New York State Department of Labor
David A. Paterson, *Governor*
M. Patricia Smith, *Commissioner*

April 29, 2009

[redacted]

Re: Installation of Steel Case Products
Our File No. RO-09-0056

Dear [redacted]:

You ask our opinion as to whether work involving the installation of free-standing office furnishings to a public work project would be subject to the Prevailing Wage Law. You state that while some assembly is required, the furniture does not become a part of the structure itself. I am enclosing a recent opinion from Counsel's Office (*Hoover, April 14, 2006*), in regard to this subject for your review and consideration. That opinion remains the opinion of Counsel in this regard.

The only difference between the prior situation and yours is that you note that some assembly work will take place on the site. Because such assembly work takes place prior to placement of the furniture of the free-standing office furnishings in the building and does not involve the incorporation of the furnishings you describe into the fabric of the building, the delivery, the set up and placement of portable furnishings to an office site as described in your letter is not subject to Article 8 of the Labor Law.

This opinion is specific to the facts described in the documents provided and, were those facts to vary from those set forth in the documents, or if additional facts and circumstances exist of which we are not currently aware, this opinion could be changed accordingly. I trust that this is responsive to your inquiry. Please let us know if you need any further clarification on this issue.

Very truly yours,

John D. Charles
Associate Attorney

Enclosure

cc: Chris Alund
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NYS Department of Labor
Workforce New York
Put us to work for you

George E. Pataki, Governor

Linda Angello, Commissioner

April 14, 2006

[redacted]

Re: Request for Opinion
RO #006-0014

Dear [redacted]

Your letter dated February 16, 2006 to Chief Counsel, and your email of February 27, 2006, to Senior Investigator [redacted], regarding classification of specific tasks on public work projects has been referred to me for response.

As a threshold issue, Article 8 of the Labor Law applies to construction, repair, renovation and maintenance work where the "work has to do with the ... fabric and essential part of public buildings...." *Matter of Golden v. Joseph,* 307 N.Y. 62, 67 (1954); *see also Sewer Environmental Contractors, Inc. v. Goldin,* 98 A.D.2d 606 (1st Dep't 1983) ("the 'repair' of a public work is a public work"). Therefore, delivery of a product that is not installed by you, for example pots, pans, or tables or shelving which is never affixed to a wall or a floor, is not public work. Under such circumstances, your company is merely a vendor and not subject to the prevailing wage. You are also merely a vendor if you deliver materials which at some future time would be affixed to the structure, but your company does none of the installation. For example, if your company were to provide a range hood, but never install any portion of it and only deliver it to the loading dock, you would be a vendor and not subject to prevailing wages for those actions.

The Bureau of Public Work has historically maintained that the installation, maintenance and repair of equipment attached to any wall, ceiling or floor or affixed by hard wiring or plumbing is public work, while, in contrast, a piece of equipment which is portable or a "plug-in" free-standing unit would not be public work. Therefore, the delivery of a free-standing toaster unit, which requires no work on site other than plugging in to a socket, would not be subject to prevailing wages for those actions.

However, to the extent that you install range hoods, dishwashers, sinks, trim, panels, and other pieces of equipment, then that work is subject to prevailing wages. You are correct that there is no restaurant equipment installers union. The work that you describe is within the jurisdiction of well known trade unions in the locale where your company is known to conduct business, i.e. Albany, Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Schoharie, Warren, Washington, Saratoga, Schenectady, and Rensselaer counties. For example, the

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installation of metal range hoods, stainless steel wall panels, metal walk-in coolers, and metal trim, including the movement from delivery site and thereon, unpacking, preparation for installation, installations, polishing and cleaning of the area after installation, is the work of the sheet metal worker. The installation of sinks and dishwashers, including the movement from delivery site and thereon, unpacking, preparation for installation, installation, caulking and cleaning of the area after installation, or the hook-up of other types of equipment to liquid, refrigerant or waste-water systems, is the work of the plumber. To the extent that electrical wiring work is done on these projects, it is the work of the electrician..

As mentioned above, the maintenance or repair of a public work is also subject to prevailing wages. Generally, the same trade who installed or constructed the public work is the trade who would repair or maintain it. However, some repairs may go to a specific trade, as in the repair of a large piece of equipment may only require the services of an electrician, not a sheet metal worker.

Classification of public work is done by a review of several factors, including the nature of the work, collective bargaining agreements, jurisdictional agreements, jurisdictional decisions, historical practice, past DOL recognition and/or case law precedents. Please note, that classification of work pursuant to Labor Law section 220(3-a(a)) may change based on geographic location. For an explanation of classification, you may go to the Department of Labor website or refer to the recent decision in *Lantry v. New York State Department of Labor*, 6 N.Y.3d 49 (2005).

The Department of Labor does not instruct companies on how to do their paper work. Each company comes up with its own system of time keeping depending on the trades involved, the type of work being done, its payroll company's requirements, its own bookkeeping needs, etc.

I trust this letter is responsive to your request.

Very truly yours,

Patricia Rhodes Hoover
Senior Attorney

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cc: Christopher Alund
David Bouchard
Calvin Norton
Erickson.001