DLS opinion letters here, we affirm the dismissal.

Background. Yankee provides building automation software installation for heating, ventilation, and air conditioning (HVAC) systems on public works projects. Yankee does not install HVAC equipment; rather, Yankee's employees, called building automation (BAS) technicians, program and implement software designed for HVAC systems and customized to clients' specifications. In 2009 and 2010, Yankee corresponded with the defendant on several occasions, seeking opinions as to whether the work of its BAS technicians was within the purview of the Massachusetts prevailing wage law for public works projects, G.L. c. 149, §§ 26 et seq., which would require Yankee to pay the prevailing wage rate. In three separate opinion letters dated August of 2009, December of 2009, and September of 2010, the defendant responded to Yankee's specific requests regarding the classification of certain work performed by its employees. The letters generally stated that downloading and installing software on HVAC systems was covered under the law and was comparable to work performed by pipefitters or HVAC mechanics. Postinstallation writing of computer code to integrate HVAC systems with servers and computers, however, was not covered.

Yankee has never appealed from the classification of work performed by its BAS technicians following an advertisement or call for bids for a particular public works project, a process that is detailed in G.L. c. 149, § 27A, and allows challenges to the director's wage rate determination. See *Construction Indus. of Mass. v. Commissioner of Labor & Indus.,* 406 Mass. 162, 166 (1989) (§ 27A is "appropriate vehicle for review" of these decisions). Instead, Yankee filed an action in the Superior Court seeking a writ of certiorari under G.L. c. 249, § 4, and a declaratory judgment pursuant to G.L. c. 231A.

After reviewing Yankee's motions for summary judgment and judgment on the pleadings, the judge dismissed Yankee's complaint because she found that neither certiorari nor declaratory judgment was appropriate, and that Yankee should have sought review under G.L. c. 149, § 27A,

when there was a particular public works project at issue to which the wage determination applied. 2 On appeal, Yankee argues that courts have entered declaratory judgments in cases similar to this, and that certiorari is the proper vehicle to bring this action because Yankee otherwise lacks a meaningful remedy .

Discussion. First, as the Superior Court judge correctly concluded, Yankee could not seek certiorari. There are three requirements for a court to entertain a request for relief on certiorari: "(1) a judicial or quasi judicial proceeding; (2) a lack of all other reasonably adequate remedies; and (3) a substantial injury or injustice arising from the proceeding under review." Cumberland Farms, Inc. v. Planning Bd. Of Bourne, 56 Mass.App.Ct. 605, 607 (2002), quoting from Boston Edison Co. v. Selectmen of Concord, 355 Mass. 79, 83 (1968). As noted by the judge, the opinion letters did not arise from a judicial or quasi judicial proceeding. Furthermore, Yankee could not show that it had no other opportunity for a reasonably adequate remedy here because G .L. c. 149, § 27A, provides an opportunity for review when an employer wishes to challenge a wage classification for a particular project. See id. at 608 ("Certiorari cannot be requested where administrative remedies terminating in judicial review are available and unexhausted"), quoting from St. Botolph Citizens Comm., Inc. v. Boston Redev. Authy., 429 Mass. 1, 7 (1999). See also Drayton v. Commissioner of Correction, 52 Mass.App.Ct. 135, 140 (2001) (certiorari exists to provide a remedy where there otherwise would not be one). Thus, Yankee failed to meet two of the three requirements for certiorari review, and the judge properly dismissed the certiorari action. We also agree with the judge's decision to deny declaratory relief because Yankee had chosen to bypass an available administrative remedy. See *Norfolk Elec., Inc. v. Fall River Hous. Authy.,* 417 Mass. 207, 210 (1994) ("As a general rule, a party's failure to exhaust administrative remedies precludes resort to a court for declaratory relief"). Yankee cannot seek declaratory relief as an attempt to circumvent the administrative remedy specifically provided in G.L. c. 149, § 27A.

Judgment affirmed.