

## DEPARTMENT OF INDUSTRIAL RELATIONS

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October 8, 2002

William A. Dahl, Esq.  
McGregor, Dahl, Sullivan & Klug  
7080 North Whitney Avenue, Suite 105  
Fresno, CA 93720-0154

Re: Public Works Case No. 2001-062  
Anlin Industries Expansion Project  
Clovis Community Development Agency

Dear Mr. Dahl:

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 expansion of Anlin Industries, Inc.'s ("Anlin") manufacturing facilities is not subject to the requirements of the California prevailing wage laws. However, the construction and installation of certain off-site improvements necessitated by the expansion project are subject to the requirements of the California prevailing wage laws.

Anlin's manufacturing facility is located at 1665 Tollhouse Road in Clovis. In October 1997, Anlin entered into an "Agreement for Right of First Refusal" with the Clovis Community Development Agency ("Agency") regarding an adjacent 6.1-acre parcel. That agreement gave Anlin the option to purchase the parcel from Agency for \$291,555. In February 2001, Anlin purchased the parcel from Agency in order to expand its facility. In March 2001, Anlin and Agency entered into a Disposition and Development Agreement ("DDA") providing for the construction of a new facility. Attachment No. 5 to the DDA, Scope of Development, defines the "Developer Improvements" to include, at a minimum, all of the following:

[A] building consisting of not less than sixty-five thousand (65,000) square feet; landscaping; parking; all infrastructure improvements; and satisfaction of all City conditions of approval of the Improvements, including without limitation mitigation measures imposed pursuant to the California Environmental Quality Act, and

satisfaction of all Public Entity Fees with respect to the Improvements.

The satisfaction of all conditions of approval imposed by the City as part of its approval process (collectively, the "City Approvals") shall be deemed to constitute part of the Developer Improvements.

The City of Clovis ("City") conditions of approval are set forth in a City Planning Division document titled, "Acknowledgment and Acceptance of Conditions - Site Plan Review," and include such off-site improvements as street improvements, curbs, sidewalks, lighting and landscaping, as well as on-site parking. On January 15, 2002, Anlin entered into a standard form construction contract with Fortune-Ratliff General Contractors, Inc. ("Fortune-Ratliff") to construct the off-site improvements for the sum of \$329,329.65. The contract provided for the work to commence on January 16, 2002, and specified that prevailing wages were required.<sup>1</sup>

Anlin is constructing its new manufacturing facility with private funding. It received a verbal commitment from its bank to finance the construction, contingent on financial participation from Agency and/or the City for off-site improvements. Anlin submitted a request to Agency for such assistance, since the DDA did not provide for any public funding. On February 27, 2002, Agency and Anlin entered into an Agreement for Reimbursement of Costs for Off-Site Improvements. The reimbursement agreement provided for the Agency to reimburse Anlin a maximum of \$275,000 for the cost of the public improvements, to be paid upon demand made not less than 60 days after completion and final acceptance of the work by the City. The cost for the off-site improvements is in excess of \$300,000. The reimbursement agreement acknowledged that the off-site improvements are "required conditions of approval of the project." Neither City nor Agency has retained any proprietary interest in the expansion project.

With certain exceptions not relevant herein, Labor Code section 1771<sup>2</sup> requires the payment of prevailing wages to all workers employed on public works. Under section 1720(a)(1), public works

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<sup>1</sup> On September 5, 2001, Anlin had entered into a separate contract with Fortune-Ratliff for the on-site parking lot expansion. This contract does not require prevailing wages. Anlin has not yet entered into a contract for the construction of the new building.

<sup>2</sup> All subsequent statutory references are to the Labor Code.

includes construction "done under contract and paid for in whole or in part out of public funds . . ." Other subdivisions of section 1720, which became effective January 1, 2002, provide:

(b) For purposes of this section, "paid for in whole or in part out of public funds" means the payment of money or the equivalent of money by a state or political subdivision directly to or on behalf of the public works contractor, subcontractor or developer, performance of construction work by the state or political subdivision in execution of the project, transfer of an asset of value for less than fair market price; fees, costs, rents, insurance or bond premiums, loans, interest rates or other obligations that would normally be required in the execution of the contract, which are paid, reduced, charged at less than fair market value, waived or forgiven; money to be repaid on a contingent basis; or credits applied against repayment obligations.

(c) Notwithstanding subdivision (b):

(2)(A) *If the state or a political subdivision requires a private developer to perform construction, alteration, demolition, installation or repair work on a public work of improvement as a condition of regulatory approval of an otherwise private development project, and the state or political subdivision contributes no more money, or the equivalent of money, to the overall project than is required to perform this public improvement work, and the state or political subdivision maintains no proprietary interest in the overall project, then only the public improvement work shall thereby become subject to this chapter.*  
(Emphasis supplied.)

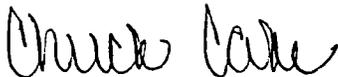
The agreement for Agency reimbursement to Developer for the improvements work occurred in early 2002, after section 1720(c)(2)(A) became effective. As such, that provision, which allows the segregation of publicly funded improvement work from privately funded construction under certain circumstances, applies.

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Applying section 1720(c)(2)(A) to the instant case, because the construction of the improvements was a "condition of regulatory approval," the amount of Agency's reimbursement is less than the cost of the off-site improvements, and the Agency will not maintain any proprietary interest in the expanded Anlin facility, under section 1720(c)(2)(A) the requirements of the prevailing wage laws are not applicable to the on-site private construction. Pursuant to that section, however, the requirements of the prevailing wage laws are applicable to the off-site improvements work.<sup>3</sup>

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake  
Acting Director

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<sup>3</sup> Additionally, the Agency has agreed to install a traffic signal, and the City has agreed to construct an access road to its new corporate yard. If this work is being done under contract, prevailing wages are required under section 1720(a).