

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050



July 19, 2002

Stephen C. Tedesco, Esq.
Littler Mendelson
650 California Street, 20th Floor
San Francisco, CA 94108

RECEIVED
Department of Industrial Relations

JUL 30 2002

Div. of Labor Statistics & Research
Chief's Office

Re: Public Works Case No. 2002-002
Survey Work
Construction of Veritas Elementary School
Manteca Unified School District

Dear Mr. Tedesco:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced work under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations ("CCR"), 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 the survey work for the Manteca Unified School District ("District") in preparation for the construction of a school is a public work subject to the payment of prevailing wages.

In October 2000, the District entered into a Real Property Purchase and Development Agreement ("Agreement") with Atherton Woodward Partners, LLC ("Developer") under which the District agreed to purchase a portion of a parcel of property owned by Developer. The Agreement provides that, as a precondition of the sale, the District would obtain approval from the California Department of Education ("CDE") for the acquisition of the property on which to construct Veritas Elementary School, a public school. The District would also obtain an environmental site assessment of the property to obtain Department of Toxic Substances Control ("DTSC") approval. As of January 1, 2000, both the CDE and DTSC approvals are necessary to obtain state funding for school construction. Both CDE and DTSC require the land be surveyed as part of the environmental site assessment. If there are no environmental impediments on the surveyed property, CDE can approve the project more quickly. The Agreement further provides that, should the District discover an environmental condition on the property that would prevent its use as a school, Developer agrees to remove the condition or terminate the agreement at Developer's option.

Letter to Stephen C. Tedesco
Re: Public Works Case No. 2002-002
July 19, 2002
Page 2

The District contracted¹ with MCR Engineering ("MCR") to conduct two surveys of the proposed school site. One was a boundary survey, which outlined the particular borders of the property and produced a boundary map. The boundary survey was for the District to determine whether to purchase the property and to determine whether the parcel is what it has been represented to be by Developer. The other survey performed by MCR was a topographical survey, which determines what the property physically looks like. The topographical survey results in a report or topographical map that reveals any particular impediments on the land. Licensed surveyors perform both surveys. After the surveys, the District and Atherton changed the description of the property the District would buy to move one border 170 feet to the west. The boundary survey map, dated December 7, 2001, became the basis for the description of the property the District would buy. The District took title to the property in February 2002, using state money.

What is now Labor Code² section 1720(a)(1) (as amended by statutes of 2001, chapter 938, section 2) defines "Public Work" as:

Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds For purposes of this paragraph, "construction" includes work performed during the design and pre-construction phases of construction including, but not limited to, inspection and land surveying work.

Title 8, CCR, section 16001(c) provides "Field survey work traditionally covered by collective bargaining agreements is subject to prevailing wage rates when it is integral to the specific public works project in the design, pre-construction or construction phase." In this case, the survey work performed by MCR is traditionally covered by a master collective bargaining agreement between Operating Engineers Local Union No. 3 and Bay

¹ MCR Engineering asserts that the purchase orders used to contract for the surveys are not "construction contracts" and presumably therefore not a public work under what is now Labor Code section 1720(a)(1). However, that section requires, among other elements, only a "contract" for the existence of a public work, and purchase orders are contracts. As is discussed, infra, it is the work that must fall within an enumerated definition.

² Unless otherwise indicated, all subsequent statutory references are to the Labor Code.

Letter to Stephen C. Tedesco
Re: Public Works Case No. 2002-002
July 19, 2002
Page 3

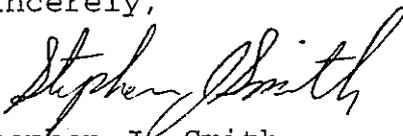
Counties Civil Engineers and Land Surveyors Association, Inc.
See also, *Winzler v. Kelly* (1981) 121 Cal.App.3d 120.

While acknowledging that section 1720(a)(1) defines construction to include land surveying work performed during the design and pre-construction phases of construction, MCR argues that the boundary and topographical surveying work it performed for District is not construction because the end product is simply the creation of a property map, at which point MCR's work is done. MCR further reasons that its surveying work was not performed during the design and pre-construction phases of construction because no specific construction plans were made at the time the map was completed. Finally, MCR argues that the surveying work was not integral to a specific public works project because it was uncertain whether the District might build the school on the property.

I am not persuaded by MCR's arguments. The District contracted with MCR to perform the surveying work as part of District's carrying out of its responsibilities under the Agreement to obtain approval by CDE for the construction of the Veritas Elementary School. As a result of the surveying, the parcel's description was changed and the District purchased the property upon which the school will be built. As such, MCR's surveying took place during the pre-construction stage of the school construction and constitutes "construction" under section 1720(a)(1), for which prevailing wages must be paid.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Stephen J. Smith
Director