

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

DECISION ON ADMINISTRATIVE APPEAL
RE: PUBLIC WORKS CASE NO. 2003-044
LINDEMAN BROTHERS TRUCKING

Introduction

On February 2, 2004, the Acting Director of Industrial Relations issued a public works coverage determination at the request of Lindeman Brothers Trucking ("Lindeman"), a Sacramento trucking firm. The determination found that the hauling of clean fill dirt by Mike Lowrie, Inc. ("Lowrie") from a public works site in Dixon to a storage location for eventual use on a future public works site in Vacaville constituted public work for which prevailing wages must be paid.

On February 10, 2004, Lowrie, the off-hauling company on the Dixon site, filed a timely administrative appeal to the coverage determination claiming that he was a bona fide material supplier in this case and not a subcontractor engaged to perform public work. Lindeman filed a response to the appeal on March 23, 2004. Having fully considered the record and the arguments on appeal, the undersigned hereby grants the appeal for the reasons set forth herein.

Statement of Relevant Facts

Lowrie had an arrangement with the general contractor on the Dixon project whereby Lowrie obtained clean fill dirt from an ongoing public works project "free of charge, with title and ownership transferred to Mike Lowrie Company at the Dixon jobsite" in exchange for Lowrie finding a disposal location for the dirt. Vacaville needed approximately 200,000 cubic yards of dirt for a future Interstate 80 overcrossing at Leisure Town Road in Vacaville. Vacaville and Lowrie entered into a contract, which describes the work as "loading, hauling, and stockpiling clean fill material from a material source in Dixon, California to a stockpile location that is the future grounds for the Solano Community College site." Lowrie engaged Mike Lowrie Transport ("Transport") to transport the material to the Solano Community College storage site.

Discussion

Lowrie asserts on appeal that his company is an established material supplier that owned the material it received from the general contractor. Lowrie further asserts that the site where the material was obtained in Dixon was not established as a "borrow pit" exclusively for the Vacaville project, nor was the borrow pit located at the site of the future Solano Community College project. Lindeman responds that the site where the dirt was obtained is not a commercial source but a public works site itself.

The central question presented by this appeal is whether, under the facts of this case, Lowrie's off-hauling of dirt from Dixon to the Solano Community College site is exempt from the obligation to pay prevailing wages.¹ This Department has long determined that only certain types of off-haul work constitute covered work for purposes of the California prevailing wage law. See PW Case No. 2003-049, *Williams Street Widening Project, Off-Hauling of Road Grindings/City of San Leandro*. This determination holds that off-hauling generally has not been considered public work except, for example, (1) when the off-hauling of material is to another part of a public works site or to another public works site; (2) where there is a specification in the contract that the off-hauling be accomplished in a specific manner or to a specific location; (3) when the off-hauling is to return tools, equipment or materials to the contractor's place of business; or (4) as required under the provisions of Section 1720.3.²

Based on the application of the above criteria, Lowrie is not obligated to pay prevailing wages for the off-hauling

¹ The Department did not address in the initial determination nor does it here the material supplier defense asserted by Lowrie. Such a defense, which generally applies to on-hauling situations, is not relevant. The dispositive issue addressed here is whether the off-hauling by Transport is, under Section 1772, performed in the execution of any public work contract such that the workers hauling the clean fill dirt are deemed to be employed upon public work.

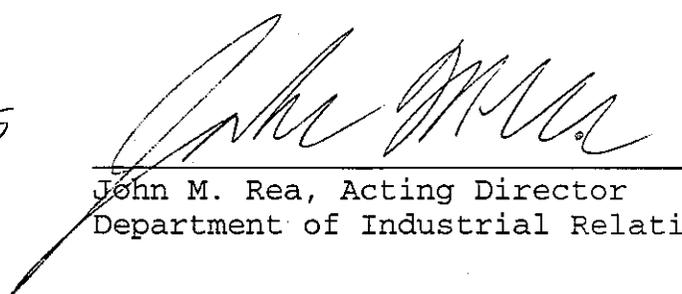
² Section 1720.3 states: "For the limited purposes of Article 2 (commencing with Section 1770), "public works" also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state."

from the Dixon project to the Solano Community College storage site. Lowrie was engaged to haul away dirt and dispose of it in any manner he chose. His delivery of the dirt to the storage site does not cause the off-hauling to be public work because the dirt is not slated to be used in the Solano Community College construction, which only coincidentally will be a future public work site. The dirt is slated for use on the future Vacaville public works site. Whether the hauling of the dirt from the storage site to that future Vacaville public works site is public work is not addressed here, as the record does not contain facts sufficient to reach a conclusion.

Conclusion

For the foregoing reasons, the February 2, 2004, determination is reversed. Prevailing wages are not required to be paid to the drivers transporting dirt from the Dixon project to the Solano Community College storage facility.

Dated: 3 January 2005



John M. Rea, Acting Director
Department of Industrial Relations