

Prevailing Wage Program Opinion Letter February 4, 2011

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RE: Application of Prevailing Wage Law to DCR Ice Skating Rink

By letter dated December 22, 2010, you requested that the Division of Occupational Safety ("DOS") clarify the application of the prevailing wage law to an ice skating rink owned by the Commonwealth of Massachusetts acting by and through its Department of Conservation and Recreation ("DCR") and operated, managed and maintained through a management contract between the Town of XXXX and the DCR. This letter provides written confirmation under the Massachusetts Prevailing Wage Law, c. 149, §§ 26 and 27, that, to the extent the management contract involves alterations of or additions to the ice skating rink, workers who perform such tasks must be paid the applicable prevailing wage rates.

Analysis

The 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 and 27. The term "construction" includes "additions to and alterations of public works." See c. 149, § 27D. When public awarding authorities contract for construction work, within the meaning of the statute, DOS establishes prevailing wage rates that are not less than the rates that "have been established in certain trades and occupations by collective agreements or understandings in the private construction industry between organized labor and employers." c. 149 § 26. DOS also looks to these agreements and understandings to determine the appropriate job classifications under the prevailing wage law.

In this instance, the ice skating rink is owned by the DCR, a state entity, and is operated and maintained by the Town of XXXX, a municipality, as a public facility. I understand that the Town of XXXX entered into a three year contract with YYY to manage the facility on behalf of the Town. The management contract with YYY does not change the ownership or character of the public ice skating rink. In this respect, the ice skating rink is no different from a public library, swimming pool or park. See e.g. 27A Decision, Appeal of Local 3 of Wage Rates and Classifications for Maintenance/Repair Contract for Boston Public Library, 1988. Accordingly, any alterations or improvements to the ice skating rink are subject to the prevailing wage law.

In your letter, you list a number of tasks which will be performed pursuant to the management contract, including painting, repair of the rink's security system, installation of a low-emissivity reflective insulated ceiling and side-wall insulation, dealing joints, and addition of light controls. Each of these tasks

constitutes construction as an "addition to or alteration of" a public work and workers who perform the tasks must be paid the applicable prevailing wage rates. See also, Letter to Courtemarche, Data Fire Systems, Inc. September 1, 1999 and PW-2002-08-11.15.2002. Conversely, the following tasks listed in your letter are not subject to the prevailing wage law as they do not constitute "construction" work: opening and closing the rink, ice resurfacing between uses by means of a Zamboni machine, recording ice temperatures, monitoring use of the rink and trash removal.

I hope this information has been helpful to you. Please let me know if you have further questions.

Sincerely,

Patricia A. DeAngelis

Acting Deputy Commissioner