THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF LABOR STANDARDS

DEVAL L. PATRICK
GOVERNOR

RACHEL KAPRIELIAN
SECRETARY

HEATHER E. ROWE
DIRECTOR

December 5, 2014

PW-2014-06-12.05.14

Re: Drawbridge Operator

Dear XXX:

The Department of Labor Standards ("DLS") has issued two determinations in the last couple of years on the proper job classification and prevailing wage rate under M.G.L. c. 149, §§ 26 and 27, for workers whose duties primarily involve operating equipment to raise and lower bridges to ensure the safe passage of water vessels and road traffic. You requested that we revisit the classification based on information regarding the duties of a "bridge tender." You also requested that the DLS determine when the prevailing wage rate must be paid when a job is filled on a 24-hour basis, but construction is not taking place during that entire time.

The bridge tender classification and wage rate determinations are based on a unique set of facts pertaining to this matter and do not set any precedent for future classification and wage determinations.

I. What is the proper job classification for workers who raise and lower bridges to ensure the safe passage of water vessels and road traffic?

a. <u>Applicability of prevailing wage to drawbridge operators</u>

The DLS uses the terms "drawbridge operator," "bridge tender," and "bridge operator" interchangeably for purposes of discussion of the job of raising and lowering bridges to allow the passage of water and road traffic.[1] As an initial matter, the DLS reiterates the long-standing position that drawbridge operators or tenders who control the raising and lowering of a bridge during a bridge project are covered by the prevailing wage under M.G.L. c. 149, §§ 26 and 27. See Letter to Reilly (December 3, 1997). As stated in that letter, and presently applicable, the DLS understands that the construction contractor must provide drawbridge operators at all times during the bridge rehabilitation

[1] The U.S. Department of Labor Dictionary of Occupational Titles lists "Drawbridge Operator" as a subset of "Bridge, Lock, and Lighthouse Tenders." The DLS is unaware of a description of the work of a drawbridge tender that would distinguish it from a drawbridge operator.

project in place of regular state or municipal employees. The bridge is raised and lowered to accommodate construction activities. The operator must be mindful of the construction schedule, the structural changes in progress; and particular hazards to waterway, vehicular, and pedestrian traffic caused by the construction. The bridge operation is an integral part of the rehabilitation project and the operators must be paid the prevailing wage.

b. Prior classification determinations

MassDOT requested clarification of the proper classification of "Bridge Tenders" on June 28, 2011.[2] At that time, the DLS advised MassDOT that, because there was no prevailing wage classification for bridge operators, the correct classification was the one that had the lowest rate on the applicable rate sheet.[3] The lowest rate was under the classification "Tree Trimmer Groundman."[4]

After that determination, the DLS was advised that the collective bargaining agreement between Local 103, IBEW and the Electrical Contractors Association of Greater Boston contained the job classification "Drawbridge Operator."[5] Article 6.34, "Bridge Operation, Repair and Maintenance," provides, "This Agreement shall govern the operation, repair and maintenance of electrically-driven bridges, including but not limited to drawbridges and swing bridges. All work under this section shall be performed by Inside Journeyman Wiremen…" As a result of this information, the DLS determined that the proper job classification for "Bridge Tender" was "Drawbridge Operator." A "Drawbridge Operator" classification and corresponding rates were added to the prevailing wage rate schedules.

c. Revised classification determination

The DLS has received and reviewed additional information that warrants revisiting the job classification for "bridge tender" or "bridge operator." The DLS was asked to reconsider whether "Bridge Operation, Repair and Maintenance," was intended to cover the type of work performed by a bridge tender. In response to a request from the DLS, the IBEW and National Electrical Contractors Association (NECA) provided a joint letter setting forth their agreed-upon definition of "operation" as set forth in the agreement. According to the letter, in referencing "bridge operation," the collective bargaining agreement covers the following job duties:

> *Operation – Electric Bridge Tender*
> *The performance of work by qualified persons which insures the safe passage of water traffic, trains, other vehicles and persons in compliance with the general*

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[2] E-Mail from John Brady, DOT to Steve Falcone, DLS, June 28, 2011.

[3] Phone call between Patricia DeAngelis, DLS, and John Brady, DOT, June 28, 2011. This is consistent with previous advice regarding bridge tenders DLS provided to contractors in 2010.

[4] *See* Wage Request No. 20120217-017.

[5] Electrical Industry of Greater Boston Agreement between Local 103, IBEW of Greater Boston and the Electrical Contractors Association of Greater Boston, dated September 2011 through August 2016.

requirements of the Commonwealth of Massachusetts, Department of Transportation policies, procedures, and bulletins, and United States Coast Guard regulations governing drawbridge requirements and operations. In general, Electric Bridge Tenders, after receiving signals from approaching vessels, or other approved means or modes of transportation as required, are responsible for initiating movements by which bridges and related equipment are safely set in motion by pre-engineered and defined mechanical and electrical means, including confirmation that the Electric Bridge has attained its desired destinations. Electric Bridge Tenders shall make observation, direct communications and perform necessary record keeping as directed by appropriate authority.

The definition describes the work of a bridge tender; therefore, the job is within the jurisdiction of the IBEW and NECA collective bargaining agreement. In accordance with M.G.L. c. 149, §26, the DLS sets prevailing wage rates based on "collective agreements or understandings in the private construction industry between organized labor and employers." The DLS also looks to these agreements and understandings to determine the appropriate job classifications under the prevailing wage law. M.G.L. c. 149, §27. The "Drawbridge Operator" classification and corresponding rates will remain on the prevailing wage rate schedules.

d. Effective date of the Drawbridge Operator classification

The DLS determination that the bridge tender was classified as Drawbridge Operator on the prevailing rate sheet caused a significant increase in the wage rate. In accordance with normal practice, a prevailing rate determination by the DLS is effective immediately, and appears on prevailing rate sheets issued subsequent to the determination. The Drawbridge Operator classification appeared on requested rate sheets immediately after the determination of the proper classification. The new rate was prospective from the date it appeared on the prevailing rate sheet.

The DLS departs from the normal effective date in regard to the Drawbridge Operator classification due to the unique circumstances. The departure should not be viewed as setting any precedent outside the particular facts of this classification. The major factor in this case is the significant increase in the prevailing wage rate for contracts that had already been awarded. As a public agency, the DLS cannot ignore the practical implications of the rate change for this classification on contractors who had already successfully bid a contract. The DLS reiterates that, in general, changes in classifications and increases in rates are effective immediately, even on already-awarded contracts. The bridge tender classification is the exception.

The DLS also takes note of the agreement between the IBEW and NECA that jurisdiction over bridge operation and maintenance work would "apply to all jobs bid on and after the date of its original execution, September 17, 2012." The DLS notes initially that it is not bound by the union/management agreement regarding the effective date of a classification. Nevertheless, M.G.L. c. 149, §26 provides that wage rates may be based

on "understandings" in the private construction industry. Given the unusual increase in the prevailing wage for the Drawbridge Operator classification, the impact on already-awarded contracts, and the "understanding" of the parties in the private construction industry, the DLS determines that the Drawbridge Operator classification on the prevailing rate sheet is only effective for public works bid after the date of this letter. For contracts awarded prior to this date, the bridge tender must be paid at the lowest rate on the applicable rate sheet. Currently, the lowest rate is for the classification "Tree Trimmer Groundman." M.G.L. c. 149, § 27 requires an updated rate schedule each year after the awarding of the contract. For the bridge tender classification, if the construction contract was awarded prior to the date of this letter, the rate for the annual update will remain the lowest rate on the wage sheet for the duration of the contract. This does not apply to any other job classification that may change during the course of a construction project, which must be paid at the proper classification when a new rate sheet is issued.

II. When must the prevailing wage rate be paid on a 24-hour job?

As stated previously, drawbridge operators/bridge tenders who control the raising and lowering of a bridge during a bridge rehabilitation project are covered by the prevailing wage under M.G.L. c. 149, §§ 26 and 27. The bridge operation is, generally, covered 24-hours per day. The DLS was advised that during a construction project, the contractor is required to provide the 24-hour coverage. The question arose as to whether the bridge tender must be paid the prevailing wage during the entire 24-hours, or only during the time when construction is taking place.

Several scenarios were presented:

1. Construction is underway but the bridge may or may not have to be raised. The DLS position is that the prevailing wage must be paid at all times construction is going on and the bridge is in operation. The DLS understands that the bridge tender may only have to raise and lower the bridge for the ordinary passage of vessels unrelated to the construction, and that the bridge may not have to open at all or only infrequently. The bridge tender is essentially on call to respond in relation to the construction and must at all times be mindful of the construction schedule, the work taking place, and hazards to waterway, vehicular, and pedestrian traffic caused by the construction.

2. Breaks in construction may take place during the course of a shift when construction is temporarily halted. The DLS position is that ordinary breaks in work or pauses in certain jobs while other work is accomplished is a normal workplace occurrence. Workers at or on the construction site who are awaiting assignment or who must wait to perform their job until another aspect of the job is completed are generally entitled to pay at the applicable prevailing rate. The bridge tender is entitled to the prevailing rate during such temporary breaks in construction. If the construction completely ceases for

the day or shift, the bridge tender may be paid at the regular, non-prevailing wage rate.

3. The bridge tender is on duty and construction is going on, but the bridge may not be opened due to time of day, order of the Coast Guard, closure of the waterway, or other reason. The DLS position is that the prevailing wage is not required if the bridge may not be opened due to rule or order.

4. Construction is not taking place for a period of time due to mandatory cessation of work, such as during certain times of the year, or during certain shifts such as overnight, or for weather-related reasons, or because design issues have arisen. The bridge tenders need not be paid the prevailing wage during such times when construction is not taking place. If some construction is taking place during such times, the bridge tender on duty is entitled to the prevailing rate.

We hope we have addressed all of the potential scenarios that come up. We will be happy to consider other situations, if necessary.

Please do not hesitate to contact this office with questions regarding any of the issues addressed in this letter.

Sincerely,

Jean E. Zeiler
General Counsel

CC: Jocelyn Jones, Deputy Chief & Special Counsel for Fair Labor Policy, Fair Labor Division, Office of the Massachusetts Attorney General