

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

the duties of which he is qualified to perform as will provide him like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in his case.” (Emphasis ours.)

Since this Federal Statute says in effect that an individual who had a temporary position with a state prior to his induction in the Armed Forces is not entitled to reinstatement as a matter of right, and since a person with a temporary position does not have a permanent status under State law, it follows that the State of Maine is not liable for re-employment of nonstatus employees under pertinent provisions of Federal Law.

JEROME S. MATUS
Assistant Attorney General

February 3, 1966
Labor and Industry

Marion E. Martin

Public Works, Fair Minimum Wage Rate; definition of term majority.

FACTS:

Section 1306 defines fair minimum rate of wages stating that it “. . . shall be the rate of wages paid in the locality in this state as hereinbefore defined to the majority of workmen, laborers or mechanics in the same trade or occupation in the construction industry. . . .” (Emphasis supplied)

QUESTION:

Does the word “majority” as used in section 1306 quoted above mean 50% plus one?

ANSWER:

No.

OPINION:

26 M.R.S.A. § 1305 provides as follows:

“It is declared to be the policy of the State of Maine that a wage rate of no less than the *prevailing hourly rate* of wages for work of a similar character in this State in which the construction is performed, shall be paid to all workmen employed by or on behalf of any public authority engaged in the construction of public improvements.” (Emphasis supplied)

We believe that when the legislature in section 1306 speaks of the wage paid “to the majority of workmen, . . . in the same trade or occupation in the construction industry,” what is meant is the prevailing rate of wages or labor market wage rate, and not necessarily the hourly wage rate which is paid to 50% plus one of the number of workers in a particular trade.

Standing alone, the word majority means the greater number, or more than half of the whole number. If one were to ignore other sections of the statutory law which provide for the establishment of a fair minimum rate of wages to govern employment on state public improvement contracts, one might conclude that such a minimum wage rate

should be based on a wage rate which is paid to 50% plus one of the total number of workers in a particular trade. A reading of all sections of the statutes establishing a fair minimum wage rate for employees on state public improvement contracts militates against such a conclusion however.

There may not be a particular wage rate paid to a majority of workmen. For example, let us assume that the Department of Labor and Industry wishes to establish a minimum hourly wage rate for electricians. Let it further be assumed that there are a total of 200 electricians in the state who receive the following hourly wage rates: 80 electricians receive \$2.50 per hour, 50 receive \$2.70 per hour, 50 receive \$2.40 per hour, 10 receive \$2.20 per hour, and 10 receive \$2.90 per hour. Clearly, there is no specific wage rate which is paid to a majority of electricians, if one interprets majority to mean 50% plus one. However, by taking all of the wage rates into consideration, could not a prevailing or labor market wage rate for electricians be determined?

26 M.R.S.A. § 1308 (1) Determination of Wage Rates.

“The Department of Labor and Industry, from time to time, *shall investigate and determine the prevailing hourly rate of wages in this state.*

“*In determining such prevailing rates*, the Department of Labor and Industry may ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, and such rates as are paid generally in this State where the construction of the public improvement is to be performed.” (Emphasis supplied)

The language of section 1308 (1) emphasizes the need for determining the prevailing hourly rate of wages, and not simply discovering that rate which is paid to a majority of workers.

The determination of a prevailing wage rate need not be based on any specific economic formula, provided that all known wage differentials in a trade are taken into consideration. The *wage which prevails* may be a median wage resulting from relatively free competition for services between employers and employees, or the prevailing wage could reflect a monopolistic wage rate established largely by one employer or one labor union. Regardless of what the prevailing wage rate reflects, it alone, forms the basis for the establishment of a fair minimum rate of wages.

PHILLIP M. KILMISTER
Assistant Attorney General

March 17, 1966
Water Improvement Commission

R. W. MacDonald

License to Discharge Waste and Compliance with Conditions Pertaining Thereto.

FACTS:

An industrial firm applies to the Water Improvement Commission for a license to discharge waste for a limited period of time during the calendar year. The Commission issues a waste discharge license to said applicant subject to certain conditions, one of which is the period of time during which the applicant may discharge waste. (approx. October to February)