

Construction & Infrastructure Law Blog

April 14, 2011 by Sheppard Mullin

The Year 2010 In Review: Prevailing Wage & Employment Law

This article is the sixth in a series summarizing construction law developments for 2010.

By [Candace Matson](#), [Harold Hamersmith](#) & [Helen Lauderdale](#)

1. *Alameda County Joint Apprenticeship and Training Committee v. Roadway Electrical Works Inc.*, 186 Cal. App. 4th 185 (1st Dist. June 2010)

A general contractor and its electrical subcontractor working on the project to rebuild the Bay Bridge were sued by various electrical unions, electrical contractors, and electrical contractors' associations. The plaintiffs asserted claims for unfair and unlawful competition under Business and Professions Code Section 17200 claiming that that defendants were using unauthorized workers to perform work that called for certified electricians under Labor Code Section 3099. The defendants succeeded in obtaining the dismissal of the lawsuit by arguing that the plaintiffs' claims raised issues with respect to the proper classification of workers, that it was up to the Department of Industrial Relations ("DIR") in the first instance to determine the scope of work that must be performed by certified electricians, and that plaintiffs had failed to exhaust their administrative remedies with the DIR before filing suit.

The Court of Appeal reversed. Labor Code Section 3099 was enacted in 1999 to establish and validate minimum standards for training and competency for electricians. It requires all persons who perform work for electrical contractors with class C-10 licenses to be certified. Section 3099 was not enacted as part of prevailing wage legislation, but rather as public safety legislation to ensure that electrical work be performed safely by properly trained electricians. When the general contractor bid for and secured electrical work requiring a C-10 license, it was on notice that it was obligated to use certified electricians to perform the work. Because the requirement for C-10 licensees to employ certified electricians was not the result of any DIR determination, but rather was a statutory requirement, the plaintiffs' claims that alleged violation of the statute did not require that any type of administrative proceeding be exhausted before the claims could be presented in court.

2. *Azusa Land Partners v. Department of Industrial Relations*, 191 Cal. App. 4th 1 (2d Dist. Dec. 2010)

The private developer of a planned residential community reached an agreement with the City of Azusa regarding the public infrastructure that would be required as a condition of approval of the proposed planned community. The infrastructure included a school, park, streets, storm drains, sewers, utilities, and other improvements, all of which were estimated to cost \$147 million to construct. Roughly one-half of the cost would be financed through Mello-Roos bonds; the other half was to be paid from private funds.

The developer unsuccessfully sought a determination from the DIR that the portion of the public improvements paid for through private funds need not be subject to the prevailing wage requirements of Labor Code Section 1720, et seq. The DIR's determination was upheld by the trial court, which in turn was affirmed by the Court of Appeal. The Court held that Mello-Roos bond proceeds are public funds under Section 1720 and that the obligation to pay prevailing wages applied to all of the public improvements required for approval of the development, even though some of the specific improvements might be entirely financed with private funds. The Court of Appeal rejected the developer's argument that each piece of infrastructure should be analyzed individually to determine if its construction was paid for with public funds. Instead, the Court held the public infrastructure works that were a condition of the development's approval must be analyzed as a whole; if public funds are used to pay a portion of the overall infrastructure costs, then prevailing wages must be paid in connection with the infrastructure costs, regardless of whether individual aspects of the infrastructure were privately funded.

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