



THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
**DIVISION OF OCCUPATIONAL SAFETY**  
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DEPUTY DIRECTOR

August 15, 2002

Ms. Karla E. Zarbo  
Assistant Attorney General  
Office of The Attorney General  
200 Portland Street  
Boston, MA 02114

Re: Determination of Classification: Laborers' Classification or Glaziers' Classification.

Dear Ms. Zarbo:

Your letter dated August 2, 2002 to Robert J. Prezioso of the Division of Occupational Safety ("DOS") has been forwarded to me for a response. This letter responds to your request for a determination of whether the Laborers' occupational classification or Glaziers' occupational classification is the proper occupational classification to be used on the project described below.

You state in your letter that you seek a determination from DOS as to whether the prevailing wage occupational classifications of "Laborer: Multi-Trade Tender" or "Glazier" apply to the unloading and installation of pre-glazed windows, curtain walls and aluminum framing on a public works project in Chelsea, Massachusetts. You also describe in more detail the following tasks:

Exterior Window Installation-

1. Workers unload the pre-glazed exterior windows from the delivery truck, and then transport the windows to the installation areas either by hand or with a Condor (person lift).
2. Workers install aluminum receptors (casings that house the windows) inside the window openings and secure the receptors to the opening with bolts.
3. Workers install and set each window into the receptor and then caulk around the perimeter of the set window.

#### Curtain Wall Installation-

4. Workers unload the exterior curtain wall glass panes, curtain wall pressure caps, and stock aluminum framing from the delivery truck and stack the materials in a central area on-site.
5. Workers transport the materials to the various installation areas on a daily basis.
6. Workers cut, fabricate, and install the aluminum framing for each curtain wall, securing the framing with bolts.
7. Workers complete the framing by installing rubber gaskets, caulk, and dam blocks (water protection).
8. Workers then install temporary blocks to secure the glass panes in the framing. Once installed, the workers remove the temporary blocks and install permanent pressure caps around the framing to secure the glass panes.

The Division of Occupational Safety ("DOS") issues prevailing wage schedules, which include occupational classifications and rates of wages, for public works construction projects based on "collective bargaining agreements or understandings in the private construction industry between organized labor and employers." See M.G.L. ch. 149, § 26. The question before us is whether the "Laborers: Multi-Trade Tender" classification (established by the collective bargaining agreement between The Labor Relations Division of Construction Industries of Massachusetts, Inc. and Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL-CIO) or the "Glazier" classification (established between the Glass Employers Association of New England, Inc. and the Painters and Allied Trades District Council #35) applies to the tasks described above.

Based on a review of the aforementioned collective bargaining agreements, tasks 2, 3, 6, 7, and 8 fall squarely within the craft jurisdiction of the glazier union. Generally, all persons performing installation work associated with pre-glazed windows, curtain walls and aluminum framing on public works, should be classified as "Glazier" workers in accordance with the prevailing wage schedule issued for the project.

The remaining tasks, numbers 1, 4, and 5, involving the unloading, handling, and distribution of all materials associated with pre-glazed windows, curtain walls and aluminum framing appear to fall within an area of overlap between the glazier and laborers' unions. See attached DOS applicability determination letter to Trager, OAG dated June 4, 2002 in reference to overlap of the "Laborer: Multi-Trade Tender" classification.

To DOS, overlap between the jurisdictional language of two collective bargaining agreements represents, at worst, a dispute between two or more private parties (i.e. unions), and at best, a tacit understanding between two unions that each will claim jurisdiction over the same activity. 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 language of the statute speaks only of the

requirement that workers' pay rates "shall not be less than" (emphasis added) the rates established by "collective agreements or understandings in the private construction industry between organized labor and employers". See M.G.L. ch. 149, § 26. In this case, the rate established by the glazier collective bargaining agreement is higher.

Copies of the relevant portions of the Laborers' and Glaziers' collective bargaining agreements are attached for your reference.

If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Ronald E. Maranian  
Program Manager

cc: Robert J. Prezioso, DOS Deputy Director  
Kathryn Palmer, DOS General Counsel  
Ralph Harriman, Business Manager, Painters and Allied Trades, DC No. 35  
Paul J. McNally, Business Manager, Mass. Laborers' District Council