



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

August 13, 2010

[REDACTED]

Re: Temporary Workers/ Leaf Pick up
Our File No. RO-10-0103

Dear [REDACTED]:

We are in receipt of your letter of June 14, 2010, in which you inquire as to the applicability of the prevailing wage laws where a Town contracts with a temporary employment agency to supply labor for curbside brush and leaf pick up. The answer is that Article 9 of the Labor Law, prevailing wages for building service employees, applies to this contract.

Assuming that the temporary employment agency is the employer of these workers, the employment agency would be obligated under Labor Law, Section 230(1) to pay the prevailing wage to its employees for refuse collection work regardless of whether the properties being served are public or private buildings, as long as the work is being done pursuant to a public work contract. *Feher Rubbish Removal, Inc. v. New York State Department of Labor*, 28 A.D.3d 1, 807 N.Y.S.2d 494 (4th Dept., 2005). The same would be true if the Town employed these temporary workers in non-civil service positions (*Corrigan v. Joseph*, 304 N.Y. 172, (1952)).

In determining whether a project is public work, two conditions must be fulfilled: "(1) the public agency must be a party to a contract involving the employment of laborers, workmen or mechanics, and (2) the contract must concern a public works project" *Matter of Erie County Indus. Dev. Agency v Roberts*, 94 AD 2d 532, 537 (4th Dept. 1983), *aff'd* 63 NY2d 810 (4th Dept. 1984), *see also*, *Matter of National R.R. Passenger Crop. v. Hartnett*, 69AD2d 127. "Later, it was stated that contemporary definitions focus upon the public purpose or function of a particular project***. To be public work, the projects primary objective must be to benefit the public" (citations omitted) *Sarkisian Brothers, Inc. v. Hartnett*, 172 A.D. 2d 895, (3rd Dept., 1991).

The two part test is easily met in these circumstances. The Town is contracting for the provision of laborers to perform work on behalf of the Town. Accordingly, the contract will

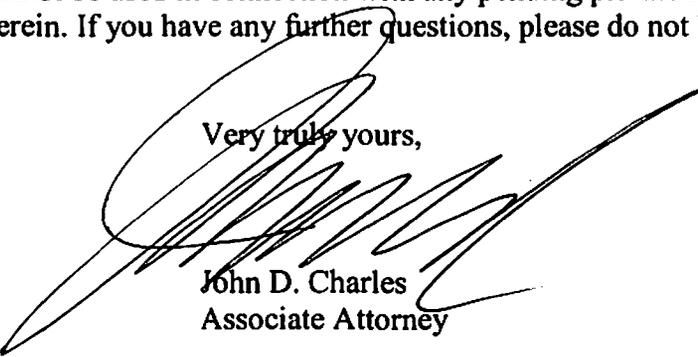
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meet the first condition of the test. With respect to the second condition of the test, the work is public work because the primary purpose of collecting refuse from buildings, and their grounds, whether public or private is to benefit the public. The Town is performing this service work for its citizens. *Feher Rubbish Removal, Inc. v. New York State Department of Labor*, 28 A.D.3d 1, 807 N.Y.S.2d 494 (4th Dept., 2005).

The fact that the employees are in the temporary service of the town is of no import. Since this work is covered under Article 9, the Town should request a schedule from the Bureau of Public Work so as to properly bid for these services.

This opinion is based exclusively on the facts and circumstances described in your letter dated June 14, 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. 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
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Opinion File
Dayfile