

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

MAR 30 2007

By: _____

In the Matter of the Request for Review of

CEI West Roofing Company, Inc. and
Thompson Pacific Construction, Inc.

Case No. 04-0276-PWH
and 05-0010-PWH

From the Notice of Withhold issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR

PROCEDURAL HISTORY

Affected subcontractor CEI West Roofing Company, Inc. ("CEI West") and affected contractor Thompson Pacific Construction, Inc. ("Thompson Pacific")¹ each requested review of a civil wage and penalty assessment ("Assessment") issued by the Division of Labor Standards Enforcement ("Division") with respect to the Monterey Trails High School/Edward Harris, Jr. Middle School Project ("Monterey Trails Project") in Elk Grove, California. A hearing on the merits occurred on May 18, 2006 before appointed Hearing Officer John Cumming. Deborah E. G. Wilder appeared for CEI West, Quinlan S. Tom appeared for Thompson Pacific, Thomas R. Fredericks appeared for the Division, and Mark S. Renner appeared for intervener Sheet Metal Workers International Association Local Union No. 162 ("Sheet Metal Workers Local 162"). For the reasons set forth below, the Acting Director of Industrial Relations issues this decision dismissing the Assessment in full.

SUMMARY OF EVIDENCE AND PROCEDURAL HISTORY

This case arises out of a subcontract for the installation of preformed metal roofing on a school construction project for the Elk Grove Unified School District ("School District") in

¹ Collectively the requesting parties will be referred to as "contractors."

Sacramento County. The specific question presented is whether the workers who performed this work were entitled to be paid not less than the prevailing rate for the classification of Sheet Metal Worker or whether they could be paid the lesser rate for the classification of Roofer without violating prevailing wage requirements.

The project was first advertised for bid on January 18, 2002. The date for the close of bids was February 21, 2002. The School District awarded the prime construction contract for this project to Thompson Pacific on or about March 20, 2002.

According to witness Michael McClain,² CEI West had a California roofing contractor's license and performed work in the Sacramento area for several years, including prior jobs for the School District. CEI West may have installed metal roofs for the School District but has not paid the Sheet Metal Worker's prevailing wage rate. CEI West submitted a bid to Thompson Pacific for the roofing work on the Monterey Trails Project some time in February 2002. On February 27, 2002, after the close of bids but before the award of the prime construction contract, CEI West received a fax from Paul Broyles, the Financial Secretary and Business Representative of Sheet Metal Workers Local 162. That fax stated in relevant part as follows:

As a prospective bidder on the new Monterey Trail High School and Edward Harris Middle School, I would like to remind you of the prevailing wage requirements on this job[.]

* * *

Enclosed for your information is a letter from the Elk Grove School District stating that the installation of the metal roofing must be paid at the prevailing sheet metal rate. There is also a letter from the Department of Industrial Relations addressing the same issue.

The referenced enclosure from the School District was not introduced into evidence. However, the letter from the Department of Industrial Relations (DIR) was produced, and McClain confirmed that a copy of that letter was among the items received by fax with Broyles's February 27 letter.

The Department of Industrial Relations' letter was dated October 24, 2000, and sent

² McClain testified that he was the Vice President and General Manager of CEI West Roofing at the time of this controversy. He later became the President of CEI Roofing in California.

by then-Chief Deputy Director Daniel M. Curtin to Broyles with reference to "Franklin High School/Toby Johnson Middle School."³ ("Curtin letter") The body of the letter stated in full:

This is in response to your request initially received on June 27, 2000 as to the proper classification for use on a public works project first advertised for bids by Elk Grove Unified School District on May 26, 2000. The Division of Labor Statistics and Research conducted an area practices investigation of the labor market for metal roofing between July 1, 1999 and June 30, 2000 in the county of Sacramento. The results of this investigation show that the prevailing rate for the installation of metal roofing on non-residential building construction on this project is not less than that paid to a Sheet Metal Worker.

At the bottom of this letter were "cc" notations indicating that copies were sent to the Labor Commissioner and to representatives of Roofers Local 81 and the Elk Grove Unified School District.

McClain testified that CEI West was not involved with the Franklin High School or Toby Johnson Middle School project, although it may have bid on those projects. According to McClain, the information provided by Broyles "was news to me [and] inconsistent with everything else we had done, inconsistent with our bid preparation[.]" The School District never told CEI West that the Sheet Metal Worker rate was required, and there was nothing in the bid specifications for the Monterey Trails Project that so indicated.

Upon receipt of the February 27 correspondence from the Sheet Metal Workers, McClain immediately called the School District. He spoke with the Director of Construction, Leroy Young. McClain recalled telling Young that CEI West needed something in its file for upcoming discussions with Thompson Pacific. McClain also recalled being told by Young that the school district wanted to stay out of an ongoing jurisdictional battle between the two unions (*i.e.* Roofers and Sheet Metal Workers) "as to where the scope of metal roofing fit within."

Mr. Young also provided a written response to McClain's inquiry on the same day. Young's letter stated as follows.

In response to your telephone call this morning, we advise that the prevailing wage rates for subject project are effective from the date it was first advertised,

³ This is a different project than the Monterey Trails Project.

January 18, 2002. The rates that apply are listed on the attached wage determination made by the Director of Industrial Relations. No craft assignments are made or inferred by the Elk Grove Unified School District.

Enclosed with this letter was a copy of county-specific Prevailing Wage Determination (without the scopes of work) for Sacramento County (SAC-2001-2), which the parties here agree was the wage determination that applied to the project and included both Roofer and Sheet Metal Worker rates.

When asked if he did anything else following the conversation with the school district, McClain testified that it is CEI West's policy, on a routine basis, to review the scope of work provisions on the DIR's website to make sure the company was "bidding correctly for the pay rate of the classification." McClain identified the applicable scope of work provisions for Roofer in Sacramento County as the ones he had reviewed, and he said that upon finding the reference in that document to metal roofing covered by a C-14 license,⁴ he felt assured that CEI West had bid the job accurately. McClain testified that he also looked for any other website references that might affect the decision of what classification to use and could find none.

On cross-examination McClain acknowledged his own awareness of the dispute between the unions over which rate prevailed going back into the 1990's. He found the Curtin letter "interesting" but attributed it to a climate involving project labor agreements and different requirements for different projects. McClain thought it was clear that metal roofing was allowed under the Roofer's scope of work provisions, while conceding that it was unclear to the school district. With regard to how the company handled overlapping scopes of work, McClain testified that, "It's been our custom by our attorney's advice that if there is two conflicting, or not conflicting, but if there's, if the scope of work is listed in both scopes, you can use either of those." He recalled getting this advice "a number of years ago" but could not recall if it was before or after bidding on the Monterey Trails project.

The applicable scope of work provisions for Roofer in Sacramento County during the period in question were drawn from a collective bargaining agreement to which the United

⁴ McClain testified that CEI West had held a C-14 license, for which he was the qualifier, until the C-14 classification was eliminated by the Contractors State License Board. CEI West was then grandfathered into a C-39 license, which it authorized it to install metal roofing systems, and which it held at the time it bid on the Monterey Trails Project.

Union of Roofers, Waterproofers and Allied Workers Local No. 81 ("Roofers Local 81") was a party, for the years 2001 through 2004. Section M sets forth the types of work covered by the agreement, specifying twenty-five categories of materials or processes. Item 25 on the list was "All metal roofing covered by a C-14 State Contractor's License."

With regard to the C-14 license, the parties stipulated that the following notice appeared on the Contractors State License Board website when the Monterey Trails project was advertised for bid.

California Code of Regulations
Division 8, Title 16, Article 3. Classification

C14 – Metal Roofing Contractor

"[This classification was repealed and is no longer being issued.]

(a) Effective July 1, 1998, the C-14 (Metal Roofing Contractor) classification shall be abolished, and a C-14 license cannot be renewed. On July 1, 1998, contractors who hold a C-14 and a C-39 (Roofing Contractor) license will hold only a C-39 license. On July 1, 1998, contractors who hold a C-14 and a C-43 (Sheet Metal Contractor) license will hold only a C-43 license. On July 1, 1998, contractors holding only a C-14 license will be granted a C-39 license.

The parties also submitted into the record the corresponding notices for the C-39 Roofing Contractor and C-43 Sheet Metal Contractor licenses. Both notices included "metal roofing systems" as being within the work embraced by the respective licenses.

The applicable scope of work provisions for Sheet Metal Worker in Sacramento County during the period in question were drawn from a collective bargaining agreement to which Sheet Metal Workers Local 162 was a party for the period of July, 1998 through June 30, 2003. Article I provides that the agreement covers "all metal roofing, gutters, downspout and related metal flashing[.]"

Thompson Pacific was awarded the bid on the Monterey Trails project and on April 1, 2002, entered into a subcontract with CEI West to handle that portion of the work involving installation of "preformed metal roofing." CEI West performed this work over a period of months from the summer of 2002 through the middle of 2003. CEI West paid its workers not less than the prevailing wage rate for the classification of Roofer for the work it performed on

the project. However, that rate was less than the applicable prevailing wage rate for the classification of Sheet Metal Worker.

In late November 2002, the Sheet Metal Workers Local 162 submitted a formal complaint to the Division over CEI West's payment of the Roofer rate rather than the Sheet Metal Worker rate. The following month Roofers Local 81 submitted its own complaint to the Division alleging that CEI West was not paying the required prevailing rate to its roofers, among other asserted violations. In January 2003, the complaints were assigned to a Deputy Labor Commissioner for investigation who communicated with Broyles and with CEI West's attorney, over the next several months. These notes reflect the Division's own uncertainty over how to resolve the pay-rate issue and led to a decision by the investigator and his supervisor in March 2004 to request a determination on the pay-rate issue from the Acting Director of Industrial Relations. The parties did not submit the letter sent to the Acting Director; however, the memo to the supervisor describes the Curtin letter as stating "for the Elk Grove Unified School District the prevailing rate for the installation of metal roofing on non-residential building construction is not less than that paid to a Sheet Metal Worker."⁵ The Acting Director may have been provided with the Curtin letter and the date the Monterey Trails Project was advertised for bid, although the record is not clear.

Acting Director John Rea issued such a determination by letter dated September 13, 2004, addressed to Joseph Romanazzi, Senior Deputy Labor Commissioner, with reference to "Installation of a Metal Roof Including Flashing Monterey Trails/Edward Harris Jr. Middle School in Sacramento County[.]" ("Rea letter") The letter stated in relevant part as follows:

This is in response to your request received March 22, 2004, requesting the appropriate rate of pay for the above referenced work in Sacramento County.

"Based on the information provided to the Department [of Industrial Relations] from your organization and other interested parties, and the scope of work provisions within the applicable collective bargaining agreements on file with the Department, the minimum rate of pay required for the metal roofing work on this project is that of the Sheet Metal Worker (HVAC):

⁵ This purported quotation is not a quotation from the Curtin Letter, which actually stated in pertinent part: "the prevailing rate for the installation of metal roofing on non-residential building construction on **this project** is not less than that paid to a Sheet Metal Worker." (emphasis added.)

The letter notes that copies were sent to the Acting Deputy Chief Labor Commissioner, the Division's investigator, Sheet Metal Workers Local 162, Roofers Local 81, McClain, and the Elk Grove Unified School District.

Thereafter, the Division audited the wages paid by CEI West and ultimately determined that CEI West had underpaid its workers in the total amount of \$90,495.53 due to paying the Roofer rate rather than the prevailing Sheet Metal Worker rate. The Division also determined that CEI was liable for \$49,850.00 in penalties under Labor Code section 1775 (based on 997 violations at the rate of \$50.00 per violation) plus an additional \$200.00 in penalties under Labor Code section 1813 (based on 8 overtime violations the rate of \$25.00 per violation). The Division set the Labor Code section 1775 penalties at the maximum amount of \$50.00 per violation based upon its finding that the violations were "willful" and that there was the existence of "a prior history in case tracking." The Division's Legal Referral and Case Summary notes the existence of two open cases, two other cases that were closed, and a fifth case in which CEI West was assessed a little over \$3,500.00 in wages and penalties for unspecified reasons. McClain testified that CEI West had been the subject of from four to six complaints for prevailing wage violations; actual violations were found in only one case based on a failure to pay a predetermined rate increase.

Regarding the completion of the Monterey Trails project, McClain testified that this was new construction and that he believed "the school was opened and in use in September of ... 2003." The formal Notice of Completion states that the project was completed on June 21, 2004, and the Notice of Completion itself was filed on June 23, 2004.

The Division issued its Assessment on December 14, 2004, finding CEI West and Thompson Pacific liable for back wages and penalties as set forth above, and potentially liable for liquidated damages under Labor Code section 1742.1(a), for any back wages that remained unpaid after sixty days. Both CEI West and Thompson Pacific timely filed their requests for review. The cases were consolidated and then stayed for several months with the agreement of the parties pending the resolution of seven other cases involving the same principal issue of whether the Roofer or Sheet Metal Worker classification was appropriate for the installation of a metal roof.

After the stay was lifted, Sheet Metal Workers Local 162 was permitted to intervene based on the fact that it had filed a formal complain with the Division (*see* Rule 08(c) [8 Cal.Code Reg. §17208(c)]). On August 23, 2006, CEI West's counsel notified the hearing officer and parties of a bankruptcy proceeding initiated by CEI West in Texas in 2004, contending that this might bar further proceedings against CEI West. The parties were given additional time to respond to this contention and to submit additional evidence requested by the hearing officer. In an e-mail sent to the hearing officer on September 9, 2006, Ms. Wilder herself expressed the view that "the bankruptcy does not impact the merits of the case, only the collection of any assessment relating to CEI West."⁶

DISCUSSION

Labor Code section 1720 and following⁷ set forth a scheme for determining and requiring the payment of prevailing wages to workers employed on public works construction projects.

The overall purpose of the prevailing wage law ... is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees.

(*Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 987 [citations omitted].)

The Division enforces prevailing wage requirements not only for the benefit of workers but also "to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards." (Lab. Code, §90.5(a), and *see Lusardi, supra.*)

Section 1775(a) requires, among other things that contractors and subcontractors make

⁶ In light of this concession and the fact that questions as to how or against whom the Assessment may be enforced are not at issue in this Labor Code section 1742(b) review proceeding, it is not necessary to address the bankruptcy issue further.

⁷ All further statutory reference is to the California Labor Code, unless otherwise indicated.

up the difference to workers who were paid less than the prevailing rate, and section 1775(a) also prescribes penalties for failing to pay the prevailing rate. Section 1742.1(a) provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if those wages are not paid within sixty days following service of a civil wage and penalty assessment under section 1741.

Upon determining that a contractor or subcontractor has violated prevailing wage requirements, the Division issues a civil wage and penalty assessment, which an affected contractor or subcontractor may appeal by filing a request for review under Labor Code section 1742. In such an appeal “[t]he contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect.” (Lab. Code, §1742(b).)

The Assessment is Not Barred by the Statute of Limitations.

The contractors argue that the statute of limitations for issuing the Assessment must run from the completion of the Monterey Trails Project, which they equate with the school district’s “beneficial occupation” of the newly-constructed school building in September of 2003.⁸ The applicable statute of limitations is found in section 1741, which states in relevant part as follows.

... The assessment shall be served not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever occurs last.

In *Department of Industrial Relations v. Fidelity Roof Company* (1997) 60 Cal.App.4th 411, the court held that a “valid” notice of completion meant one filed within ten days of acceptance of a public works project; otherwise, the statute of limitations runs from the awarding body’s acceptance of the project.⁹

In the public works context, “acceptance” is “that date at which someone with author-

⁸ The contractors also appear to assert, without expressly stating, a laches defense based on the time taken to issue the Assessment in relation to the project bid date, the filing of the complaints, and the occupancy of the school. The contractors cite no legal authorities to support their limitations defense and provide no factual information about how they may have been prejudiced by the Division’s purported delay.

ity to accept does accept unconditionally and completely.” (*Madonna v. State of California* (1957) 151 Cal.App.2d 836 at 840; *see also In re El Dorado Improvement Corporation*, 335 F.3d 835, 840 (9th Cir. 2003) [“acceptance” occurs when public officials consent to dedication of improvement to the public “typically . . . by determining that the improvement was satisfactorily built.”].) The Division’s un rebutted notes refer to the project as having been accepted on June 21, 2004. The same date is identified as the date of completion in the formal Notice of Completion that was signed and filed two days later on June 23, 2004. Neither contractor introduced evidence to the contrary. The Assessment was issued on December 14, 2004, within 180 days of either date, and therefore was timely under section 741.

CEI West was Not Required to Pay the Prevailing Rate for Sheet Metal Workers for the Work Performed on the Monterey Trails Project In Light Of The Information Publicly Available From DIR.

The prevailing rate of pay for a given craft, classification, or type of work, is something that the Director of Industrial Relations determines in accordance with the standards set forth in section 1773. It is the rate paid to the majority of workers; if there is no single rate payable to the majority of workers, it is the single rate paid to most workers (the modal rate). On occasion, the modal rate may be determined with reference to collective bargaining agreements, rates determined for federal public works projects, or a survey of rates paid in the labor market area. (Lab. Code, §§1773, 1773.9, and *see California Slurry Seal Association v. Department of Industrial Relations* (2002) 98 Cal.App.4th 651.) The Director determines these rates and publishes general wage determinations such as SAC 2002-1 to inform all interested parties and the public of the applicable wage rates for the “craft, classification and type of work” that might be employed in public works. Lab. Code, § 1773. Contractors and subcontractors are deemed to have constructive notice of the applicable prevailing wage rates. (*Division of Labor Standards Enforcement v. Ericsson Information Systems* (1990) 221 Cal.App.3d 114, 125.)

The applicable prevailing wage rates are the ones in effect on the date the public works contract is advertised for bid. (*See* Lab. Code, §1773.2 and *Ericsson, supra.*) Section

⁹ The court rejected the argument that the failure to file a timely notice of completion meant that there was an

1773.2 requires the body that awards the contract to specify the prevailing wage rates in the call for bids or alternatively to inform prospective bidders that the rates are on file in the body's principal office and to post the determinations at each job site.

At the time of the bid advertisement date, the scopes of work provision relating to SAC-2001-2 for Roofer provided that coverage included work involving "All metal roofing covered by a C-14 State Contractor's License" and for Sheet Metal Worker provided that coverage included "...all metal roofing, gutters, downspout and related metal flashing...." The C-14 specialty classification was eliminated in 1998. Under Division 8, of title 16, Article 3 of the California Code of Regulations, the work encompassed by the C-14 class (metal roofing systems) was subsumed within both the Roofer class (C-39) and the Sheet Metal class (C-43). A contractor who possessed only a C-14 license automatically possessed a C-39 license. It seems evident therefore that for scope of work purposes, a C-14 and C-39 license are interchangeable. Because CEI West paid the prevailing wages specified for the Roofer classification and the scope of work provisions encompassed metal roofing, it did not violate its statutory obligation to pay prevailing wages, even though the scope of work overlapped with some of the provisions of the Sheet Metal Worker scope of work provisions.

Section 1773.4 and related regulations set forth procedures through which any prospective bidder, labor representative, or awarding body may petition the Director to review the applicable prevailing wage rates for a project, within 20 days after the advertisement for bids. (*See Hoffman v. Pedley School District* (1962) 210 Cal.App.2d 72 [rate challenge by union representative subject to procedure and time limit prescribed by section 1773.4].) Any determination under section 1773.4 only applies to the specific project involved. Besides using the procedures in section 1773.4, an awarding body can seek a special determination from the Director under California Code of Regulations, title 8, section 16202. This request must be made at least 45 days in advance of the bid advertisement date of a specific project, and the resulting determination only applies to the project.

CEI did not learn of the claim that only the Sheet Metal Worker rate applied in Sacramento County until the 20 days had expired; it had no ability, therefore, to use the provisions

open statute of limitations.

of section 1773.4 to obtain clarification from Director. In the absence of a timely petition under-section 1773.4, the contractors and subcontractors are bound to pay the prevailing rate of pay, as determined and published by the Director, as of the bid advertisement date.

The Curtin letter is not clearly either a determination under section 1773.4 or the result of a request for a special determination. Regardless of the statutory or regulatory basis for the letter, it could only apply to the specific project that was the basis of the request and in fact says its application is limited to the Franklin High/Toby Johnson Middle School projects. It therefore did not in fact apply to Monterey Trails Project. This leaves the outcome controlled by the determinations published prior to the bid advertisement dates.¹⁰

The argument for holding the contractor to the higher of two published rates is the mirror image of the argument of the contractor rejected in *Ericsson*. That case rejected the argument that a contractor has the ability to pay a lower rate than those published as prevailing when a different rate had been given as a special determination for another project, but not yet published as generally prevailing by the time of bid advertisement. The court held that such contractors are instead on notice of the required published rate. (*Ericsson, supra*, 221 Cal.App.3d at 125). This is the reverse. Here there were **two** published rates both of which on their face could be used, and one of which was paid. The Division's argument for the higher rate rests on a special determination, which was not published as generally prevailing at the time of bid, for *another* project, as requiring the higher of the two published rates to be paid. The existence of a official letter to private parties specifying a choice of a rate between the two published, but which was neither published by DIR nor delivered as a special determination for this project, does not control this case under the *Ericcson* principles.

To sum up the evidence in this case, the published prevailing wage determinations for both Roofer and Sheet Metal Worker contained scopes of work that provided for the installation of metal roofs; the CSLB allowed the installation of metal roofs by either licensed roofer or licensed sheet metal contractors; the School District, when asked to specify the prevailing

¹⁰ Reliance on the undersigned's post-bid September 2004 letter sent to the Division, which was not published, would be a retroactive enforcement of a project specific opinion with similar defects to the Curtin letter. Regardless of any informal, internal-to-the-Department opinion, even by the undersigned, the decision on CEI's ultimate liability must be based on the information publicly available at the time of the bid advertisement. See, Lab. Code, § 1773.6; Cal. Code Regs., tit. 8, § 16204((a)(4).

wage rate under section 1773.2 refused to choose one, but directed the contractor to a source listing both; and none of the parties listed in section 1773.4 requested clarification from DIR for this project.¹¹ In this circumstance, the contractor cannot be penalized for paying a published rate as "this sort of delicate line-drawing goes far beyond the task of determining 'general prevailing wages' by 'craft, classification or type of workman.'" *Pipe Trades District Council No. 51 v. Aubry* (1996) 41 Cal.App.4th 1457, 1473.

At the time of bidding, a diligent contractor could not know that DIR had issued the Curtin letter, which did not directly apply to the Monterey Trails Project. The evidence in this case also shows that the awarding body, the School District, had notice of the determination described in the Curtin letter, as seen by the notation showing that a copy was sent to the district. McClain's own testimony about his discussion with the school district's Director of Construction demonstrates the School District's knowledge. When McClain asked the school district about the Curtin letter, he was *not* told what rate applied as the School District apparently avoided its responsibility to specify which rate applied. Lab. Code, section 1773.

In the end, the issue in this case concerns whether the Roofer scope of work in the applicable published determination was appropriate on its face and whether the Curtin letter, a private letter applicable to a different project, changed the result. The scope of work in Prevailing Wage Determination SAC 2001-2 for Roofer was appropriate on its face. The Curtin letter does not change this result as it does not apply to the Monterey Trails Project.

All Other Issues Are Moot

In light of the determination above, all other issues are moot and need not be decided.

FINDINGS

1. Affected subcontractor CEI West Roofing Company, Inc. and affected contractor Thompson Pacific Construction, Inc. timely requested review of a civil wage and penalty assessment issued by the Division of Labor Standards Enforcement with respect to the Mon-

¹¹ While the Labor Code provides that DIR will publish prevailing per diem wages for the necessary "craft, classification and type of worker," there is no such obligation to publish rates for task in which a type of worker might engage. Nowhere is there recognized a craft or classification of "metal roofer." As the CSLB licensing regulations show, nor is there just one type of contractor devoted to installation of metal roofing.

terey Trails High School/Edward Harris, Jr. Middle School Project in Elk Grove, California.

2. The Assessment was issued timely.

3. CEI West could reasonably rely on the published determination that the applicable prevailing rate of wage for the installation of metal roofing on this project was the prevailing wage rate for either a Roofer or for a Sheet Metal Worker (HVAC), as set forth in Prevailing Wage Determination SAC-2001-2.

3. CEI West did not fail to pay its workers at least the prevailing wage, as it paid its employees the Roofer rate.

4. All other issues are moot.

ORDER

The Civil Wage and Penalty Assessment is dismissed. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: 28 March 07



John M. Rea
Acting Director of Industrial Relations