

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
SOUTH BUILDING
TENTATIVE RULINGS - December 06,2007

EVENT DATE: 12/07/2007 EVENT TIME: 01:30:00 PM DEPT.: N-29

JUDICIAL OFFICER:

CASE NO.: 37-2007-00054316-CU-WM-NC

CASE TITLE: STATE BUILDING AND CONSTRUCTION TRADES COUNCIL OF CALIFORNIA VS.
CITY OF VISTA

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Writ of Mandate

EVENT TYPE: Motion Hearing (Civil)
CAUSAL DOCUMENT
/DATE FILED:

Petitioner State Building and Construction Trades Council of California, AFL-CIO's Petition for Peremptory Writ of Mandate is denied.

Under the doctrine of *stare decisis*, this Court is required to follow the decisions of the Court of Appeal. In this case, the Court is unable in good faith to distinguish the Court of Appeal's decision in *Vial v. City of San Diego* (1981) 122 Cal.App.3d 346. The petitioner concedes that its "legal argument in this case is essentially the same legal argument the Court of Appeal rejected in *Vial*. . . ." (Reply brief at 6) Therefore, because this Court is bound to follow the *Vial* decision, and this Court cannot in good faith distinguish the *Vial* case from the present case, the Court hereby denies petitioner's petition for writ of mandate.

If this Court were not bound to follow the *Vial* decision, the Court would have been inclined to grant petitioner's petition. It appears to this Court that the focus of the *Vial* decision was on the issue of whether any particular construction project would be a matter of "municipal" vs. "statewide" concern. The *Vial* court stated: "The prevailing wage law, a general law, does not apply to the public works projects of a chartered city, as long as *the projects* in question are within the realm of 'municipal affairs.'" 122 Cal.App.3d at 348. (emphasis added)

In contrast, it appears that the more appropriate focus should be on whether *the statute* that is sought to be applied addresses a matter of "municipal" or "statewide" concern. *See, e.g., California Federal Savings and Loan Association v. City of Los Angeles* (1991) 54 Cal.3d 1, 17 ("If the subject of the statute fails to qualify as one of statewide concern, then the conflicting charter city measure is a 'municipal affair' and 'beyond the reach of legislative enactment.' . . . If, however, the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution, then the conflicting charter city measure ceases to be a 'municipal affair' pro tanto and the Legislature is not prohibited by Article XI, section 5(a), from addressing the statewide dimension by its own tailored enactments.") The Court believes that the payment of prevailing wages for modern public works, and the public policies underlying the prevailing wage statute, are properly considered matters of statewide concern.

Therefore, if this Court were free to decide the matter without having to follow *Vial*, the Court would be inclined to find that (1) the prevailing wage law properly reflects a matter of statewide concern, and (2)

the City of Vista is required to follow the prevailing wage law in connection with its pending public projects, including the construction of Fire Station No. 5 and Fire Station No. 6.

But because this Court is a court of lesser jurisdiction to the Court of Appeal and is required to follow *Vial*, the Court believes it is required to deny the writ petition, leaving to petitioners the opportunity to invite the Court of Appeal and/or the Supreme Court to review the principles upon which *Vial* was decided.

In the absence of any objection by the City, the Court hereby grants petitioner's request to take judicial notice of all documents as to which judicial notice was requested. Similarly, in the absence of any objection by the petitioner, the Court hereby grants the City's request to take judicial notice of exhibits A – F attached to the City's request for judicial notice, filed Oct. 29, 2007.

The Court rejects the City's argument that this case is not ripe for adjudication. It appears that the City has approved certain public works under the City's Ordinance 2007-9, including the construction of Fire Station No. 5 and Fire Station No. 6. Therefore, it is appropriate for the Court to address the merits of petitioner's request for a writ of mandate.

This is the tentative ruling for an appearance hearing at 1:30 p.m. on Friday, December 7, 2007. If no party appears at the hearing, this tentative ruling will become the order of the Court as of December 7, 2007. If the parties are satisfied with the Court's tentative ruling or do not otherwise wish to argue the motion, they are encouraged to give notice to the Court and each other of their intention not to appear, though this notice is not required.