Prevailing Wage Opinion Letter-04-03-08

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 for a determination as to the proper occupational classification of the following work:

1. Roofing work, including removal of old roof(s) where a new or replacement roof(s) will be laid or re-laid;

2. Handling of the materials related to removal of an old roof or roofs where the roof(s) will be replaced;

3. Removal of old roofing and building materials of a building that is to be demolished where no roof will be re-laid.

As you may know, in a letter dated February 21, 2001, then Deputy Director Robert Prezioso addressed what he deemed several "areas of overlapping craft jurisdiction," including one pertaining to the roofing tasks you have outlined in your request. In that letter, Deputy Director Prezioso determined that, while the installation of roofing materials is covered by the Roofers collective bargaining agreement:

Other activities associated with roofing projects, including the removal of existing roofing material from the building, the handling of materials at the site, and clean-up, are included in the craft jurisdiction sections of the Roofer collective bargaining agreement and the Laborers' collective bargaining agreement.

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) establishes prevailing wage rates that are not less than the rates or rates that "have been established in certain trades and occupations by collective bargaining agreements or understandings in the private construction industry between organized labor and employers." G.L. c. 149, § 26 (emphasis added). In this instance, in response to this office's request for clarification as to whether any understandings exist in the construction industry, the Roofers Union and the Laborers' Union submitted letters (see attached) evidencing an understanding between the two unions that is contrary to DOS' prior ruling as articulated in the February 21, 2001 letter. That understanding is as follows:

All roofing work including removal of old roof or roofs where a new or replacement roof is to be relaid and handling of materials is the work of the Roofers.

All removal of old roofing and building materials of a building that is to be demolished and no roof is to be relaid is the work of the Laborers.

Accordingly, the prior determination is hereby revised [1] to reflect the understanding between the unions. Therefore, to answer your specific questions, as of this date, the roofer's rate shall apply to the first and second situations articulated in your request: "roofing work, including removal of old roof(s) where a new or replacement roof(s) will be laid or re-laid"; and "handling of the materials related to removal of an old roof or roofs where the roof(s) will be replaced." The laborers' rate shall apply to the third situation in your request: "removal of old roofing and building materials of a building that is to be demolished where no roof will be re-laid." [2]

Deputy Director Robert Prezioso's February 21, 2001 letter also made a broad determination that DOS would not require employers to pay the higher or highest rate for work included in what he deemed "areas of overlapping craft jurisdiction" where the "activity on the job is covered by collective bargaining agreements for two or more unions." (See letter attached.) In making that determination, Deputy Director Prezioso stated "DOS

has no statutory authority under the prevailing wage law to choose between the higher or lower wage rate in classifying workers engaged in activities that fall under the jurisdictional ambit of two different unions, and certainly is not authorized to attempt to resolve jurisdictional disputes or eliminate understandings between different unions."

The letter addresses a number of other specific examples that Deputy Director Prezioso deemed "areas of overlapping craft jurisdiction." Those specific determinations are not before us today and are not addressed at this time. However, the blanket statement that "DOS has no statutory authority under the prevailing wage law to choose between the higher or lower wage rate in classifying workers engaged in activities that fall under the jurisdictional [3] ambit of two different unions" is rescinded. DOS carefully reviews each wage determination individually, looking first to the collective bargaining agreements that cover the specified work. In the majority of cases, it is not necessary to look beyond the collective bargaining agreements. However, where two or more collective bargaining agreements cover the same work, DOS conducts further inquiry to determine whether (1) there is an understanding (formal or informal) between the unions as to the proper classification of workers performing that work, and (2) whether there are other factors that indicate the proper classification of the workers, despite the fact that it is covered by more than one collective bargaining agreement.

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

Sincerely,
Laura M. Marlin
Commissioner

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[1] The commissioner shall classify said jobs, and he may revise such classifications from time to time, as he may deem advisable. G.L. c. 149 § 27.

[2] In an unpublished decision, Commonwealth v. Diversified Contracting, Inc., 53 Mass. App. Ct. 1111 (2002), the Appeals Court affirmed convictions for prevailing wage violations arising from a contractor's failure to pay the roofers rate to workers on public works projects based upon a determination that the roofers' rate applies to the work of "ripping away an existing roof . . . and replacing it with a new roof."

[3] It should be noted that DOS' determinations are limited to the applicability of the prevailing wage law and are not determinative of union trade jurisdiction.