

DEPARTMENT OF INDUSTRIAL RELATIONS

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February 5, 2016

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Western Municipal Water District
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RE: Public Works Contractor Registration Requirement for Maintenance Work
Western Municipal Water District, Riverside
Public Works Case No. 2015-016

Dear Interested Parties:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws (CPWL) and is made pursuant to Labor Code section 1773.5¹ and California Code of Regulations, title 8, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that Hach Company's (Hach) inspection and maintenance of its water quality testing and analytical equipment at the Western Municipal Water District (WMWD) waste water treatment facility in Riverside (work at issue) is a public work subject to the requirement to pay prevailing wages.

Facts

WMWD is a public utility district. Hach manufactures water quality testing and analytical equipment (Hach equipment) purchased and used by WMWD. Hach equipment is used to assess whether water quality goals have been achieved by collecting water samples and testing them. It is hand-held, desktop or mounted "to panels on other equipment and/or inside cabinets located at WMWD's facility using bolts." (January 5, 2016 Hach letter, p. 1.) Photographs provided by Hach confirm that the metal cabinets (on which some Hach equipment are mounted by bolts) are in turn mounted to the floors of the WMWD facility by screws and bolts. (*Id.* at Exh. B3, B4.) Hach asserts it is able to remove its equipment without damaging WMWD's equipment and cabinets. (*Id.*, p. 1.)

¹ All further statutory references are to the California Labor Code unless otherwise indicated.

Under the maintenance service agreements with WMWD, Hach service technicians provide maintenance and repair, on an ongoing basis, on the Hach equipment at the WMWD waste water treatment facility in Riverside (WMWD facility). The work at issue includes inspection of the Hach equipment, verifying performance and calibration accuracy, limited cleaning, calibration of sensors, replacing parts and fittings and other necessary repairs, and providing training on equipment operation and care.

Discussion

Section 1771 of the California Labor Code sets forth the requirement to pay “no less than the prevailing rate of per diem wages for work of a similar character in the locality where the work is performed” for all public works valued over \$1,000. Section 1771 also states that the section “is applicable to contracts let for maintenance work.”

The term “public works” is defined in various provisions of the California Labor Code and its implementing regulations. Section 1720(a)(2) defines “public works” to include:

Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. “Public work” does not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

The term “maintenance” is defined in DIR’s regulations implementing CPWL, codified at Title 8 of the California Code of Regulations, to include:

(2) Carpentry, electrical, plumbing, glazing, [touchup painting,] and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.
(Cal. Code Regs., tit. 8, § 16000.)

“Maintenance work” is a type of “public work,” without qualification, and subject to prevailing wages under section 1771.

Finally, section 1771.5 provides, in relevant part:

(a) Notwithstanding Section 1771, an awarding body may choose not to require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of ... fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body has elected to initiate and has been approved by the Director of Industrial Relations to enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

A. The Work at Issue is Covered by Section 1720(a)(2) Because it is Work Done for a Utility District.

WMWD is a public utility district. Thus, under section 1720(a)(2), the maintenance and repair of the Hach equipment at the WMWD facility in Riverside is a public work because it is work done for a utility district. Therefore, on this basis alone, Hach is required to comply with CPWL and register as a public works contractor under section 1725.5 for the work at issue.²

B. The Work at Issue is Covered by Section 1771 Because it is Maintenance Work.

As defined above, maintenance includes repairs, cleaning and other operations on equipment permanently attached to the buildings or realty as fixtures. The threshold issue, therefore, is whether Hach's equipment is permanently attached to the buildings or realty as fixtures.

The fixture issue has arisen in "installation" cases under section 1720(a)(1). "Installation" as consistently been defined in prior public works coverage determinations as work involving the bolting, securing or mounting of fixtures to realty. (*See, e.g.*, PW 2008-034, Installation of Smart Classroom Technology, Fresno Unified School District (July 27, 2009) and cases referenced therein.)³ Here, at least some of the Hach equipment has been either: (a) mounted to metal cabinets by bolts, which in turn are mounted to the WMWD facility floors by bolts and screws or (b) mounted by bolts to other equipment that is in turn mounted onto WMWD facility floors and/or walls by bolts and screws.

In arguing against coverage, Hach contends that its equipment does not qualify as a "fixture" under Civil Code section 660 because it can be removed without damaging WMWD's other equipment and cabinets. Hach relies on two cases that conclude a refrigerator and a sink unit (consisting of stove, a sink, and refrigerator) are not fixtures under Civil Code section 660. (*See Daniger v. Hunger*, 114 Cal.App.2d 796, 798 (1952) [sink unit not a fixture where it was not "built in" or made to be a part of the building] (*Daniger*) and *Andrews v. First Realty Corp.*, 6 Cal.App.2d 407, 408 (1935) [refrigerator equipment not a fixture] (*Andrews*).) These cases are inapposite. As the *Daniger* court explained:

² Section 1720(a)(2) is dispositive on the issue of coverage. Nonetheless, since Hach's arguments against coverage relies on two other sections of the Labor Code, the remainder of this determination addresses Hach's claims that (1) the work at issue is not maintenance work and therefore not covered under section 1771 and (2) that the work at issue is exempt from CPWL by the terms of section 1771.5.

³ Consistent with the analysis that affixing items to the realty using screws and other similar methods of attachment constitutes installation, Civil Code section 660 defines "fixture" as that which is "permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws." (Civ. Code, § 660.) This approach is also consistent with cases analyzing other types of equipment, albeit in the context of property tax assessment. For example, cable television equipment located in the subscriber's home was found to be fixtures of the subscriber's realty. (*Tele-Vue Systems, Inc. v. Contra Costa County* (1972) 25 Cal.App.3d 340 [noting that wiring and related equipment were affixed to subscriber's home by means of clamps, screws, bolts, and other means of attachment].)

It seems quite clear that electrical appliances such as refrigerators and stoves are personal property and do not become a part of the realty where, as here, they are movable and can be disconnected by merely pulling a plug or unscrewing a gas connection. In the instant case, the units sold were of three items: a stove, a sink, and a refrigerator, so constructed to form one unit. . . While ordinarily a sink is “built in” and made part of the building, in the instant case it is part of a unit which is so constructed as to be easily disconnected and removed without damage to the realty or the article itself.⁴ . . . (*Daniger, supra*, 114 Cal.App.2d at 798)

Unlike the appliances in *Daniger* and *Andrews*,⁵ the Hach equipment is mounted to WMWD facility’s metal cabinets or equipment by bolts. Even if this were not so, the Hach equipment may still be deemed a fixture under a “constructive annexation” analysis. In addition to the manner of attachment, the constructive annexation analysis includes consideration of two additional factors, which are the item’s adaptability to the use and the purpose of the realty and the intention of the party in making the annexation permanent. (*See, e.g., San Diego T. & S. Bank v. San Diego County* (1940) 16 Cal.2d 142, 149; *Simms v. County of Los Angeles* (1950) 35 Cal.2d 303, 309.)

Applying these legal principles, the Hach equipment has been adapted to a water treatment system and process designed to meet the unique water quality needs of WMWD and its consumers. The use and purpose of WMWD’s facility is to treat and provide water that meets certain quality standards. As such, there can be no question that it is WMWD’s intention to annex Hach’s water quality testing equipment to its facility permanently. Such intent is supported by the fact that WMWD owns the Hach equipment and the WMWD facility has been wired to support it. Thus, the permanency factor is met and based on the specific facts of this case, it is concluded that the Hach equipment is permanently attached to WMWD facility as a fixture.

Turning to the other elements in the maintenance definition, the repair and maintenance of water quality testing and analytical equipment is craft work designed to preserve WMWD facility, a publicly owned and operated facility,⁶ in a safe, efficient and continuously usable condition for which it is intended. WMWD would not be able to function without being able to ensure that the

⁴ The sink unit in *Daniger* was constructed so that the stove was not connected to the sink and was not connected to the building in any manner except by a gas pipe connection. The sink was connected to the building by usual plumbing connections and the refrigerator by an electric plug. (*Daniger, supra*, 114 Cal.App.2d at 797.)

⁵ Hach states the refrigeration unit at issue in *Andrews* was “attached to property with four removable bolts.” (*See* January 5, 2016 letter, p. 1.) The *Andrews* court stated that the “electrical apparatus could be removed without damage and the coil was attached to the refrigeration box by four removable bolts.” (*Andrews, supra*, 6 Cal.App.2d 408.) It did not state, however, that the refrigeration box was mounted to the apartment wall or floor by bolts.

⁶ WMWD is an independent special district formed in 1954 to provide water to western Riverside County and to provide wastewater treatment. Special districts are a type of local government that delivers specific public services within defined boundaries.

water quality meets certain standards before making it available for use and consumption. As noted above, the reason that WMWD exists is to treat and provide water that meets certain quality standards. The ongoing maintenance and repair work encompasses repairs, cleaning and other operations on equipment or machinery that tests the water quality and assesses whether certain quality standards have been met. Thus, the work at issue meets the definition of maintenance.

C. Section 1771.5 Does Not Exclude the Work at Issue from Coverage.

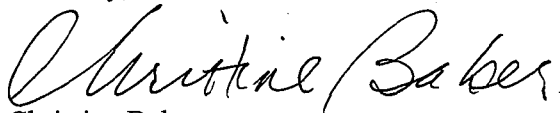
Hach argues that since each of the WMWD purchase orders are in the range of \$5,000 or less, the work is excluded from coverage by section 1771.5. However, section 1771.5 states that “an awarding body may choose not to require the payment of the general prevailing rate of per diem wages. . .” if the awarding body “has elected to initiate and has been approved by the Director” to enforce a labor compliance program. Here, rather than choosing to exclude Hach from the requirement to pay prevailing wage, WMWD has explicitly “concluded that services provided by Hach were for public works and were subject to prevailing wage requirements” and required Hach to be “registered with the DIR for services provided to WMWD after the closing of purchase orders issued to Hach in the previous fiscal year.”⁷ (October 25, 2015 WMWD letter, at p. 2.)

Conclusion

For the foregoing reasons, Hach’s inspection and maintenance of its water quality testing and analytical equipment at the WMWD facility in Riverside is a public work subject to the requirement to pay prevailing wages.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Christine Baker
Director

⁷ Although unnecessary to this analysis, it is noted that there is no evidence that WMWD has a labor compliance program that has been approved by DIR.