

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050



October 22, 2003

Robert C. Frost
International Brotherhood of Electrical
Workers Local Union 440
1074 E. La Cadena Drive, Suite 15
Riverside, CA 92501-1400

Re: Public Works Case No. 2003-027
Tamale Factory Relocation
City of Riverside Redevelopment Agency

Dear Mr. Frost:

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 relocation of the Tamale Factory ("Project") in the City of Riverside ("City") is a public work subject to prevailing wage requirements.

The Project entails the relocation of a Mexican restaurant necessitated by a Memorandum of Understanding ("MOU") between the City of Riverside Redevelopment Agency ("Agency") and the Regents of the University of California ("Regents"). In December 2001, Agency and Regents entered into the MOU, which provided for the development of the University of California, Riverside/Culver Center for the Arts ("Center"). The MOU required Agency to acquire the future site of the Center, which contained the Rouse Building, the Wurm Building and a parking lot. The Tamale Factory restaurant, owned by Charles and Naomi Avila, was the only tenant of the Rouse Building. The MOU provided for Agency and Regents to provide relocation assistance to the Avilas pursuant to the Community Redevelopment Law (Health & Saf. Code § 33000 et seq.) and the Relocation Assistance Act (Gov. Code § 7260 through 7277).

In January 2002, Agency entered into a Relocation Settlement Agreement ("RSA I") with the Avilas. RSA I provided for the Avilas to receive \$550,000 in full satisfaction of Agency's obligations under the Relocation Assistance Act, the California Constitution and any other state or federal compensatory laws. The agreed-upon amount was to serve as compensation for the displacement of the restaurant, including the fair market value of the leasehold interest, loss of goodwill and/or profits and

relocation costs. In order to receive the full \$550,000, the Avilas were required to relocate their business within City and to vacate the Rouse Building by an agreed upon date. However, in the event a suitable relocation site could not be found, RSA I provided the Avilas with two options. They could choose not to relocate the business, in which case the amount of their relocation assistance would be reduced to \$275,000, an amount reflecting a complete loss of goodwill, minus moving and reestablishment costs. Alternatively, Agency agreed that it would work cooperatively with the Avilas to discuss acquisition by the Avilas of a portion of a parcel of downtown property owned by Agency.

During the summer and early fall of 2002, Agency and the Avilas continued to discuss potential relocation sites. It became apparent that the only potentially suitable site was an unused portion ("Parcel") of two larger downtown lots that previously had been acquired by Agency. On October 15, 2002, Agency and the Avilas entered into an Agreement of Purchase and Sale and Escrow, Instructions ("PSA") conveying the Parcel to the Avilas for \$93,500, which an appraiser had determined to be the fair market value of the Parcel. The terms of PSA require the Avilas to construct a walkway on the part of the property to be retained by Agency, and required Agency to reimburse the Avilas for the cost of construction of the walkway, estimated to be approximately \$20,000.

In the course of the planning process for the development of the Parcel, City planning staff informed Agency and the Avilas that the Parcel was located within the Mission Inn Historical District, and therefore was subject to special architectural, design and development standards. Compliance with these standards was estimated to increase construction-related costs for the restaurant relocation by \$60,000. The Avilas then submitted this cost to Agency as an additional re-establishment expense under the Relocation Assistance Act. In October 2002, Agency and the Avilas entered into the Amended and Restated Relocation Settlement Agreement ("RSA II"), which increased total relocation benefits to \$610,000 and required the Avilas to relocate the Tamale Factory to the Parcel in order to receive the additional \$60,000 of benefits.

RSA II recites that the Avilas, with the assistance of Agency, identified a suitable property for the relocation of the restaurant, that relocation to that site would require construction of a new building, and that:

The cost to construct such building and structures will be higher, due to the special architectural, design, and development standards imposed by the C-3-D Zone, the Mission Inn Historic District, and the Downtown Specific Plan, all of which affect the Relocation Site.

Section 1 of RSA II sets forth an acknowledgement by the Avilas that:

[T]hey may be eligible to receive compensation, relocation benefits, and/or damages ... including, but not limited to, the fair market value of their property, loss of goodwill, loss of profits, actual and reasonable expenses for moving a business, loss of tangible personal property as a result of moving the business, expenses incurred in searching for a replacement site for the business, expenses to re-establish the business at the new site, or an in lieu payment, or any other compensation ... as a result of the Agency's acquisition and disposition of the Property

Section 2 of RSA II sets forth the Avilas' agreement to accept \$610,000 in full and complete settlement of such benefits to which they "are or may be entitled." That Section further provides:

Payment of said sum ... will be disbursed by the Agency to the Recipients as follows:

- (a) Within one week after close of escrow under the Purchase Agreement, the sum of two hundred and seventy-five thousand dollars (\$275,000.00);
- (b) On April 1, 2002 the sum of one hundred thousand dollars (\$100,000.00);
- (c) On July 1, 2002, the sum of one hundred thousand dollars (\$100,000.00);

- (d) Within two (2) weeks after inspection and approval of rough electric and rough plumbing improvements for the Building (as defined in Section 3 below) on the Relocation Site, the sum of \$60,000.00; and
- (e) Within one (1) week of vacating the Property, no later than June 30, 2003, the balance of seventy-five thousand dollars (\$75,000.00).

Section 3 of RSA II provides for the relocation of the restaurant and states in part:

The Recipients shall design and construct a three (3) story building of approximately 7,475 square feet in the Spanish Colonial Revival architectural style, with the restaurant on the ground floor, banquet facilities on the second floor, and offices on the third floor ("Building"), on the Relocation Site for the operation of the Tamale Factory restaurant.

Labor Code section 1771¹ requires, with certain exceptions, that prevailing wages be paid to all workers employed on public works. Section 1720(a)(1) defines "public works" to include [c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds." Section 1720(b) provides in pertinent part:

For purposes of this section, "paid for in whole or in part out of public funds" means all of the following:

- (1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

¹ All subsequent statutory references are to the Labor Code unless otherwise indicated.

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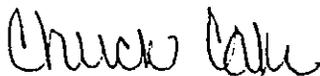
Under Section 1720(a), a project is a public work if it meets three criteria: First, the project must involve construction, alteration, demolition, installation or repair work; second, the work must be done under contract; and third, the work must be paid for in whole or in part out of public funds. The Project clearly involves construction of a new building. The construction is done pursuant to RSA II, which is a contract between Agency and the Avilas, and also pursuant to a contract between the Avilas and a private contractor.² The question presented is whether the construction is being paid for with the public funds.

International Brotherhood of Electrical Workers, Local Union 440 argues that the relocation assistance constitutes a payment for construction out of public funds. Agency contends that the relocation assistance was not payment for construction, but rather legally-required compensation for business losses suffered by the Avilas.

RSA II explicitly requires construction of a specifically described building on a specific site as a condition for payment of the full relocation assistance sum. As such, the relocation payment constitutes payment of public funds for the construction. Accordingly, the project is a public work subject to prevailing wage requirements.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake
Acting Director

² Section 1720 does not require that a public entity be a party to a construction contract. Goleta Amtrak Station, PW 98-005 (November 23, 1998).

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