

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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December 4, 2002

Arthur S. Lujan
Labor Commissioner
Department of Industrial Relations
Division of Labor Standards Enforcement
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Public Works Case No. 2002-024
John O'Banion Community Learning Center
Housing Authority of the County of Merced

Dear Mr. Lujan:

This constitutes the determination of the Director of the Department 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, ("CCR") section 16000(a). Based upon my review of the facts of this case and an analysis of the applicable law, it is my determination that the John O'Banion Community Learning Center Project ("Project") is a public work subject to the payment of prevailing wages.

The Project includes demolition, site preparation and construction of a new 17,000 square-foot, one-story multi-purpose building in Merced. The owner and general contractor for the Project is the Housing Authority of the County of Merced ("Housing Authority"), which entered into sub-contracts with the successful bidders on the Project. Funding for the Project consists of a \$150,000 Community Development Block Grant ("CDBG") from the U.S. Department of Housing and Urban Development ("HUD"), and a \$1 million loan from the County Bank of Merced to the Housing Authority. The preliminary work for the Project, including surveying and architectural design, was funded by the CDBG funds, which are administered by the Housing Authority. The bank loan is a standard commercial loan from a private source that will be repaid from lease payments made by the tenants of the Center. Lockwood General Engineering, a subcontractor, will receive approximately \$505,535 for performing demolition, site preparation, all grading work, site utilities installation and specified concrete work on the Project.

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What is now Labor Code section 1720(a)(1)¹ (as amended by Statutes of 2001, Chapter 938, section 2 (Senate Bill 975)) defines "public works" in relevant part as: "Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or part out of public funds." "Construction" includes work performed during the design and pre-construction phases of construction including, but not limited to, inspection and land survey work. 8 CCR section 16000 defines "public funds" as state, local and/or federal monies.

This Project involves construction and demolition done under contract at both the pre-construction and construction stages. Although there is also a private bank loan funding the Project, under the applicable regulation the federal CDBG funds constitute public funds. The question appears to be whether the Project is subject to the payment of California prevailing wages.

In a letter dated February 4, 2002, HUD states that the CDBG funds will not trigger the Davis-Bacon requirements, and therefore the Project is not subject to the payment of federal prevailing wages. That federal prevailing wages are not required has no bearing in this case on whether state prevailing wages are required. Applicable to this issue is 8 CCR section 16001(b), which states:

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.

Because the Project in this case is federally funded and assisted and is being administered by the Housing Authority, a California awarding body, California prevailing wages would apply.

In summary, pursuant to section 1720(a)(1) and 8 CCR section 16001(b), the work being done by Lockwood on this Project is a public work for which California prevailing wages must be paid.

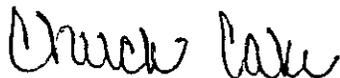
¹ All statutory code section references are to the Labor Code.

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I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake
Acting Director

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