

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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March 27, 2002

Steven Lopez, Organizer
IBEW Local Union 413
415 Chapala Street, Suite 208
Santa Barbara, CA 93101

Re: Public Works Case No. 2001-053
Lobrero Theatre Renovation

Dear Mr. Lopez:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, 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 Lobrero Theatre renovation is a public work subject to the payment of prevailing wages.

The Lobrero Theatre Foundation ("Foundation") owns the Lobrero Theatre in Santa Barbara. On June 29, 2001, the Foundation wrote a letter to the Redevelopment Agency of the City of Santa Barbara ("Agency") requesting a grant of \$600,000 "to cover the cost of the planned rigging and lighting renovation in the theatre" On July 24, 2001, the Agency and the Foundation entered into Grant Agreement No. RO-377 ("Agreement"), which recited that the Foundation had indicated to the Agency "a need to raise approximately \$2,000,000 to complete necessary technical and capital improvements to the theatre's lighting, rigging, sound systems and physical plant" and had requested that the Agency "provide a grant of \$600,000 as a contribution to the cost of technical and capital improvements" (Agreement, p.1.) The Agency agreed to provide the requested funding, "to be used in the manner specified in the [attached] Budget Summary" *Id.*, p.2.) The Budget Summary listed costs for such items as soft demolition, hard demolition, concrete, structural steel and rough carpentry.

On June 28, 2001, the Foundation entered into a standard form construction contract with Frank Schipper Construction Co. ("Schipper") to perform the renovation work. Section 5.1.1 of that contract provided that costs to be reimbursed by the Foundation included: "Wages of construction workers directly employed by the Contractor to perform the construction of the

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work, including welfare, unemployment compensation, social security and other benefits."

With certain exceptions not relevant here, Labor Code section 1771¹ requires the payment of prevailing wages to all workers employed on public works. Section 1720(a) generally defines "public works" to include: "Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds" Here the documents establish that construction and demolition work is being done under contract. The phrase "public funds" is defined by Title 8, California Code of Regulations, section 16000 to include "state, local and/or federal monies." The funds paid by the Agency to the Foundation fall within this definition. Therefore, the renovation project is a public work within the meaning of section 1720(a) notwithstanding the fact that the Foundation, rather than the Agency, is a party to the construction contract.²

I hope this determination letter satisfactorily answers your inquiry.

Sincerely,



Stephen J. Smith
Director

¹ Subsequent statutory references are to the Labor Code.

² Precedential Public Works Coverage Determination Case No. 99-052, Lewis Center for Earth Sciences Construction (November 12, 1999).