

DEPARTMENT OF INDUSTRIAL RELATIONS
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Re: Public Works Case No. 2008-022
On-Site Heavy Equipment Upkeep and Repair for the Interstate 80 Soda Springs
Improvement Project
State of California Department of Transportation

Dear Messrs. Carrion and Kazanjian:

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 California Code of Regulations, title 8, section 16001(a). Based on my review of the facts of this case and analysis of the applicable law, it is my determination that the on-site heavy equipment upkeep and repair work done by Holt of California ("Holt") for Teichert Construction ("Teichert") on the Interstate 80 Soda Springs Improvement Project ("Project") is subject to prevailing wage requirements.

Facts

The Project is sited in Soda Springs and encompasses a portion of Interstate 80 requiring pavement repair and roadway facility upgrades. Planned improvements include bridge replacements at Castle Peak, widening of the outer westbound lane at the Boreal Ski Area exit, shoulder widening, road surface replacement, culvert replacement, drainage improvements and establishment of a wetland and riparian area.

In March 2007, the State of California Department of Transportation ("CalTrans") entered into a \$64,471,600 contract with Teichert, a general contractor, for the performance of work entailed by the Project. Work began in May 2007, and is to be completed within three years.

The Parts and Service division of Teichert engaged Holt, a company that sells and services heavy equipment, to service the heavy equipment used by Teichert in the performance of the work required under Teichert's contract with CalTrans. All of the work is performed on-site. None of the work is performed under warranty. Holt bills Teichert on an hourly basis with invoices.

Work orders, invoices and the personal work calendar of one Holt employee provide a representative illustration of the heavy equipment upkeep and repair work done by Holt on the Project.

For example, on May 6, 2008, in the Boreal area of the Project site, Holt removed and installed an overflow bottle, repaired loose bolts, removed and installed a rear broom, removed and installed bucket teeth, repaired a pin coming out of a bell crank, tightened a fitting to a line, replaced a broken bolt and installed a new tip on a hammer, and replaced a hose on a quick coupler. On an invoice dated May 22, 2008, Holt billed Teichert for this day's work at a regular time rate of \$105 per hour and an overtime rate of \$132 per hour, for a total of \$6,372.

Other work done by Holt on the Project in 2008 includes air conditioning repair on May 17, flashing and welding mount installation on May 21, and welding and motor maintenance on July 21. On July 6, one of Holt's employees stood by on-site while Teichert excavated in case the heavy equipment that was being used to perform the excavation work broke down and needed repair.

Discussion

Labor Code section 1771¹ generally requires the payment of prevailing wages to all workers employed on public works. Section 1720(a)(1) in relevant part defines "public works" to mean: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds" 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." Section 1774 states that such contractors or subcontractors "shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract." Section 1723 defines "worker" as "laborer, worker, or mechanic."

It is without dispute that the Project is a public work under section 1720(a)(1) because it entails construction done under contract and paid for out of public funds. The question presented is whether the heavy equipment upkeep and repair work done by Holt on-site is performed "in the execution of" the contract for public work within the meaning of section 1772.

California courts have looked to federal law under the federal Davis-Bacon Act as guidance in interpreting California's prevailing wage laws because the two schemes share similar purposes. (*Southern California Labor Management Operating Engineers Contract Compliance Committee v. Aubry* (1997) 52 Cal.App.4th 873, 882-883.) It is long-settled law under the Davis-Bacon Act that on-site heavy equipment repair work is subject to prevailing wage requirements. For example, a United States Department of Labor Wage and Appeals Board case held that heavy equipment repair work performed on-site for the on-site contractor by a laborer or mechanic employed by an equipment dealer was "directly related to the prosecution of the work to be performed ... and necessary for its completion ..." and, therefore, the laborer or mechanic was entitled to the protections of the Davis Bacon Act. (*In the Matter of Griffith Co.* (1965) 17 BNA WH 49, 52 (Wage-Hour Appeals Board) 1965 WL 8116 (DOL W.A.B.); see also *In the Matter of Vecellio &*

¹All statutory references are to the California Labor Code unless otherwise indicated.

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Grogan, Inc. (1984), Wage-Hour Appeals Board-847 (not reported), 1984 WL 161749 (DOL W.A.B.).)

As in *Griffith*, the heavy equipment upkeep and repair work performed by Holt for Teichert on the Project is necessary for the carrying out and completion of the public works contract for the reason that broken equipment can slow or halt construction. That Teichert would pay Holt to have a mechanic stationed on-site during excavation demonstrates the integral role that the heavy equipment upkeep and repair work plays in the performance and completion of the Project. Accordingly, the on-site heavy equipment upkeep and repair work performed by Holt in the execution of the contract between CalTrans and Teichert is subject to prevailing wage requirements under section 1772.²

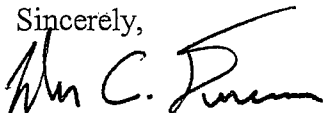
Holt takes the position that the heavy equipment work must be an enumerated task in a specific provision of the public works contract, quoting the definition of "execution" in *Williams v. SnSands* (2007) 156 Cal.App.4th 742. The court stated, "the use of 'execution' in the phrase 'in the execution of any contract for public work,' plainly means the carrying out and completion of all provisions of the contract." (*Id.* at p. 750.) Contrary to Holt's assertion, *Williams* does not require that there be an exhaustive description of the manner of performance in each contract provision. Under *Williams*, Holt's workers assigned to the Project are carrying out and completing the provisions of the contract between Teichert and CalTrans by keeping the heavy equipment in good working order.

Holt also argues that heavy equipment work is analogous to the type of work performed by a material supplier and, therefore, the exemption from prevailing wages for delivery of materials from a bona fide material supplier applies. (See *Sansone v. Department of Transportation* (1976) 55 Cal.App.3d 434.) This argument is without merit. The Holt work orders and invoices do not itemize any material sold and delivered to Teichert. These documents evidence work performed on-site by mechanics, a classification of worker specifically enumerated in section 1723's definition of workers falling within the protections of California's prevailing wage laws. To accept Holt's assertion that the on-site labor of a mechanic is equivalent to the work of an off-site material supplier is a concept inconsistent with the Labor Code and case law.

For the foregoing reasons, the on-site heavy equipment upkeep and repair work performed by Holt for Teichert on the Project is subject to prevailing wage requirements.³

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John C. Duncan
Director

²The analysis and conclusion herein is consistent with the prior coverage determination in PW 2004-013, *Dry Creek Joint Elementary School District, Coyote Ridge Elementary School – On-site Heavy Equipment Upkeep* (December 16, 2005).

³This is the case regardless of whether the heavy equipment is owned or leased by Teichert.