

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



To All Interested Parties:

Re: Public Works Case No. 2002-011

Heavy Equipment Operators - County of San Bernardino Transfer Stations - Burrtec Waste Industries

The Decision on Administrative Appeal, dated October 16, 2002, in PW 2002-011, *Heavy Equipment Operators - County of San Bernardino Transfer Stations - Burrtec Waste Industries*, was affirmed by the San Francisco Superior Court on July 28, 2003. See *Southern California Labor/Management Operating Engineers Contract Compliance Committee v. Chuck Cake, in his official capacity as Acting Director, Department of Industrial Relations*, Case No. CPF-02-502056.

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR - LEGAL UNIT
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September 12, 2002

Donald C. Carroll, Esq.
Law Offices of Carroll & Scully, Inc.
300 Montgomery Street, Ste. 735
San Francisco, CA 94104-1909

Re: Public Works Case No. 2002-011
Heavy Equipment Operators
County of San Bernardino Transfer Station

Dear Mr. Carroll,

Please be advised that the attached determination in the above-referenced public works case supersedes yesterday's mailing. Please replace it with the attached version.

I apologize for any inconvenience this may cause you.

Sincerely,

A handwritten signature in cursive script that reads "Terry Christensen".

Terry Christensen
Legal Support Supervisor

Enclosures

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Re: Public Works Case No. 2002-011
Heavy Equipment Operators
County of San Bernardino Transfer Stations

Dear Mr. Carroll:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, 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 heavy equipment work performed at County of San Bernardino ("County") transfer stations by Burrtec Waste Industries ("Contractor") is not a public work subject to the payment of prevailing wages.

In March 2001, County entered into a seven-year Solid Waste Operations Contract under which Contractor will operate and maintain County's Solid Waste Disposal System. The System consists of several County landfills, both active and inactive, and its transfer stations. The transfer stations exist to provide a solid waste disposal option to County residents. While the Contract provides that the operation and maintenance of the landfills and the maintenance of the transfer stations are subject to the payment of prevailing wages, it exempts the operation of the transfer stations from prevailing wage requirements. This coverage request was submitted on behalf of the Southern California Labor/Management Operating Engineers Contract Compliance Committee ("Operating Engineers") regarding the public works status of the work performed by heavy equipment operators at County transfer stations.

According to County's Request for Proposals, the operation of the transfer stations consists of "receiving and compacting waste, loading transfer vehicles with a road legal weight, transferring waste to Designated Disposal Facilities and coordinating with County scale operators." At approximately three of the transfer stations (Heaps Peak, Phelan and Twenty-Nine Palms), waste dumped onto the concrete floor of the transfer stations is pushed, compacted and loaded into containers by heavy equipment

operators. Contract, Exhibit I, pp. 13, 16 and 18, and Exhibit J, pp. 3 and 4.

Operating Engineers contends that the heavy equipment work is a public work because, under Department administrative precedent, the work at the transfer stations is related and integral to County's comprehensive waste management plan, which includes the public work performed at County landfills and transfer stations. County and Contractor counter that the work constitutes operation of the County transfer stations, which, under Department precedent and the opinions of the California Attorney General, is not a public work.

What is now Labor Code section 1720(a)(1)¹ (as amended by statutes of 2001, chapter 938, section 2 (Senate Bill 975)), defines "public works" as "construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds." The work in question is done under a contract between County and Contractor. It is paid for with County funds, which are public. We examine whether the work performed falls within the types of work enumerated in section 1720(a)(1).

In *Precedential Public Works Case No. 2001-002, Mono County Transfer Station/Construction and Demolition Waste Landfill (April 18, 2001)*, this Department found that the operation of a county transfer station was not a public work. Our *Mono County* determination was based on an opinion by the California Attorney General that the operation of a landfill is not a public work where it does not involve construction, alteration, demolition, installation or repair work. 83 Ops.Ca.Atty.Gen. 166 (2000). The Attorney General's Opinion did note that contractor employees who alter the surface of the land in the performance of their duties at a transfer station must be paid prevailing wages.

Here, Operating Engineers does not appear to contend that Contractor's employees at the transfer stations perform a type of work enumerated as a public work in the Labor Code. Indeed such a position would not be meritorious. In this case, the receiving and compacting of waste, loading it into transfer vehicles with a road legal weight and coordinating with County scale operators fits within the definition of operation of the transfer station. In particular, picking up and pushing around waste on a concrete floor does not constitute alteration. Nor does the transporting of the waste to designated disposal facilities in this case

¹ Unless otherwise indicated, all statutory references are to the Labor Code.

constitute public work. While under sections 1720.3² and 1772³ there are circumstances under which the transporting of waste from a transfer station may constitute a public work, for both of those sections to apply there must be an underlying public work. Here, because the work at the transfer station is not a public work, there is no public work from which the refuse may be hauled or in the execution of which the transporting is performed.⁴

Consistent with *Mono County* and the Opinion of the Attorney General, the work performed by Contractor's employees at the County transfer stations here does not fall within the types of work required for a public work.

The parties have argued whether the facts in *Mono County* are substantially different from those in the instant case. It appears that the operation of the transfer stations in both counties is integral to their landfills and comprehensive waste management plans, and does not appear to differ greatly. Any factual variation, however, is irrelevant to the essential question whether the heavy equipment work at County's transfer stations is a public work. Operating Engineers concedes that, looking at the transfer stations in isolation, the heavy equipment work is not a public work. Instead, they assert that the Contract integrates the work at all sites such that "there is no reason to pay prevailing wages at one part of the same integrated operation but not at another." Whether the landfill and transfer station work is integrated or not, the reason that prevailing wages are not required to be paid to the heavy equipment operators at County transfer stations is, as discussed previously, that the work in question does not constitute public work under section 1720(a)(1).

The three cases cited by Operating Engineers in support of the contention that the work in question is public work are not on point. *Stoney Point*, *Imperial Prison II*, *South* and *Caltrans I-5/Redmond* all involve the issue under section 1772, and *O.G.*

² Section 1720.3 includes in the definition of "public works" "the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency ... or any political subdivision of the state."

³ Section 1772 provides: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work."

⁴ Note that the Department does not consider the transporting of the waste to be part of the operation of a transfer facility. Therefore, it is not here excluded from the definition of a public work on that basis.

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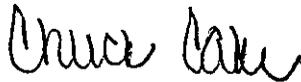
Sansone v. Department of Transportation, 55 Cal.App.434 (1976), whether a provider to a project is a contractor subject to the prevailing wage laws, or a material supplier exempt from them. This analysis is not applicable to a transfer station where the work in question constitutes operation or, as in the case of the transporting of the waste to landfills, is not performed in the execution of a public works project.

Finally, the fact that the Department recognizes a Transfer Station Loader Operator classification (Determination SC-63-12-41-2001-1, August 22, 2001) does not make public work all projects on which these classifications are used. Under collective bargaining agreements, for example, workers work on projects on which they are paid under this classification but where prevailing wages are not required. For prevailing wages to attach, the elements of a public work must still be met.

In conclusion, because the heavy equipment work at County transfer stations is not a public work, prevailing wages need not be paid.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake
Acting Director