

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS

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December 16, 2005

Dennis B. Cook, Esq.  
555 Capitol Mall, Suite 425  
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Re: Public Works Case No. 2004-013  
Dry Creek Joint Elementary School District  
Coyote Ridge Elementary School - On-site Heavy Equipment  
Upkeep

Dear Mr. Cook:

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 on-site heavy equipment upkeep described below, which is necessitated by the paving, grading and utility installation at the Coyote Ridge Elementary School construction site, is public work subject to the payment of prevailing wages.

Dry Creek Joint Elementary School District ("District") entered into a contract to construct new buildings at the Coyote Ridge Elementary School ("Site"). On September 16, 2003, District entered into a separate construction contract with a different contractor, Western Engineering Contractors, Inc. ("Contractor"), to perform grading, paving and underground utility installation at the Site.

In performing the grading, paving and underground utility installation at the Site, Contractor uses bulldozers, excavators, scrapers and loaders ("heavy equipment"). Use of the heavy equipment in the performance of the paving, grading and the underground utility installation at the Site results in the consumption of supplies and the wearing down and wearing out of parts. Consequently, Contractor's shop employees are required to drive onto the Site and perform, with hand tools, the following in order to keep the heavy equipment running: (1) oil, gas, lubricate movable parts and wash; (2) change out of wearable parts including blades and ripper teeth every 500 hours; and (3) replacement of worn out or broken parts including hoses and belts. This heavy equipment upkeep, which is performed on-site with hand tools, is the subject of the determination and the conclusion reached herein is limited to these facts.

Labor Code section 1771<sup>1</sup> generally requires the payment of prevailing wages to all workers employed on public works. Section 1720(a)(1) defines a public work in pertinent part as: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds ... ." Under section 1771, public work includes work performed under "contracts let for maintenance work." Section 1772 states that "[w]orkers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." Finally, under section 1774 such contractors or subcontractors "shall pay not less than the specified prevailing rates of wages to all work[ers] employed in the execution of the contract."

It is undisputed that the paving, grading and underground utility installation performed by Contractor at the Site under the September 16, 2003 contract is a public work under section 1720(a)(1) because it is construction, alteration and installation work. The issue presented here is whether under the facts of this case the on-site heavy equipment upkeep is performed in the execution of this public work of construction, alteration and installation. Contractor argues that the on-site heavy equipment upkeep is not covered because it is not construction, is not performed by construction workers and is not part of the construction process. As explained below, there is no merit to Contractor's arguments.

It is long-settled law under the Davis-Bacon Act that on-site heavy equipment upkeep that is sufficiently part of the public work of construction and alteration, and necessitated by a public works construction project is considered public work. Two United States Department of Labor Wage and Appeals Board cases decided under the Davis-Bacon Act held that repair of heavy equipment at a public works site involves the performance of public work because the mechanics are performing services "directly related to the prosecution of the work to be performed ... and necessary for its completion ... ." (See *In the Matter of Griffith Co.* (1965) 17 BNA WH Cases 49, 52 (Wage-Hour Appeals Board), 1965 WL 8116 (DOL W.A.B.); *In the Matter of Vecellio & Grogan, Inc.* (1984) Wage-Hour Appeals Bd-847 (not reported), 1984 WL 161749 (DOL W.A.B.); cf. *Heller v. McClure & Sons, Inc.* (1998) 963 P.2d 923, 927.) California courts look to federal law under the Davis-Bacon Act as guidance in interpreting California Prevailing Wage Law because the two schemes share similar purposes. (*Southern California Labor Management Operating Engineers Contract Compliance Committee v. Aubry* (1997) 54 Cal.App.4th 873, 882-883.) Accordingly, it is appropriate to take into account the long-settled law under the

<sup>1</sup> Unless otherwise indicated, all statutory section references are to the Labor Code.

Davis-Bacon Act in deciding whether the work is directly related to the prosecution of the public work and necessary for its completion. If so, the work is deemed performed in execution of the public work - as defined in section 1720 *et seq.* - under sections 1771, 1772 and 1774.

Here, the on-site heavy equipment upkeep is performed by the Contractor's own shop employees as necessary to carry out and complete Contractor's obligations under the construction contract. The oiling, gas filling, lubricating of movable parts and washing are necessitated by the use of the heavy equipment in this construction and alteration. It is the wearing down of parts from the grading, paving and trench-digging actions of the heavy equipment that requires the change out of blades and ripper teeth every 500 hours and the replacement of worn out or broken hoses and belts.

Accordingly, this on-site heavy equipment upkeep is as much a part of the construction, alteration and installation moving forward as the paving, grading and underground utility installation. It is work that is directly related to the prosecution of the public work of construction, alteration and installation and necessary for its completion. Therefore, the on-site heavy equipment upkeep is performed in the execution of the public work. Thus, Contractor's employees who perform such work are entitled to prevailing wages. Contrary to Contractor's argument, it is immaterial that the shop workers who perform the on-site heavy equipment upkeep are not also engaged in the paving, grading or underground utility installation work.

It should be noted that Contractor describes portions of the heavy equipment upkeep involved in this case generally as "maintenance." Section 1771, which requires the payment of prevailing wages for maintenance work, is not applicable; however. California Code of Regulations, title 8, section 16000, which sets forth the definition of maintenance, limits coverage of maintenance to work performed on a publicly owned or operated facility including realty or on a permanently attached fixture. Heavy equipment is not a publicly owned or operated facility or a permanently attached fixture. Therefore, though work performed on heavy equipment is sometimes referred to as "maintenance," it is not "maintenance" for purposes of section 1771.

Contractor relies on PW 90-059, *Ham Bros./Routine Maintenance* (December 31, 1990) in support of its position that "routine scheduled maintenance" on heavy equipment is not covered work. This determination is not precedential and therefore cannot be relied on for any purpose. (See Gov. Code, § 11425.60.) Moreover, the only example of *scheduled* work provided by Contractor is the

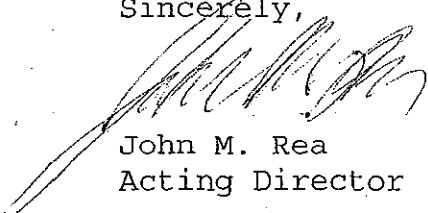
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change out of blades and ripper teeth. The fact that this work is scheduled every 500 hours does not defeat coverage because, as explained above, the on-site work of changing out worn down blades and ripper teeth is as closely connected to the necessities of the construction project as the on-site work of replacing a broken belt or filling an empty gas tank. In other situations, the heavy equipment upkeep might not be directly related to the prosecution of the public work and necessary for its completion to support coverage under the California Prevailing Wage Law, e.g., upkeep performed on a set calendar schedule irrespective of use, replacement of parts pursuant to a manufacturer's recall or an optional upgrade.

Based on the foregoing, I find that the above-described on-site heavy equipment upkeep requires the payment of prevailing wages.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea  
Acting Director