

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

DECISION ON ADMINISTRATIVE APPEAL
RE: PUBLIC WORKS CASE NO. 2000-091
LANDFILL WATER TRUCK OPERATORS
COUNTY SANITATION DISTRICTS OF LOS ANGELES

The undersigned, having reviewed the December 12, 2001, administrative appeal filed by Water Wagons Express ("Appellant"), said appeal is hereby denied for the reasons set forth in the initial coverage determination dated November 20, 2001, which is incorporated by reference herein, and for the additional reasons set forth below.

In its appeal, Appellant raises three matters not addressed in the initial coverage determination.¹ First, Appellant asks whether it is only required to pay the basic prevailing rate without benefits to its drivers. Labor Code section 1771 requires that no less than the prevailing rate be paid to workers on public works projects. By its very

¹On January 22, 2002, Appellant advised this Department that it had just learned the work performed at one of the four landfills was done pursuant to a conditional use permit ("CUP") issued by the County. Appellant argues that since its work was performed under a CUP, the work could not be considered maintenance. During the pendency of this determination, County had already submitted relevant parts of this same CUP and argued that the requirements thereunder did not amount to maintenance. Since this argument was already considered and disposed of in the original determination, it need not be addressed further herein.

nature, the prevailing wage rates include payments for certain fringe benefits (see, tit. 8, Cal.Code.Reg. 16100). Employers have the option, however, of paying their workers the cash equivalent of fringe benefits required under the prevailing wage rates directly to the employee in lieu of contributing to the trust fund for the required benefit payments. Cash paid directly to the employee in lieu of benefits must equal the total prevailing rate.

Next, Appellant argues the awarding body expressly and impliedly waived Appellant's requirement to pay the prevailing wage rate. This argument is without merit in this appeal for two reasons. First, the mandate to pay prevailing wages is set forth in a state statute, i.e., Labor Code section 1771 and thus a local public entity cannot waive this statutorily created right. Title 8, California Code of Regulations, section 16100 requires the awarding body to inform the contractor of its duty to pay prevailing wages. Second, Appellant concedes in its letter of appeal that the awarding body told each of the bidding parties to determine on their own whether prevailing wages needed to be paid on the project.

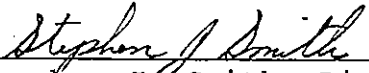
Finally, Appellant argues that since its contract is almost complete, it would be unreasonable to require compliance with the Director's determination at this point in time. This argument raises an issue of enforcement, not

coverage. Questions of coverage and compliance are distinct. Title 8, California Code of Regulations, 16001 vests the Director with quasi-legislative authority to determine questions of coverage under the public works laws. The Director's coverage determinations are legally constructed policy decisions. What is being decided in this appeal is the issue of coverage, not the issue of enforcement.

Separate from the Director's authority to issue coverage determinations is the authority delegated to the Division of Labor Standards and Enforcement ("DLSE") to enforce compliance with California prevailing wage law. Questions raised in the appeal regarding compliance should therefore be addressed to DLSE.

This decision constitutes final administrative action in this matter.

Dated: 3/8/02



Stephen J. Smith, Director