

Prevailing Wage Opinion Letter 02-12-08

I am writing in response to your request for this Office's written opinion regarding the applicability of the Massachusetts Prevailing Wage Law, G.L. c. 149, §§26-27. Specifically, you have asked if the prevailing wage law applies to contracts for the commissioning of a fire alarm system on a public works project.

As I understand it, 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 your letters of August 29 and September 19, 2007, you described one such project as follows: An electrical contractor was hired to install a new GE-EST fire alarm system. This contractor installed and wired the initiating devices (pull stations, heat detectors, and smoke detectors), the signaling devices (horns and strobes), and the fire alarm control panel. One of your client's employees, a factory-certified trained technician, then arrived at the worksite to perform the commissioning work. She or he mounted the CPU, connected it into the power supply of the panel, and started programming by means of a laptop computer. When problem areas were found, licensed electricians are called to perform any necessary manual work, and the system was then re-evaluated on the laptop by the technician. This continued until the system was fully operational, and the owner was assured that all components worked together as designed.

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 Division of Occupational Safety (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.

Unlike most other building trade agreements, the Inside Electrical collective bargaining agreements provided to this Office do not include a detailed trade autonomy section that would assist us in making this determination. Nonetheless, it is clear from field observations and past determinations that 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 the work of the *Electrician*. Similarly, 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 *Electrician's* work. [1] 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.

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

Sincerely,
Lisa C. Price
Deputy General Counsel

[1] You have made the argument that the work to mount the CPU and connect it into the power supply should be considered *de minimis* work. Given that the prevailing wage law includes no dollar threshold, all work that constitutes "construction" within the meaning of G.L. c. 149, §27D, no matter the scope or cost, is covered work.