STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

DECISION ON ADMINISTRATIVE APPEAL

RE: PUBLIC WORKS CASE NO. 2010-010

PHOTO RED LIGHT ENFORCEMENT PROGRAM
CITY OF HAYWARD

I. INTRODUCTION

On August 12, 2010, the Director of the Department of Industrial Relations (Department) issued a public works coverage determination (Determination) in the above-referenced matter finding that the construction and installation work performed in connection with the Photo Red Light Enforcement Program at designated intersection approaches in the City of Hayward (City) is public work subject to prevailing wage requirements.

On September 9, 2010, Redflex Traffic Systems, Inc. (Redflex) timely filed a notice of appeal of the Determination pursuant to section 16002.5(b) of title 8 of the California Code of Regulations (Appeal). The Appeal is based solely on whether the City's status as a charter city exempts it from the requirement to pay prevailing wages (the "charter city exemption").

In June 2011, the Director suspended further proceedings on the Appeal pending the decision of the California Supreme Court in *State Building and Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547 (*City of Vista*).

The argument on Appeal and the materials submitted have been carefully considered. For the reasons set forth in the Determination, which is incorporated by this reference, and for the additional reasons set forth below, the Appeal is denied and the Determination is affirmed.

II. DISCUSSION

The issue presented by the Appeal was framed by the Court in *City of Vista* as follows: "Under the state Constitution, the ordinances of charter cities supersede state law with respect to 'municipal affairs' (Cal. Const., art. XI, § 5), but state law is supreme with respect to matters of 'statewide concern.'" (*City of Vista, supra*, 54 Cal.4th at p. 532.) The Court confirmed that determination of what constitutes a municipal affair and what constitutes a matter of statewide concern is for the courts to decide. (*Id.* at p. 541; *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 81 (*Bishop*).)

To decide this issue, the Court in *City of Vista* adopted the analytic framework it set forth in *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1 (*California Fed. Savings*) to resolve "whether or not a matter falls within the home rule authority of charter cities." (*City of Vista, supra*, at p. 535.) Under this analysis, the factors to be considered are: first, whether the city ordinance at issue "regulates an activity that can be characterized as a 'municipal affair;'" second, whether the case presents an actual conflict between local and state law; third, whether the state law addresses a matter of "statewide concern;" and finally, whether the state law is "reasonably related to ... resolution of that concern ... and narrowly tailored to avoid unnecessary interference in local governance." (*Id.* at pp. 535-536; internal quotes and case cites omitted.)

Applying this four part test to the public works of improvement at issue in *City of Vista*, the Court found that "the construction of a *city-operated facility* for the benefit of a *city's inhabitants* is quintessentially a municipal affair," as is "the control over *the expenditure of a city's own funds*." (*City of Vista, supra,* at p. 538; italics in original.) Next, the Court found there was an actual conflict between the local law, the city's ordinance which forbade compliance with the state's prevailing wage laws, and the state's prevailing wage law, which does not exempt charter cities. Finally, the Court concluded that the state's interest did not justify "the state's interference in what would otherwise be a merely local affair." (*Id.* at p. 539.) Based on these findings, the Court reaffirmed its holding in *City of Pasadena v. Charleville* (1932) 215 Cal. 384

(*Charleville*)[1] that "the wage levels of contract workers constructing locally funded public works are a municipal affair (that is, exempt from state regulation), and that these wage levels are not a statewide concern (that is, subject to state legislative control)." (*City of Vista, supra*, at p. 556.)

A literal interpretation of the Court's broad statement, however, (i.e., that all locally funded public works are exempt from state regulation) would not properly reflect the Court's carefully constructed analytical approach to the issues. Put into proper context, the central issue before the Court in the *City of Vista* was whether California's prevailing wage law was a matter of statewide concern. It was virtually undisputed that the public works were "municipal affairs" (i.e., two locally funded and operated fire stations that benefitted the city's inhabitants.). Not all public works projects of charter cities, however, are undisputedly "municipal affairs." The Court's opinion acknowledged this practical reality when it discussed the first *California Fed. Savings* factor.[2]

The public works at issue in *City of Vista* were the renovation and construction of public buildings. The City of Vista, a charter city, had passed an ordinance that forbade the payment of state prevailing wages in city contracts. The Court held that the ordinance regulated a municipal affair – the wages of the workers constructing the public works – and that there was no statewide concern sufficient to justify state regulation. As shown above, the Court relied upon and addressed each *California Fed. Savings* factor. Under the first *California Fed. Savings* factor, the Court determined whether the public work at issue was a "municipal affair." This is consistent with the Court's earlier holding in *Southern California Roads Company v. McGuire* (1934) 2 Cal.2d 115 at 120:

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[1] In *Charleville*, the City Manager for the City of Pasadena refused to sign a contract for the construction of a wire fence around a reservoir that did not contain the specification of a general prevailing rate of per diem wages under the Public Works Wage Rate Act of 1931 (PWWRA). The central issue before the Court was whether the City was subject to or controlled by any enactment of the legislature as to the city's municipal affairs. The Court concluded that the construction of a wire fence around a reservoir that was a part of city's municipal water system was a municipal affair and that under the City's charter, the City could not be compelled to require prevailing wages for the work because the PWWRA was not effective, binding or controlling on the City.

[2] In discussing the first factor, the court analyzes, albeit briefly, the construction of fire stations by the City of Vista. The Court analogizes the fire stations to the municipal water system that are municipal affairs. The Court referenced several factors for consideration including ownership, operational control and funding for the construction of the fire stations.

> If .... the contemplated improvement ... is a municipal affair as this term is used in the Constitution, the Public Works Wage Rate Act, being a general law, would not be applicable to the contract providing for its improvement. (*Charleville*) On the other hand, if the improvement ... is of more than local concern, or if it is an affair in which the people generally of the state are concerned, the city in the construction of said improvement is subject to and controlled by the general laws, including the Public Works Wage Rate Act of 1931.[3]

The Court in *City of Vista* concluded that the public work at issue - renovating an existing fire station, construction of two new fire stations, a new civic center, a new sports park, and a new stage house for City's Moonlight Amphitheater - was "quintessentially" a "municipal affair." The Court also noted that the work of improvement in *Charleville*, the construction of a wire fence around a city-owned reservoir, was a "municipal affair" as a matter of law. (*City of Vista, supra*, at p. 559.) The Court then addressed the second and third *California Fed. Savings* factors respectively and found that there was an actual conflict between local and state law because the City of Vista's ordinance prohibits compliance with the state's prevailing wage law; and, that state law regulating payment of prevailing wages did not address a matter of "statewide concern." The Court further held that it was unnecessary to address the fourth factor because the work was exempt based on an analysis of the first three factors.

Because the Court in *City of Vista* held that the California Prevailing Wage Law (CPWL) is not a matter of statewide concern (under the third *California Fed. Savings* factor), the only relevant *California Fed. Savings* factors for purposes of this decision are the first and second. With respect to the first factor, whether the public work of improvement at issue in this case is a municipal affair or a matter of statewide concern, the public work here involves the construction and installation of automated photo red light enforcement systems by Redflex that are used to regulate traffic on public streets. Courts have consistently held that as a matter of law, the regulation of motor vehicle

[3] The Public Wage Rate Act of 1931 was the state's first prevailing wage law. (*City of Vista, supra*, at p. 534.)

traffic on city streets is not a municipal affair but a matter of general state concern. An early case so holding is *Ex parte Daniels* (1920) 183 Cal. 636 (*Daniels*).[4] In *Daniels,* the California Supreme Court had to decide whether an individual could be charged with the offense of driving an automobile within the limits of the city of Pasadena, in violation of a municipal ordinance of the city of Pasadena prohibiting a greater rate of speed than fifteen miles an hour while the Motor Vehicle Act of 1917 permitted the driving of a motor vehicle at a speed not exceeding twenty miles an hour and the individual had not exceeded that limit. The Motor Vehicle Act of 1917 not only fixed the maximum rate of speed at twenty miles an hour, but expressly prohibited municipalities from fixing as a maximum a lesser rate of speed.

In *Daniels*, the Court held that the regulation of motor vehicle traffic upon the streets of a city is subject to the general laws of the state and is not a municipal affair over which chartered cities are given power superior to that of the state legislature. *Daniels* found that:

> The streets of a city belong to the people of the state, and every citizen of the state has a right to the use thereof, subject to legislative control. ... The right of control over street traffic is an exercise of a part of the sovereign power of the state. (*Daniels, supra*, 183 Cal. at p. 639; citations omitted.)

It is beyond dispute that controlling traffic signal operations and regulating the conduct of drivers is as essential to traffic control as setting speed limits and other rules of vehicle operation.

The continuing validity of *Daniels* was acknowledged by the Supreme Court in *Rumford v. City of Berkeley* (1982) 31 Cal.3d 545 at 549 (*Rumford*). *Rumford* also cites *County of Los Angeles v. City of Alhambra* (1980) 27 Cal.3d 184, 192-193, and *Pipoly v. Benson* (1942) 20 Cal.2d 366, 369 in holding that:

> The regulation of traffic on streets is not one of those "municipal affairs" over which local authorities are given power superior to that of the Legislature. (*Rumford, supra*, 31 Cal.3d at p. 550, fn3.)

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[4] *Daniels* is distinguished by the Court in *Charleville* as among the class of cases holding "that the particular city transactions involved were not municipal affairs as contemplated by the Constitution." (*Charleville, supra*, 215 Cal. at p. 393.)

The holdings in *Daniel* and *Rumford*, the cases cited therein, and the cases following those decisions, are controlling on the question whether the work of improvement in this case is a "municipal affair" or a matter of statewide concern. As summarized by the court of appeal in one such case, *Mervynne v. Acker* (1961) 189 Cal.App.2d 558 at 561-562:

> The right of the state to exclusive control of vehicular traffic on public streets has been recognized for more than 40 years. While local citizens quite naturally are especially interested in the traffic on the streets in their particular locality, the control of such traffic is now a matter of statewide concern. Public highways belong to all the people of the state. Every citizen has the right to use them, subject to legislative regulation. Traffic control on public highways is not a "municipal affair" in the sense of giving a municipality (whether holding a constitutional charter or not) control thereof in derogation of the power of the state. [Case cites omitted]

Thus, the public work of improvement at issue in this case is of statewide concern as a matter of law. As such, it is subject to and controlled by the general laws of the state, including the state prevailing wage law. (*McGuire*, *supra*, 2 Cal.2d at p. 120; *Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 906 ("In matters of statewide concern ... applicable general state laws govern charter cities regardless of their charter provisions"); *Vial v. City of San Diego* (1981) 122 Cal.App.3d 346 (public works projects of statewide concern are subject to the California prevailing wage law).

The Supreme Court's holding in *Bishop* further supports the determination that the public works project here is not a municipal affair falling within the home rule authority of a chartered city.

> As to matters which are of statewide concern ... home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters, *if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation (the preemption doctrine)*. (italics added; case cites omitted.)
> *(Bishop, supra,* 1 Cal.3d at p. 61.)

It is well settled that the state has preempted the field of traffic control. In *Rumford, supra*, 31 Cal.3d at p. 550, the Court held as follows:

> The state's plenary power and its preemption of the entire field of traffic control are stated in Vehicle Code section 21: 'Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the state and all counties and municipalities therein, and *no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized therein*...' (Italics in original.)

Similarly,

> The state has preempted the field of traffic control. ... 'The streets of a city belong to the people of the state, and every citizen of the state has a right to use thereof, subject to legislative control .... The right of control over street traffic is an exercise of a part of the sovereign power of the state. ... Thus, unless 'expressly provided' by the Legislature, a city has no authority over vehicular traffic control.' (*City of Hawaiian Gardens v. City of Long Beach* (1998) 61 Cal.App.4th 1100 at 1106-1107 (case cites omitted).)

City's authority to install and to operate the automated photo red light traffic enforcement system is derived from state law. (Vehicle Code § 21455.5.) City may operate the system only if it complies with the requirements of that section.[5] Thus, the activity does not constitute a municipal affair under the first factor in *California Fed. Savings*. To apply the state prevailing wage law to the construction and installation of the system does not constitute interference by the state with either local governance or a matter that would otherwise be a merely local affair. Accordingly, the state prevailing wage law applies to this public work of improvement.

In addition, even if the public work of improvement here was not a matter of statewide concern, it would not be exempt from the state prevailing wage law for the reason that the second factor in *California Fed. Savings* is not met. There is no actual conflict between the local law and the state law. City has adopted the state prevailing wage law as the standard for local public works projects of City. In Resolution No. 08-070, approved by unanimous vote of the City Council on May 20, 2008, City adopted by

[5] This section was last amended in 2012 (Stats.2012, c. 735 (S.B.1303), § 3.).

reference and made applicable to public works projects of City, the May 2006 Standard Specifications of the Department of Transportation (DOT) (2006 Standard Specifications), including the state prevailing wage law.

Section 7-1.01 of the 2006 Standard Specifications concerns "LAWS TO BE OBSERVED." Section 7-1.01 A (2) Prevailing Wage provides in relevant part that:

> The Contractor and any Subcontractor under the Contractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, the Contractor and any subcontractor under the Contractor shall forfeit, as a penalty to the State or political subdivision on whose behalf the contract is made or awarded a penalty of not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by the Contractor or by any subcontractor under the Contractor in violation of the requirements of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive.
> ...

City's decision to apply the state prevailing wage law to local public works projects is confirmed in City Council resolutions adopted in 1996 and 2003 which reaffirm City's commitment to upholding prevailing wage laws. On February 27, 1996, the City council adopted Resolution No. 96-47, a "RESOLUTION REAFFFIRMING THE CITY OF HAYWARD'S COMMITMENT TO UPHOLDING PREVAILING WAGE LAW REQUIREMENTS." The Resolution provides in relevant part:

> NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the Council recognizes the importance of the current California prevailing wage requirements, reaffirms the Council's unwavering commitment to uphold prevailing wage requirements on City public works projects, and declares its desire that the existing prevailing wage requirements be continued without change.[6]

On October 14, 2003, the City Council adopted Resolution No. 03-137, again

[6] In Resolution No. 93-120 (1993), City adopted by reference the 1992 DOT Standard Specifications, including its prevailing wage provisions.

captioned a "RESOLUTION REAFFIRMING THE CITY OF HAYWARD'S COMMITMENT TO UPHOLDING PREVAILING WAGE LAW REQUIREMENTS" in which the City Council endorsed "the California Legislature's conclusion that the prevailing wage law addresses statewide concerns ..."

Based on the facts presented, there is no actual conflict between the local and state law. For this additional reason, under the second factor in *California Fed. Savings*, the work at issue is subject to state prevailing wage requirements.

City has not asserted the "charter city exemption" as a basis for denying the prevailing wage obligation for the installation and construction work at issue. When DIR asked Redflex and City to respond to the question whether in light of the City's Resolutions there is a conflict between the local prevailing wage requirements and the state law, City did not respond.[7]

III. CONCLUSION

In summary, for the reasons set forth in the Determination and in this Decision on Administrative Appeal, the Appeal is denied and the Determination affirmed. This Decision constitutes the final administrative action in this matter.

Dated: 3/12/2013

Christine Baker, Director

[7] Redflex replied only that this is a matter between the contracting parties and that DIR and the Division of Labor Standards Enforcement (DLSE) "do not have jurisdiction" to address this issue. To the contrary, the Supreme Court has held that "issues of coverage of the prevailing law are determined by the Director or the DLSE as the Director's designee." (*Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 989.)