



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

October 15, 2009

[REDACTED]

Re: Security Services on Prevailing Wage Projects
Our File No. RO-09-0092

Dear [REDACTED]:

Your letter of June 24, 2009 asks our opinion as to the applicability of Article 9 to security services provided on a public work building under construction or demolition. Your letter argues that such services are not in connection with an "existing building" and therefore Article 9 should not apply.

The statutory definition of a "building services employee" includes "any person performing work in connection with the care of maintenance of an *existing building*" (emphasis supplied). Given your assertion that the building in question could be under construction, an individual providing security services during the course of such construction would not be considered a building services employee. However, a building which is being demolished is existing, in whole or in part, during demolition. Therefore, if the individual is serving as a guard or watchman (both of which are covered occupations in Article 9) during such demolition, they would be eligible for Article 9 wages.

It should also be noted that the definition of a "building service employee" specifically "does not include any employee to whom the provisions of articles eight and eight-a of this chapter are applicable." Labor Law §230(2). The work you describe in your letter could, under certain circumstances, be subject to Article 8. Were that the case, the employees would not be covered by Article 9. Therefore, we must next determine whether Article 8 would apply to such employees.

In this regard, I would note that a review of the New York City prevailing wage schedule, and a quick look at a sampling of schedules from upstate counties do not show any such category of work under any title. Absent inclusion of such work in a prevailing wage schedule, Article 8 would not be applicable to security services provided on a public work project, as such work would not be the work of laborers, workers, or mechanics as those terms are referenced in the statute. There are situations where employees of a contractor or one of their subcontractors are

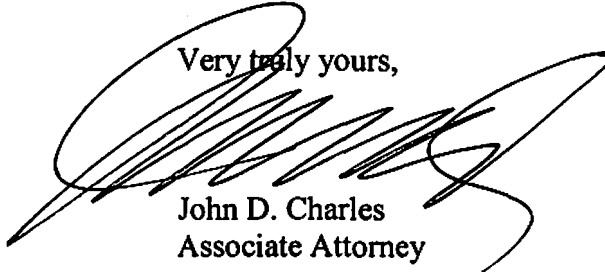
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posted at a construction gate and are involved in controlling traffic access to the site, which would generally be considered traffic and flag duties and therefore be the work of a laborer. As a result, it would appear that unless the security service workers you reference are performing work contained in a specific rate schedule or are traffic control workers as defined in a wage schedule, such employees would not be entitled to prevailing wages under the requirements of Article 8 of the Labor Law.

In conclusion, individuals employed to provide security services for a public building under construction are generally not entitled to prevailing wages under either Article 8 or Article 9 of the Labor Law. Individuals employed to provide security services for a public building being demolished are not entitled to Article 8 prevailing wages but are entitled to Article 9 wages while the building is being demolished; they would not be entitled to Article 9 wages in connection with securing the site during or subsequent to site clean once the building is totally demolished.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "John D. Charles", is written over the typed name and title.

John D. Charles
Associate Attorney

cc: Pico Ben-Amotz
Chris Alund
Fred Kelley
Opinion File
Dayfile