

Prevailing Wage Opinion 03-14-11

I am writing in response to your request for the Division of Occupational Safety's ("DOS") written opinion regarding the applicability of the Massachusetts Prevailing Wage Law, G.L. c. 149, §§26-27. Specifically, you have asked for clarification of DOS opinion letter PW-2008-01-02.12.08, which addresses the application of the prevailing wage law to contracts for the commissioning of a fire alarm system on a public works project.

Overview

The Massachusetts 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, 27*. The term "construction" is defined, in pertinent part, as "additions to and alterations of public works." *G.L. c. 149, §27D*. When public awarding authorities contract for construction work, within the meaning of the statute, the DOS sets prevailing wage rates for these projects based on "collective bargaining agreements in the private construction industry between organized labor and employers. *See G.L. c. 149, §26*. DOS also looks to these agreements to establish craft jurisdictions. DOS opinion letters make clear that the installation, maintenance and repair of fire alarm systems constitutes an "addition to" or "alteration of" a public work subject to the prevailing wage law. *See e.g. Letter to Griffin, dated April 19, 1997; Letter to Countermarche, Data Fire Systems, dated September 1, 1999; Letter to Moschos, Mirick O'Connell, MassPort, dated May 27, 1999 and PW-2008-01-2.12.08*.

As set forth in DOS Opinion Letter PW-2008-01-02.12.08, the commissioning process occurs after installation of a fire alarm system to verify proper operation among system components and the controls that signal them to respond. In the letter, DOS determined that the installation and wiring of the initiating devices (pull stations, heat detectors, and smoke detectors), the signaling devices (horns and strobes), and the fire alarm control panel is paid at the rate for an "*Electrician*" as provided on the rate sheets issued by DOS. The DOS further concluded that work to mount the CPU, and connect it into the power supply of the panel, and any work performed on the electrical system when problem areas are found during the commissioning process is also paid at the rate for an "*Electrician*." DOS takes this opportunity to affirm these classifications.

The 2008 letter concludes as follows: "As for the commissioning work performed on the laptop and at the CPU, we have been provided with no information about contracts where union electricians performed this type of work. Therefore, it is this agency's determination that the prevailing wage law does not apply to this work." We understand that there is some confusion regarding the computer programming addressed in the quoted excerpt from the 2008 letter and other types of fire alarm commissioning work. Specifically, the testing of the operation of the fire alarm system controlled by the fire alarm panel, including by means of opening of wires and splices to prove circuit integrity and confirmation of proper programming and operation of the auxiliary system controlled by the fire alarm panel (i.e. commissioning). DOS clarifies that this work is covered by the prevailing wage law as explained below.

Analysis

As set forth above, when public awarding authorities contract for construction work, within the meaning of the statute, DOS sets prevailing wage rates for these projects based on "collective bargaining agreements in the private construction industry between organized labor and employers. *See G.L. c. 149, §26.* DOS also looks to these agreements to establish craft jurisdictions. In this instance, the collective bargaining agreement known as the Telecommunications Agreement between the IBEW, Local 103 and the Electrical Contractors Association of Greater Boston, Inc. National Electrical Contractors Association (NECA) and its counterpart in Western Massachusetts, IBEW, Local 7 and Western Massachusetts Chapter of NECA, include the testing and commissioning of the operation of the fire alarm system after initial installation as described. [1] Based on a review of these agreements and other understandings among the unions and employers in the industry, DOS determines that such fire alarm commissioning work is paid at the rate for a " *Fire Alarm Repair/Maintenance*" as set forth on the rate sheets issued by DOS. [2]

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

Sincerely,
Patricia A. DeAngelis
Acting Deputy Commissioner

[1] Routine, annual testing of fire alarm systems not related to the initial installation of the system is not subject to the prevailing wage law unless such testing results in repair work - which is covered as an "alteration or improvement" of a public work. *Letter to Countermarche, Data Fire Systems, September 1, 1999 and Letter to Moschos, Mirick O'Connell, Massport, May 27, 1999.*

[2] Going forward, DOS will add the term "commissioning" to the classification description for the convenience of awarding authorities and contractors.