



New York State Department of Labor
David A. Paterson, *Governor*
Colleen C. Gardner, *Commissioner*

June 30, 2010



Re: Demolition Projects and Section 816-b of the Labor Law
Our File No. RO-10-0097

Dear [REDACTED]:

You requested our opinion as to the breadth of the term “construction contract” in Section 816-b of the Labor Law. Specifically, you ask if that term extends to demolition work that may be performed in connection with a construction contract. As we understand the issue, the City of Rochester has taken the position that the City Ordinance that established the apprenticeship requirements for the City (Ordinance No. 2003-347) requires apprenticeship programs for construction contracts in excess of \$250,000.00 that involve the “construction, reconstruction or improvement of any building, facility or physical structure of any kind”, and therefore does not include demolition. In answer to a question concerning the possible amendment of that ordinance to include demolition, the City takes the position that Section 816-b of the Labor Law precludes such an amendment.

This office cannot comment on the legal interpretation of any City Ordinance in regard to this issue. However, the interpretation of the provisions of Section 816-b is within the Commissioner’s broad authority as set forth in Labor Law Article 23, Section 811.

While there is no language in Section 816-b that directly addresses this question, the Department may look to other relevant sections of law and their interpretation for guidance in responding to your question. Toward that end, it is noted that Article 8 of the Labor Law applies to every contract for public work which involves the employment of workers, laborers and mechanics. As long ago as 1907, the Attorney General opined that “all work which is necessary, incidental to or connected with the execution of a contract” is included within the terms of a contract (1907, Op. Atty. Gen. 348). In following that direction, the Department of Labor has continuously determined that demolition work that is part of a public work contract is subject to the prevailing wage law, despite the fact that demolition is not expressly referenced in the statute. See opinions dated December 1, 1964, April 24, 1995, July 2, 1998, June 6, 2001, and June 11, 2001(363) attached hereto. See also, *City Const. and Development Inc. v Hartnett* 192 A.D. 2d 651.

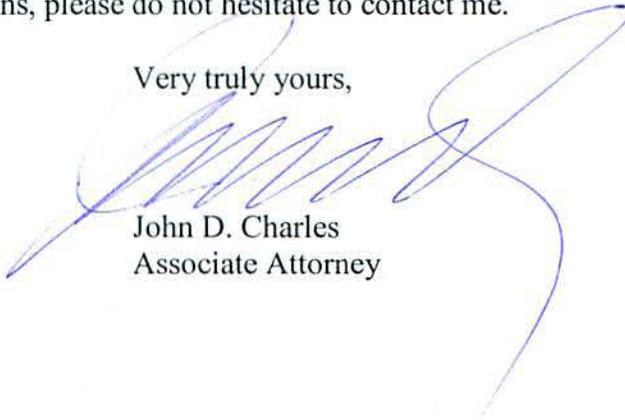
Phone: (518) 457-4380 Fax: (518) 485-1819
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

Section 816-b speaks in terms of construction contracts. As noted above, construction contracts include all work that is to be performed by laborers, workers and mechanics on those contracts, and by necessity would include demolition work that is part of such contracts. In many contracts, demolition, like site preparation work, is performed in order for the construction to take place. As such, demolition is covered by the prevailing wage law, and would be included as part of the definition of construction contracts contained in Labor Law, Section 816-b. However, even under circumstances where demolition is undertaken without a connection to subsequent construction or renovation of a building, we have found it to be subject to the prevailing wage law, and the terms of the prevailing wage law are substantially similar to those contained in Labor Law, Section 816-b. It is Counsel's opinion that a construction contract, as that term is used in Labor Law, Section 816-b, includes demolition work. Therefore, Labor Law, Section 816-b is no impediment to a local government's requirement that demolition work be included in contracts for work that requires apprenticeship training.

This opinion is based exclusively on the facts and circumstances described in your e-mail dated June 23, 2010, and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein 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. This opinion cannot be used in connection with any pending private litigation concerning the issue addressed herein.

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

Very truly yours,



John D. Charles
Associate Attorney

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