



New York State Department of Labor

David A. Paterson, Governor

M. Patricia Smith, Commissioner

April 17, 2008

Rossette, Rossette & Martino
Attn: Richard P. Rossette
269 West Pulteney Street
Corning, New York 14830

Re: Opinion Request re Informational Technologies / Prevailing Wages
Our file # RO-07-0011

Dear Mr. Rossette:

You request our opinion as to the applicability of the prevailing wage laws to certain work performed in connection with the installation of computer cables, computer network servers, computer work stations and peripherals. Please accept our apologies for the delay in our response, caused in large part by the deceptively complex nature of the issues raised by your request. The rapid rate of technological advances has impacted many aspects of building operations; seemingly raising new questions each day. Multiple meetings regarding this subject have been held so as to provide you with an accurate response.

For purposes of this letter, we will respond using your definitions of a "Data Cabling Technician" and an "Information Technology Engineer / Technician", although those titles do not represent any known classifications for this type of work. We will further assume that the work is being performed for the benefit of the state or some other municipal entity.

The Department's position in regard to the work you categorize as that of a "Data Cabling Technician", whose duties include the actual installation of coaxial cable and fiber optic transmission cables within buildings, "together with the installation of connectors, terminators connection boxes and wall plates, switches, transducers and related apparatus" would be that the work of an electrician consistent with the applicable collective bargaining agreements, and the prevailing wage schedule applicable to that classification of work would determine the required prevailing wage rate. Actual construction related activities as described above have always been treated as being subject to the prevailing wage law. In the past we have determined that the installation of fiber optic cable in Thruway right of way was public work; that the installation of cable in a privately owned building leased by the New York State Department of Insurance was covered by the prevailing wage law; and that the installation of Cable TV cable would be subject to the prevailing wage law, while as a general proposition, work associated with portable or plug in features would not be public work. The installation of fiber optic cable as defined in your letter would be subject to prevailing wages.

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Your second category of work, that you have defined as “Information Technology Engineer/Technician” requires a more specific response to each type of work described. Those work descriptions are addressed in the order set forth in your letter under the category of Information Technology Engineer/Technician.

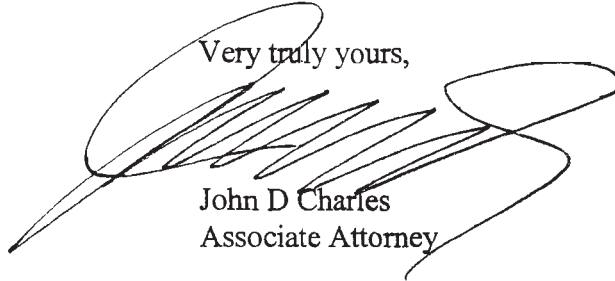
- 1) Assists in design, etc- Such work, which is assumed to take place off site, would not be public work. If such work is customarily and normally performed off site, prevailing wage rates would not apply.
- 2) May carry tangible personal property onto site- If it is determined that the work is subject to Article 8, then the carrying, distribution and unpacking is carried out by the installer and his or her appropriate rate or rates would apply.
- 3) Un-packs units- If it is determined that the work is subject to Article 8, then the carrying, distribution and unpacking is carried out by the installer and his or her appropriate rate or rates would apply.
- 4) Plugs computer network file servers, etc- The installation of individual pieces of equipment of a portable nature is usually not subject to the prevailing wage law. However, if such installation is required to complete an Article 8 contract (such as where a contract requires both the installation of optical cable and the installations of servers, central junction equipment, terminals and/or phones or like equipment) then all such work is subject to the payment of prevailing wages. Stated another way, if the installation is integral to an Article 8 project, then such installation is subject to prevailing wage rates.
- 5) Installs software into computers- While the actual work performed would have to be reviewed to make this determination, simple installation of software is usually not subject to the prevailing wage law, unless it is required as part of the completion of a public work contract. However, work performed on a public site, such that it is a repair or an alteration to existing building functions, could be public work, even if the work is related to the installation of software. For instance, if a software installation were required to change the operating conditions of a HVAC system, or the elevator operations in a public building, and such work ordinarily and customarily would have been work performed at the site, such work would be subject to prevailing wage rates in the appropriate classification of worker.
- 6) Configures hardware and software- Off-site work not covered. On-site work covered to the extent that such configuration is integral to the completion of a public work contract. Hardware and software configuration work that is customarily and normally performed on a site would be subject to the prevailing wage law, even if it is performed off site.
- 7) Tests installations- Post construction testing of those parts of the installations that are integral to the operation of the overall system is subject to prevailing wage rates. If a public contract is let for “testing and repair” of a system, testing would be covered under Article 8. On the other hand, if testing does not involve the installation or repair of a system, Article 8 will not apply. Examples of this would be a third party evaluation of the operation of a system by the party in the business of providing a warranty; the supplier of materials and devices; or the manufacturer of materials and devices.
- 8) Performs client training- Is not subject to prevailing wage rates.

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While rate schedules vary from county to county, generally speaking, the work as described above falls within the Electrician category of work, either as a Telephone and Integrated Tele-Data systems worker, or as a regular electrician. In cases involving outside work, lineman's rates might also apply. The Department's local Bureau of Public Work office covering the county in question will classify specifically described work. Given the descriptions above, a general laborer category would not apply to any worker functioning as described.

This opinion is based upon, and limited to, the facts outlined above and as set forth in your letter. If any facts or documents relied upon in reaching this opinion change, or if other facts or documents exist which have not been revealed and reviewed, the opinion itself may be affected. Please advise if you have any further questions regarding this matter.

Very truly yours,



John D Charles
Associate Attorney

cc: Chris Alund
Fred Kelley
Dayfile
Opinion File



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