

DEPARTMENT OF INDUSTRIAL RELATIONS

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October 7, 2003

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Golden State Labor Compliance
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Palmdale, CA 93551-7618

Thomas G. Duffy, Ed.D.
California's Coalition
for Adequate School Housing
1130 K Street, Suite 210
Sacramento, CA 95814

Re: Public Works Case No. 2003-026
Advisory Opinion on DSA Project Inspectors

Dear Mr. Zinger and Dr. Duffy:

This is in response to your concurrent requests for an opinion concerning the applicability of the California public works laws to the employment of Project Inspectors and Assistant Inspectors, as approved by the Division of the State Architect ("DSA"), on school and community college construction projects. Based on my review of the facts presented and an analysis of the applicable law, it is my determination that, while Project Inspector and Assistant Inspector work is public work subject to the payment of prevailing wages, until further notice this Department will not enforce such obligations, except as discussed herein.

The Field Act, codified in sections 17280-17316 and 81130-81147 of the Education Code, requires that school buildings be constructed to withstand major earthquakes without collapse. The construction standards are set forth at Part 2, Title 24, California Code of Regulations ("C.C.R."). Under 24 C.C.R. section 4-333, school boards "must provide for and require competent, adequate and continuous inspection" by a DSA-approved Project Inspector. In Section 4-342(b), the duties of Project Inspectors are described to include "actual personal knowledge, obtained by personal and continuous inspection of the work of construction in all stages of its progress, that the requirements of the approved plans and specifications are being completely executed."

DSA's Interpretive Regulation IR A-8 provides a more detailed description of the duties of the Project Inspector. For example, the Project Inspector is responsible for "inspection of all portions of the construction for compliance with the requirements

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of the construction documents" and "identification, documentation, and reporting of deviations in the construction from the requirements of the construction documents." The Project Inspector must "readily identify non-compliant work as the construction progresses, to facilitate prompt corrective action." The Project Inspector must give the contractor prompt verbal notice of deviations so that they may be immediately corrected. The Project Inspector's personal knowledge of the construction must be gained through "physical inspection of the work in all stages of its progress."

IR A-8 also requires the Project Inspector to monitor both the work of Assistant Inspectors and the approval and work of any Special Inspectors and material testing laboratories. In Interpretive Regulation IR A-7, DSA emphasizes that "the inspector must be present on the job-site when there is construction activity."

Prevailing wage determinations have existed for certain "Building/Construction Inspector And Field Soils Material Tester" crafts since 1977. More recently, the Department addressed the issue whether construction inspectors were generally covered by the prevailing wage laws in *Northridge Earthquake Recovery Project/California State University, Northridge*, PW 99-046 (June 9, 2000). That case involved construction inspectors hired by contractors who were engaged in the reconstruction and repair of earthquake-damaged buildings on the CSUN campus. The Department determined that the inspectors were workers employed in the execution of a public work under Labor Code section 1772 and entitled to be paid at prevailing wage rates.

The *Northridge* decision was then codified by the Legislature when it amended Labor Code section 1720 to clarify the meaning of the term "construction" by the adoption of SB 1999 (effective January 1, 2001). What is now Labor Code section 1720(a)(1) generally defines public works to mean "construction alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds". SB 1999 added the following language: "For purposes of this subdivision, "construction" includes work performed during the design and pre-construction phases of construction including, but not limited to, **inspection** and land surveying work." (Emphasis added.)

The Department has not been provided with any information that would tend to support an exemption for DSA-approved Project Inspectors from the scope of Labor Code section 1720(a)(1), which by its express terms defines "construction" to include the work

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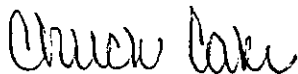
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of inspection. In the context of the school construction projects where DSA Project Inspectors are employed, such work is clearly construction done under contract and paid for out of public funds. Under the pertinent regulations, it is also clear that the duties carried out by the Project Inspectors are a vital and integral part of such construction projects, requiring that the contractor's work be actively and continuously monitored through the on-site physical presence of the Project Inspector whenever there is construction activity.

For these reasons, it must be concluded that under sections 1720(a)(1) and 1772, DSA-approved Project Inspectors and Assistant Inspectors are performing public work when employed on school and community college construction projects. Because, however, currently there are general prevailing wage determinations for only the Building/Construction Inspector and Field Soils and Material Tester classifications, until further notice this Department will refrain from enforcing prevailing wage obligations for any inspection work, past or present, that falls outside the scope of work referenced for these general prevailing wage determinations. Both the general prevailing wage determinations for the referenced crafts as well as the scope of work can be located on the Department's web site, www.dir.ca.gov/DLSR. Please note that workers performing the work described in the Scope of Work must be paid prevailing wages, regardless of their job title. The Division of Labor Statistics and Research can answer any specific questions you may have concerning this matter.

I hope this advisory opinion satisfactorily answers your inquiries.

Sincerely,



Chuck Cake
Acting Director

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