STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

DEPARTMENT OF INDUSTRIAL RELATIONS
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February 8, 2016

To All Interested Parties:

Re: Public Works Case No. 2010-024
West Village Development
University of California, Davis Campus

Based upon a stipulated agreement between the interested parties and the unique facts of the case, the Determination in this matter, *West Village Development, University of California, Davis Campus*, Public Works Case No. 2010-024, dated December 20, 2013, is hereby vacated.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
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December 20, 2013

Nina Fendel
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-9051

Re: Public Works Case No. 2010-024
West Village Development
University of California, Davis Campus

Dear Ms. Fendel:

This constitutes the determination of the Director of Industrial Relations regarding the coverage of the above-referenced project 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 an analysis of the applicable law, it is my determination that the construction of the West Village development at the Davis campus of the University of California is a public work subject to prevailing wage requirements.

Facts

The West Village development (Project) is a mixed-use development being constructed in phases on land owned by the University of California (UC) at the Davis campus. After a long-range development plan and neighborhood master plan, UC awarded the work on the first phase to West Village Community Partnership, LLC (Developer).[1] That phase includes student, faculty, and staff housing and mixed-use commercial and retail space. A community education center to be built and operated by Los Rios Community College District (College District) is also in the first phase. The next phases of construction will add more housing and recreation fields. An implementation plan provides for shared design, construction, and leasing responsibilities between Developer and UC. UC's stated intent is to build a neighborhood with affordable housing to recruit and retain faculty and staff, create a "zero net energy community," and foster a sense of community. UC states that the overall cost of the Project is $280 million.

On August 25, 2008, UC and Developer entered a ten-year master ground lease (Master Lease) covering 130 acres.[2] It provides that Developer will construct, at its own expense, over 300 residences for faculty and staff and apartments for almost 2,000 students. Developer will also

[1] West Village Community Partnership, LLC, is a joint venture between Carmel Partners, Inc. and Urban Villages - Davis LLC.

[2] The Master Lease defines "Master Project" to "mean collectively the project to be constructed on the Leased Land, including the Infrastructure Improvements, the Student Housing Project and the Faculty/Staff Housing Project."

construct a village square anchored by up to 45,000 square feet of mixed-use office and commercial space, and infrastructure improvements, including parks and utilities serving the community education center. The Master Lease also obligates UC to construct off-site infrastructure to provide water, sewer, and other utilities to the Project.

Under the Master Lease, Developer initially pays UC no rent for the land. When segments are completed Developer and UC will enter into "sub-phase" leases that will require Developer to pay UC rent in amounts increasing over time.[3] Developer will offer residences for sale to faculty and staff with resale prices tied to the cost of living index. If faculty and staff do not buy the residences, Developer may sell them to the general public. Developer will manage and rent the apartments to students at market rates. Developer is allowed to sublease the mixed-use space for uses that include retail stores, restaurants, banks, and laundromats. UC agreed to lease back 70 percent of the mixed-use space.

UC constructed the off-site infrastructure work at a cost of $18 million, for which UC used campus funds and external financing. The work was paid for at prevailing wage rates. UC also paid Developer $4.5 million for the infrastructure for the community education center, using campus funds and external financing.

UC and College District entered a 65-year lease providing for College District's construction of a community education center to be open to the public and owned and operated by College District. The lease sets rent at $1 per year, and requires College District to pay UC $4.5 million for the cost of Developer's infrastructure improvements, payable to UC in $3.5 million cash and $1 million of in-kind facility use. College District used its own funds to construct the space at a cost of $6.5 million, paying prevailing wage rates for the work.

The housing and mixed-use space at West Village incorporate advanced energy technologies and architectural elements which aim to create an energy efficient community. The structures will feature on-site renewable energy resources, energy conservation measures, and smart grid integrating equipment that UC calls the West Village Energy Initiative.

UC will receive non-UC funds to support energy efficiency at West Village. The funds include a $1.99 million grant from the California Energy Commission (CEC) under a Renewable Energy Secure Communities (RESCO) program for integrating technologies. Further financing for the energy elements at West Village includes a $2.5 million grant from the United States Department of Energy, administered by the CEC, for a waste-to-renewable energy system. The CEC provides UC an additional $500,000 in state funds to match the federal grant. Additionally, applications with the California Public Utilities Commission (CPUC) would bring up to $4.22 million in California Solar Initiative (CSI) performance-based initiative funds, as administered by Pacific

[3] No independent real estate appraisal of the fair market value of rent for the land was presented. A Keyser Marston Associates (KMA) report on the business terms between Developer and UC concludes that compensation received by UC is consistent with a market return for the interest that would be conveyed to the Developer, considering the annual ground lease payments, development of infrastructure by Developer, and the pricing of units for sale.

Gas and Electric Company (PG&E), for fixed solar photovoltaic (PV) systems.[4] Other non-UC financing for the energy elements at West Village includes a $2.5 million grant from the CPUC under its CSI program, with a matching grant of $1.24 million under the CEC's RESCO program. While UC states at least some of the grant moneys are to fund study and analysis of energy use at the Project, grant documents disclose the funds also pay for facility installation and construction.[5]

UC's policy for construction on UC land provides that, under specified conditions, UC will not require prevailing wage rates where the project cannot be constructed economically if the payment of prevailing wages is required. The specified conditions are that either the cost will be paid entirely by non-state funds furnished principally by students, faculty, staff, hospital patients, outside corporations, or donors, or the project is built for sale or lease to students, faculty, or staff without any funds being furnished by the state. The policy also provides that in case of exceptional need, the UC vice president may authorize an exception to the prevailing wage requirement. Prevailing wages were not required for the Project.

Discussion

Labor Code section 1771 generally requires the payment of prevailing wages to workers employed on public works.[6] Section 1720, subdivision (a)(1) defines "public works" to mean "[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds.... '[C]onstruction' includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work."

Subdivision (b) provides, in relevant part:

> For purposes of this section, "paid for in whole or in part out of public funds" means all of the following:
>
> (1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or Developer.

Subdivision (c)(3) provides, in relevant part:

> If the state or a political subdivision reimburses a private Developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the

[4] UC states that in lieu of the CSI program funds, Developer may install its own solar PV system for some of those buildings or seek monetary incentives from the CEC's California New Solar Homes Partnership program. UC states that it is still evaluating which incentive program is most appropriate to use for some of the Project residences.

[5] The exact mix of renewable energy funds is not altogether clear, however, as some grant purposes appear to overlap.

[6] All further section references are to the California Labor Code and all further subdivision references are to Labor Code section 1720, unless otherwise indicated.

> project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

Section 16001, subdivision (b) of title 8 of the California Code of Regulations provides the following definition:

> Federally Funded or Assisted Projects. The application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort.

No party contests that the Project involves construction, alteration, and installation done under contract. The issues here are the scope of the Project for purposes of the California prevailing wage law (PWL) (section 1720 *et seq.*); whether the Project was paid for in whole or in part out of public funds; and whether any exemption applies under section 1720, subdivision (c) or the California Constitution.

As to the scope of the Project, UC's planning documents describe the student, faculty, and staff housing; the mixed-use commercial and retail facilities; the infrastructure serving the West Village neighborhood; the community education center; the village square; and parks and recreation fields. All these facilities are being built in the same general area on UC land on the west side of the Davis campus.

The Master Lease covers many of the elements described in the planning documents. For example, it requires Developer to construct housing, the village square, utilities, and the mixed-use space. It also requires Developer to construct infrastructure such as parks, roadways and utilities serving the housing, mixed-use space, and community education center.

The Master Lease also obligates UC to construct off-site infrastructure improvements serving the Project. The infrastructure, such as a water pump station and underground utilities, can only be seen as crucial to the usability of the housing and mixed-use space at the Project. As such, the off-site infrastructure work is part of, not separate from, the Project. For that work, UC used contractors different from those retained by Developer. That circumstance, however, does not mean the infrastructure work was its own project, for the parties' contracts do not control the statutory analysis. (*Lusardi v. Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 989 (*Lusardi*); *Oxbow Carbon & Minerals, LLC v. Dept. of Industrial Relations* (2011) 194 Cal.App.4th 538, 550.) Nor does the fact that prevailing wages were paid for the off-site infrastructure work transform that work into a separate project. Payment of prevailing wages would be relevant in an enforcement action for prevailing wages. It would violate the rule in *Lusardi,* however, to base the statutory analysis on the fact that UC's contracts called for prevailing wages for some of the work.

The community education center is an important feature of the Project, as is evident where UC identifies the center as a "feeder" school for transfer students to UC Davis. The College District lease and the planning documents that highlight the role of the center at West Village show it falls within the scope of the Project.

The renewable energy facilities and other energy elements are described by UC as a separate project. Those elements, however, are promoted by UC as significant aspects of the Project, critical to the functioning of the residential and commercial spaces. As planned, the Project will incorporate advanced technologies and architectural elements that will create an energy efficient community. These circumstances dictate that the associated construction and installation work are part of the Project.[7]

If construction of a project is paid for in part out of public funds and no exemption under section 1720(c) applies, all the work in the project is a public work. (*Azusa Land Partners v. Department of Industrial Relations* (2010) 191 Cal.App.4th 1, 13.) (*Azusa*) Under the Master Lease and the planning documents discussed above, the scope of construction subject to the PWL consists of all the development at West Village. Although a request for proposals has not been issued for the next phases of construction, the planning documents provide sufficient clarity for the anticipated housing and recreation fields to be included within the scope of the Project.[8]

Having identified the scope of construction for purposes of section 1720, subdivision (a)(1), the next question is whether construction is paid for in whole or in part out of public funds within the meaning of section 1720, subdivision (b). A number of sources of public funds for the Project can be identified. UC paid over $18 million from campus funds and external financing for off-site infrastructure improvements serving the Project. UC also used $4.5 million of its funds for Developer's construction of the College District pad and related infrastructure. College District's reimbursement of $3.5 million to UC and its payment of $6.5 million for construction of its community education center constitute payment of public funds within the meaning of subdivision (b)(1). Finally, up to $12 million in state and federal grants from the CEC and CPUC for the energy systems and UC's own funds as matching share for the grants constitute payment of public funds within the meaning of subdivision (b)(1). Other forms of public subsidy such as rent subsidies are also suggested by the facts. The foregoing list alone, however, justifies a conclusion that the work on the Project is paid for in part with public funds.

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[7] UC argues the prevailing wage implications of the energy aspects of the Project are not ripe for determination because the details have not been finalized and UC is still evaluating whether to accept some of the potential funds. UC cites PW 2009-036, *Construction of Gateway Retail Complex, City of Chula Vista, City of National City* (May 17, 2010) to argue that speculative scenarios are not appropriate for a coverage determination. That determination, however, declined to accept speculative scenarios with no basis in fact. The situation here involves not speculation but actual applications for public funding in specific amounts.

[8] UC and Northern California Carpenters Regional Council (Carpenters Council) cite PW 2000-016, *Vineyard Creek Hotel and Conference Center, Redevelopment Agency, City of Santa Rosa* (October 16, 2000) (*Vineyard Creek*) in discussing the scope of the Project. *Vineyard Creek* was issued under former section 1720, and while the above-stated analysis is consistent with *Vineyard Creek*, the issue here is the application of the current section 1720. (*Azusa Land Partners, supra,* 191 Cal.App.4th at pp. 16, n. 20, and 18 [parties to a development agreement are not permitted "to carve up the individual components of an overall project into publicly and privately financed pieces."].)

UC cites two coverage determinations that held prevailing wage requirements did not apply to construction of solar facilities paid for with utility company rebates.[9] Those determinations, however, note the rebate at issue never reached the public coffers of a public entity in that the rebate was paid by a privately owned electric utility directly to the private financier of the project. In contrast, the funds here are paid by public entities, the CPUC and CEC. Money collected for, or in the coffers of, a public entity is "public funds" within the meaning of section 1720, subdivision (b)(1). (*See, e.g.*, PW 2004-016, *Rancho Santa Fe Village Senior Affordable Housing Project* (February 25, 2005).) Therefore, to the extent payments flow from the CPUC or CEC to UC, the funds would fall within the meaning of section 1720, subdivision (b)(1) because they are payments directly from the coffers of a state agency.[10]

Given the payment of public funds for the Project, the next question is whether the Project is exempt under subdivision (c)(3). That subdivision exempts a private development project where a public entity reimburses a private developer for costs normally borne by the public or provides directly or indirectly a public subsidy that is de minimis in the context of the project. Neither prong of the exemption under section 1720, subdivision (c)(3) applies because the Project is not a private development project. Instead, by virtue of UC's status as a public university, the Project is public in nature.

In that the Project is a public work and no statutory exemption applies, the next issue is whether the Project is exempt from the PWL under article IX, section 9 of the California Constitution. Subdivision (a) of that section grants UC "full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of [UC] and such competitive bidding procedures as may be made applicable to [UC] by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services...." The same section at subdivision (f) provides the UC Regents "shall be vested with the legal title and the management and disposition of the property of the university and of property held for its benefit .... [The UC Regents] shall also have all the powers necessary or convenient for the effective administration of its trust...."

The Supreme Court has acknowledged that article IX, section 9 "grants the [UC] regents broad powers to organize and govern the university and limits the Legislature's power to regulate the university or the regents." (*San Francisco Labor Council v. Regents of University of California* (1980) 26 Cal.3d 785, 789 [*S.F. Labor Council*], cited with approval in *State Building and Construction Trades Council of California, AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 563

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[9] PW 2009-005, *Solar Photovoltaic Distributed Generation Facility, West County Wastewater District* (April 21, 2010) (*West County Wastewater*) and PW 2008-038, *Solar Photovoltaic Distributed Generation Facility, Santa Cruz School District* (April 21, 2010) (*Santa Cruz School*).

[10] Some of the renewable energy incentive funds may never reach public coffers, assuming PG&E directly pays Developer. *West County Wastewater* and *Santa Cruz School* found that funds paid by the private utility were not payments of public funds within the meaning of subdivision (b)(1). The PWL, however, was amended after *West County Wastewater* and *Santa Cruz School*. Assembly Bill 136 (stats. 1953, ch. 1283, § 1, eff. 1/1/12) provides that "public work" for purposes of the PWL also means construction of renewable energy generating capacity or energy efficiency improvements, performed on the property of the state or its political subdivision, where more than 50 percent of the energy is purchased by the state or its political subdivision.

[*City of Vista*].) *City of Vista* involved application of the PWL to construction of municipal buildings. Reaching a result "under the historical circumstances presented," *City of Vista* found that no statewide concern was presented to justify application of the PWL for the "locally funded public works" in light of the charter city exemption from state law with respect to municipal affairs. (*Id.*, at p. 566; Cal. Const., art XI, § 5.) Because the constitutional grant of autonomy for charter cities differs from that for UC, the analytical approach used in *City of Vista* does not fully translate to cases involving UC.[11] The starting point must be UC's particular constitutional provision and cases that have construed it.

While the constitutional exemption expressly gives UC "broad powers to organize and govern the university," cases have held those powers are not unfettered. "The University is a public corporation but that status alone does not immunize its various functions." (*Regents of University of California v. Superior Court* (*Regan*) (1976) 17 Cal.3d 533, 536 [*Regan*].) While UC is a governmental institution and an instrumentality of the state, it "is not clothed with the sovereignty of the state, and is not the sovereign." (*Royer's Estate* (1899) 123 Cal. 614, 624 [testamentary gift to UC was not exempt from a statute limiting charitable bequests]; (*City St. Improvement Co. v. Regents of University of California* (1908) 153 Cal. 776 [land held by UC, but not in use for public purposes, was subject to street improvement assessments prescribed by law].)

UC's constitutional provision specifies that valid legislative control exists as to fund security, endowment terms, or bidding procedures. (Cal. Const., art IX, § 9.) Although the PWL is unrelated to those matters, that does not end the inquiry. "In addition to the specific provisions set forth in article IX, section 9, there are three areas of legislative regulation" recognized judicially. Those are: (1) the Legislature's power of appropriation, (2) the general police power governing private persons and corporations, and (3) legislation regulating public agency activity not generally applicable to the public when the legislation regulates matters of statewide concern not involving internal university affairs. (*S.F. Labor Council, supra,* 26 Cal.3d at p. 789.)[12] As regards the third area of valid legislative control, the requirement to pay prevailing wages on public works is "not generally applicable to the public," for it applies only to certain types of work, that which is paid for in whole or in part out of public funds. The question, then, is whether the PWL, under the facts here, regulates "matters of statewide concern not involving internal university affairs." (*Ibid.*, citing *Tolman v. Underhill* (1952) 39 Cal.2d 708, 712 (*Tolman*).)

Tolman presented "[t]he initial statement and application of this limitation on University autonomy." (*Coutin v. Lucas* (1990) 220 Cal.App.3d 1016, 1025 (*Coutin*).) In *Tolman*, the Supreme Court held that legislation specifying a loyalty oath for public employment prevailed

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[11] *City of Vista* adopted the four-step framework used in *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1 [*California Fed. Savings*].) Under that approach, the court first determines whether the city ordinance at issue regulates an activity that can be characterized as a "municipal affair," then asks if the case presents an actual conflict between local and state law. Next, the court decides whether the state law addresses a matter of "statewide concern." If so, the court determines whether the state law is reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance." (*City of Vista, supra,* 54 Cal.4th at p. 556, citing *California Fed. Savings, supra,* 54 Cal.3d at pp. 16-17, 24.)

[12] Only the third area of valid legislative control is relevant to this matter. No party argues for application of the first two exceptions to UC's constitutional exemption.

over a UC rule specifying a different and more detailed oath. *Tolman* observed that "[t]here can be no question that the loyalty of teachers at the university is not merely a matter involving the internal affairs of that institution but is a subject of general statewide concern." (*Tolman, supra,* 39 Cal.2d at p. 712.) "The import of *Tolman* is that legislation on subjects of general statewide importance applies to the university *unless* the matter is *exclusively internal* to the university." (*Coutin, supra,* 220 Cal.App.3d at p. 1026 [italics in original].)

In *Coutin* the court upheld the Legislature's repeal of a statute which designated the Chief Justice to serve ex officio as president of the Board of Directors of Hastings College of Law, a UC college, notwithstanding a claim that the repeal interfered with UC's autonomy. In so doing, *Coutin* found the repeal of the designation of the Chief Justice was not exclusively an internal affair of Hastings, it did not affect significantly the administration of Hastings or its academic activities, and it did not significantly affect internal governance of Hastings. That being so, the court "readily observe[d] that elimination of the designation of the Chief Justice ... is not exclusively an internal affair of Hastings." (*Coutin, supra,* 220 Cal.App.3d at p. 1027.)

Turning to West Village, projects limited to construction of UC student, faculty, and staff housing using exclusively UC funds generally "do not involve matters of statewide concern and involve internal UC affairs vital to its core educational function." (*Regents of University of California v. Aubry* (1996) 42 Cal.App.4th 579, 591 (*Aubry*); accord, PW 99-047, *University of California, Santa Barbara San Rafael Student Housing Project* (March 31, 2000).) *Aubry* reasoned that housing to "[e]nsur[e] access to qualified students who otherwise could not attend, and secur[e] the services of outstanding faculty and staff who otherwise might decline to accept or continue employment, is at the heart of UC's educational function...." (*Aubry, supra,* 42 Cal.App.4th at p. 590.)

The Project here, however, involves more than construction of student, faculty and staff housing using exclusively UC funds. The Project is paid for in part with CPUC, CEC, College District, and federal funds and includes construction of retail space open to the public and a community education center to be operated by College District. These circumstances provide a basis for finding that, as applied here, the PWL regulates a matter of statewide concern that is not "exclusively internal to the university." (*S.F. Labor Council, supra*, 26 Cal.3d at p. 789; *Coutin, supra,* 220 Cal.App.3d at p. 1026 [italics omitted].)

The use and control of state funds pose a statewide concern as much as "control of 'a city's expenditure is a municipal affair.'" (*City of Vista, supra,* 54 Cal.4th at p. 559, quoting *City of Pasadena v. Charleville* (1932) 215 Cal 384, 389.) As it is for a city, for the state, "[a]utonomy with regard to the expenditure of public funds lies at the heart of what it means to be an independent governmental entity." (*City of Vista,* at p. 562.) The use of non-UC funds at the Project invokes a correlative statewide interest in the wage levels of the workers on the entire Project, as dictated by the PWL by virtue of its provision that construction and installation paid for "in part" out of public funds are public works. (§ 1720, subd. (a)(1).) While the energy systems may also serve UC's educational interests by providing a model for sustainable development, that circumstance does not negate the fact that some of the non-UC funds are used for construction and installation.

A statewide interest also appears at the Project by virtue of UC's choice to include the community education center as part of the Project. That a statewide interest exists in community colleges seems clear. (*See*, Cal. Const. art. IX, §14, granting the Legislature power to provide for the incorporation and organization of community colleges; Ed. Code § 70900 *et seq.*, creating community colleges and governance by a state Board of Governors.) As with the use of other non-UC funds, by including in the Project the community education center construction paid for with College District funds, UC voluntarily subjects itself to the PWL.[13]

That the use of non-UC public funds justifies legislative supersession of UC's constitutional exemption by the PWL finds further support in *Southern California Roads Co. v. McGuire* (1934) 2 Cal.2d 115. There, the former prevailing wage law applied to improvement of a city street that also constituted a state highway, despite the charter city's constitutional autonomy, because the cost "is to be met and defrayed by the state...[,] [a] large portion of the money to improve [the street] is money belonging to the state, and the people of the state are concerned in its expenditure." (*Id.*, at pp. 121, 123.)

The fact that the planned retail space and the community education center will be open to the public and operated by an entity other than UC also contributes to the conclusion that the Project is not a matter exclusively internal to the university. The planning documents for the Project disclose not just intent to construct housing, but intent to build an entire neighborhood, complete with parks and a mixed-use center that includes retail stores and the community education center. The mixed-use center is not just incidental to the housing, for it is described as "the neighborhood's focal point." (UC Davis Neighborhood Master Plan, October 2003, p. 24.) No one argues the mixed-use or community education centers will "affect significantly the administration, ... academic activities, ... [or] internal governance" of UC. (*Coutin, supra*, 220 Cal.App.3d at p. 1027.) The mixed-use and community education centers do contribute to the model neighborhood concept repeated throughout UC's planning documents. Yet, as pointed out in the KMA report for other purposes, UC does not have community development as a central mission.

UC argues that *City of Vista, Aubry,* and *S.F. Labor Council* hold that prevailing wage laws are not matters of statewide concern. To be sure, *City of Vista* and *Aubry* did not view the PWL as justifying legislative supersession under the facts presented in those cases.

The different source of public funds and the elements of the Project, however, provide a critical distinction here. *City of Vista* declined to apply the PWL to affect wage levels on public works projects using only local funds for construction of two city-operated fire stations. (*City of Vista, supra*, 54 Cal. 4th at pp. 553, 566.) *Aubry* declined to apply the PWL "for projects like these" where construction of housing was exclusively paid for with UC funds. (*Aubry, supra*, 42 Cal.App.4th at pp. 582, 583-584.) In contrast, the Project involves elements other than housing and is paid for in part out of non-UC public funds.

S.F. Labor Council declined to apply an Education Code statute that would have set the salaries of some UC employees because "[s]alary determination is as important to the autonomy of the

[13] That UC and Developer were aware of the possibility that prevailing wages might be due finds expression in the Master Lease where it addresses the prospect. (Master Lease, § 17.4.)

university as it is to the independence of chartered cities and counties." (*S.F. Labor Council, supra,* 26 Cal.3d at p. 791.) With the understanding imparted by *Coutin* as to the application of *S.F. Labor Council*, the circumstances at this Project call for a different conclusion than that reached in *S.F. Labor Council.* By pursuing the Project in its particular dimensions, with facilities operated by other than UC, with funds for construction and installation coming from non-UC public sources, the Project "was not exclusively an internal affair" of UC. (*Coutin, supra,* 220 Cal.App.3d at p. 1027.)[14] Therefore, the Project is not exempt from the PWL by virtue of article IX, section 9(a) of the California Constitution. (Accord, *Division of Labor Standards Enforcement v. Ericsson Information Systems, Inc.* (1990) 121 Cal.App.114, 117.)

Finally, UC relies on *Regents of University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 136 (*City of Santa Monica*) to contest the Director's authority to conduct an investigation in this matter. *City of Santa Monica*, however, dealt with a city's authority relative to UC. The Court found that local building and zoning ordinances and a state law, which pertain to payment of city plan-checking and inspection fees, did not apply to UC construction of improvements intended solely for educational purposes. In contrast, the Director has authority to make public works coverage determinations, and, as stated above, the improvements are not solely for educational purposes. (Cal. Code Regs., tit. 8, § 16001, subd. (a)(1).) Further, nothing in *City of Vista, S.F. Labor Council,* or *Aubry* suggests the Director has no authority to investigate facts that involve use of public funds in a UC public works project and weigh the applicability of UC's constitutional exemption in the process.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

Christine Baker

Christine Baker
Director

[14] While the question is ultimately a legal one for the courts, that the Legislature understands it can constitutionally apply the PWL to UC based on receipt of state funds for a public works project bolsters the conclusion that receipt of state funds for the Project subjects it to the PWL. (See Assembly Bill 1506 [stats. 2002, ch. 868, subd. (e), § 1] enacting sections 1771.7, subdivision (c)(2) and 1771.75, subdivision (c)(2).)