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PW-2010-11-07.29.10

Opinion Letter

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July 29, 2010

RE: Applicability of Prevailing Wage Law for Printing Rates to the University of Massachusetts

The University of Massachusetts Amherst Campus print shop has requested our opinion regarding whether the University of Massachusetts ("University"), pursuant to M.G.L., c. 5, §1, must require its printing contractors, as defined by M.G.L., c. 5, § 1, to pay prevailing wage rates to their employees. My analysis follows.

Analysis

M.G.L. c. 5, §1 provides, in relevant part, that:

The commissioner of administration, *or any other awarding official*, in the advertising for bids or the placing of orders for the execution of printing, composition, proof reading, presswork, all processes used in the making of printing plates, paper ruling and binding, or for the supplying of office stationery and blank books without printed headings, *for the several departments of the government of the commonwealth other than the legislative department*

Contracts or orders shall be given to such establishments only as pay the prevailing rate of wages, based on wage rates and working hours that have been established by collective bargaining agreement or understanding between organized labor and employers; provided, that nothing herein contained shall prevent said commission, or any other awarding official, from placing contracts or orders with existing state institutions or departments which furnish printing or other work of the kind and character above mentioned. . .

The prevailing rate of wages shall be determined by the director of labor and workforce development as herein provided. Said prevailing rates shall be based on wage rates and working hours that have been established by collective bargaining agreement or understanding between organized labor and employers in the printing and binding industry. The director of labor and workforce development^[1] shall upon application from the commission on administration and finance prepare and furnish for the use of said commission *or other awarding officials*, a list of the several classifications of labor usually performed by the employees in the printing and binding trades together with the prevailing rate of wages and working hours. (*italics added.*)

The requirement to pay the prevailing wage rate to employees of contractors which provide printing services to the state has been the law in the commonwealth since 1938. (*See Acts and Resolves of 1938, c. 419.*) ^[2]

Counsel to University, without citation to legal authority, has suggested that "it is not clear" that the University is one of "the several departments of the government of the commonwealth" subject to the prevailing wage law for printing.

Pursuant to M.G.L. c. 75, § 1, the University of Massachusetts is "a public institution of higher learning" governed by its board of trustees. The board has such authority as is conferred by Chapter 75 and, in addition, has "all authority, responsibility, rights, privileges, powers and duties customarily and traditionally exercised by governing boards of institutions of higher learning." c. 75, § 1. Although the University is generally free from oversight by other state agencies, it is subject to the statutory provisions governing capital facility projects under the division of capital asset management as well as to the competitive bidding laws. (*See e.g. c. 75, § 1 and c. 29, § 7E. See also Brasi Development Corp. v. Attorney General, 456 Mass. 684 (2010) and Associated Subcontractors of Massachusetts v. University of Massachusetts Building Authority, 442 Mass. 159, 160 (2004).*) Further, the University does not dispute that it is subject to the prevailing wage law for construction of public works projects, M.G.L. c. 149 § 26 and 27, or other generally applicable laws.^[3]

I have located no authority which supports the suggestion that the University is not subject to c. 5, § 1. Moreover, DOS's records reflect that the University's Boston campus regularly requests DOS to provide prevailing wage rates for its printing and binding contracts – and DOS has done so. This longstanding administrative interpretation by DOS by is entitled to deference. (*Commerce Ins. Co. v. Commission of Insurance 447 Mass. 478 (2006).*) Accordingly, it is the opinion of this agency that the University is a "department of the government of the commonwealth" to which the prevailing wage law for printing applies.

Because the University is subject to the prevailing wage law for printing, contractors which provide printing services to the University are required to pay the prevailing wage rate set by the DOS for such contracts.

Please let me know if you have any questions about this matter.

Sincerely,
Patricia A. DeAngelis
Acting Deputy Commissioner

[1] The prevailing wage rates are now set by the commissioner of the division of occupational safety (“DOS”) (See M.G.L. c. 23, §§ 1 and 3.)

[2] Significantly, in setting prevailing wage rates for printing and binding work, the commissioner is not required to base the rates on printing and binding wage rates by town or locality. (cf. c. 149, § 26 and 27 (public works projects); c. 71, § 7A (school transportation contracts); and c. 121B, § 29 (housing authority employees). Rather, c. 5, § 1 specifically directs the commissioner to set prevailing wage rates for printing and binding work “based on the wage rates and working hours that have been established by collective bargaining agreement or understanding between organized labor and employers in the printing industry.” The statute may be fairly read as directing the commissioner to set statewide printing rates for “departments of the commonwealth” based on her review of collective bargaining agreements in the statewide printing industry.

[3] DOS has records of requests for prevailing wage rates from the University for construction of public works projects going back for many years.

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