

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Triple E Trucking

Case No. 04-0180-PWH
[DLSE Case No.: 40-14751/218]

From an Assessment issued by:

Division of Labor Standards Enforcement

DIRECTOR'S ORDER DENYING RECONSIDERATION

On November 13, 2008, the Director of Industrial Relations ("Director") issued a decision in this matter ("Decision") finding that the on-haul delivery of general building materials from two bona fide material suppliers did not require the payment of prevailing wages. The Enforcing Agency, Division of Labor Standards Enforcement ("DLSE") timely seeks reconsideration under Labor Code section 1742(b)(3) and California Code of Regulations, title 8, section 17261 asserting legal error.¹ I deny reconsideration because there was no legal error.

DLSE argues that entering into a contract with the on site contractor automatically makes the other contracting entity a "subcontractor" for purposes of section 1772.² Therefore, as DLSE argues, the hauling contract between the on site contractor, Bowman, and Triple E gives rise to liability for prevailing wages. DLSE's argument has no merit.

Triple E is an independent hauler who performed work that was identical to the work it performed when hired by a bona fide material supplier for the same Project. DLSE claims the fact that one contract was between Bowman and Triple E whereas the other contract was between a material supplier and Triple E is "a distinction with a difference." However, the language in section 1772 requiring payment of prevailing wages to workers employed by "contractors or subcontractors" does not apply to independent haulers who merely deliver

¹ All further references to unspecified sections are to the Labor Code unless otherwise stated.

² "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work."

general building materials onto the jobsite and so the two arrangements here are different with no distinction.³

It is within the plain meaning of section 1772 that workers employed by on site contractors or on site subcontractors are entitled to prevailing wages for all work “in the execution of” the public works contract, whether the work is on site construction or the delivery of materials. *O.G. Sansone v. Department of Transportation* (1976) 55 Cal.App.3d 434 addresses a different question: When do prevailing wage requirements attach to on-haul work that is performed by independent trucking companies. As the court in *Williams v. SnSands Corporation* (2007) 156 Cal.App.4th 742 clarified, *Sansone* is necessary to determine when an independent trucking company engaged in the hauling of materials onto the jobsite from a bona fide material supplier comes within the ambit of section 1772 as a “contractor or subcontractor.” (*Id.* at 752.) As is clear after *Williams*, employees of on site contractors and subcontractors get prevailing wage for all the work in the execution of the contract. Employees of independent haulers only get prevailing wages under the *Sansone* analysis. If the nature of the hauling work by the independent hauler is mere delivery from a bona fide material supplier, the *Sansone* delivery exemption applies. If the driver’s work is integrated into the flow process of construction, as is true with the direct and immediate incorporation of the hauled materials, the delivery exemption does not apply and such work is subject to prevailing wage requirements under section 1772.

A review of the facts and result in *Sansone* supports the above analysis and a rejection of DLSE’s argument. The question in *Sansone* was whether the drivers of an independent trucking company that contracted with the on site contractor were entitled to prevailing wages; the contract called for hauling from a site dedicated to supplying materials for the specific public works contract. Under DLSE’s theory, prevailing wages would have been required based on the contractual relationship. However, the court announced a rule (as described more fully in the Decision) that was an amalgamation of a federal Davis-Bacon case and a Wisconsin case and that would apply to any on-haul by an independent trucking company involving the delivery of

³ The Director will not comment on DLSE’s reference to and reliance on other decisions he has issued, which were not made precedential under Government Code section 11425.60(b). (See, Gov. Code, § 11425.10(a)(7).) Suffice it to say that in those cases the drivers were employees of the on site contractor. The facts here are radically different in that the Triple E drivers were not employees of the on site contractor.

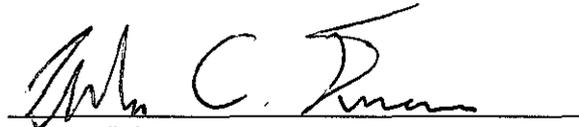
materials. Where the exemption applies, the independent trucking company is deemed to have the status of the material supplier. (See, *Williams, supra*, 156 Cal.App.4th at p. 752.) Because the hauling in *Sansone* was not from a bona fide material supplier, but from a dedicated yard or borrow pit, the work was found to be subject to the payment of prevailing wages. The identity of the party contracting with the independent trucking company played no role in the court's decision. Implicit in *Sansone* is a rejection of DLSE's argument, therefore.

This case is different from *Sansone* in that the materials were admittedly hauled from a bona fide material supplier. Therefore, the delivery work was not subject to the payment of prevailing wages.

ORDER

For the foregoing reasons, reconsideration is denied.

Dated: 11/20/09



John C. Duncan
Director of Industrial Relations