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DEPARTMENT OF INDUSTRIAL RELATIONS

**Christine Baker, Director**

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November 6, 2014

Deborah Wilder

Contract Compliance & Monitoring, Inc.

635 Mariners Island Boulevard, Suite 200

San Mateo, CA 94404

RE: Public Works Case No. 2014-023  
Dismantling and Removal of Modular Units  
Livermore Valley Joint Unified School District

Dear Ms. Wilder:

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 Labor Code section 1773.5<sup>1</sup> and California Code of Regulations, title 8, 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 dismantling and removing of modular classrooms is a public work subject to California prevailing wage requirements.

### **Facts**

On April 23, 2014, Livermore Valley Joint Unified School District (District) entered into two contracts (Lease Agreement 1 and Lease Agreement 2) with Mobile Modular for the delivery, installation, and eventual dismantling and removal of six modular classrooms and restrooms for District schools, Joe Mitchell K-8 School and Junction Avenue K-8 School. Mobile Modular Management Corporation (Mobile Modular) rents, leases, installs and removes, and sells modular re-locatable buildings to provide temporary or permanent space for a wide variety of uses. Products are typically produced in standard sizes and marketed to the general public, public schools and other public entities. The leased modular classrooms remain the property of Mobile Modular and are returned to Mobile Modular upon expiration of the lease. The products leased to the District in this instance are used and/or refurbished modular classrooms of standard sizes. The Lease Agreements have a length of 24 months, with the option to renew on a month-to-month basis.

According to Mobile Modular, upon delivery of the modular units, Mobile Modular's contractors assemble wooden supports and then place each modular unit on top of the supports. The

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<sup>1</sup> All citations are to the California Labor Code, unless otherwise specified.

contractors then attach the modular unit to the wooden supports and install the ramps and skirting which are attached to the modular units.

The Lease Agreements list “Charges Upon Delivery” for each modular classroom and restroom. Charges are included for “Block and Level Building,” “Delivery Haulage Lowboy 12 wide,” “Installation, Ramp Skirting,” “Tall cabinet, base cab w/sink/bubbler,” and “Add rough plumbing for hose bib.” (Lease Agreement 1, pp.1-2; Lease Agreement 2, p.1.) The phrase “*Prevailing Wage Cert. Payroll*” appears under the charges for “Block and Level Building” and “Installation, Ramp Skirting” to indicate prevailing wages are due for this work. (*Ibid.*, italics in original.) The Lease Agreements further state in the “Special Notes” section: “Prevailing Wage: Pricing includes prevailing wage and certified payroll for Installation work performed on site.” (Lease Agreement 1, p. 3; Lease Agreement 2, p. 2.)

Upon the expiration of the contract term, the District is responsible for disconnecting any utilities attached to the modular units. Mobile Modular then removes the ramps and skirting, raises the modular unit off the wooden supports, and loads the unit onto a truck for transport.

The Lease Agreements list “Charges Upon Return” for each modular classroom and restroom. Charges are included for “Prepare Equipment for Removal,” “Removal, Ramp Skirting,” and “Return Haulage Lowboy 12 Wide.” (Lease Agreement 1, p. 2; Lease Agreement 2, p. 2.) There are no prevailing wages indicated under “Charges Upon Return.” (*Ibid.*) The charges indicated in the Lease Agreements are paid by the District with public funds.

### **Discussion**

Section 1771 generally requires the payment of prevailing wages to workers employed on public works. Section 1720, subdivision (a)(1) defines “public works” as “[c]onstruction, alteration, demolition, installation, or repair work done under contract, and paid for in whole or in part out of public funds ....” Section 1772 provides that: “Workers employed by contractors or subcontractors in the execution of any contract for public works are deemed to be employed upon public work.” Finally, section 1774 provides that: “The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rate of wages to all workmen employed in the execution of the contract.”

It is undisputed that the work performed under the Lease Agreements is “paid for in whole or in part out of public funds” and that the work is “done under contract.” In its response to the Director’s request for information, Mobile Modular acknowledges that it must pay prevailing wages for assembling the wooden supports as well as installing the classroom ramps and skirting, pursuant to *Installation of Pre-Manufactured Modular Classrooms-San Diego Unified School District*, Public Works Case No. 2001-050 (June 23, 2002). There, the Director of Industrial Relations determined that installation work necessary to install modular buildings, including constructing and anchoring foundations, supports, building ramps, and installing skirting constituted installation and construction work subject to prevailing wage. The only issue here is whether the dismantling and removal of modular units fall within one or more of the types of covered work enumerated in section 1720(a)(1) or are otherwise subject to prevailing wage requirements under sections 1771 and 1772.

Mobile Modular contends that leasing classrooms is not a public work. That is true as far as it goes, since the work activities listed in section 1720, subdivision (a)(1) do not encompass leasing. Lease agreements, however, can form the basis for a public work. (See *Hensel Phelps Construction v. San Diego Unified Port Dist.* (2011) 197 Cal.App.4th 1020.) The question is whether a type of work listed in the statute is done under contract and paid for in whole or in part out of public funds. Mobile Modular argues that none of the activities involved in preparing the modular classrooms for return fall within the definition of “construction, alteration, demolition, installation, or repair” under section 1720(a)(1). These activities include removing the ramps and skirting prior to lifting the buildings off of their wooden supports and loading them onto delivery trucks. Mobile Modular states this work is not the “demolition” contemplated by section 1720, since the classrooms will not be torn down or permanently destroyed and the classrooms are valuable personal property not subject to destruction. For this argument, Mobile Modular relies on *Priest v. Housing Authority of the City of Oxnard* (1969) 275 Cal.App.2d 751, and a prior coverage determination, *Installation and Removal of Temporary Fencing and Power and Communications Facilities/Eastside High School-Antelope Valley Union High School District*, Public Works Case No. 2005-018 (February 28, 2006) (*Eastside High School*).

In *Priest*, the Court concluded that demolition includes tearing down and removing things previously constructed, whether on or below the surface. In that case, clean-up, removal of debris and clearing of land were included in the definition. In *Eastside High School*, the Director applied *Priest*, to find that the removal of temporary fencing and power and communication facilities after previously being installed fit within the definition of “demolition.” Like the classrooms in this case, nothing in *Eastside High School* indicates the fencing and power and communication facilities were not valuable personal property or were destroyed or discarded. The classrooms having been installed under a public work contract, their dismantling constitutes removal that fits within the penumbra of “demolition” under section 1720. Mobile Modular minimizes the retrieval of the modular units but the original installation included more than the mere placement of the modular unit atop the wooden supports. The installation also included attaching the modular units to the wooden supports, and installing and attaching ramps and skirting to the units. Thus, Mobile Modular can only remove the modular units by de-installing and disconnecting the attachments, ramps and skirting from the modular units. The work performed to de-install and disconnect attachments, ramps and skirting constitutes demolition under *Priest*.<sup>2</sup>

The dismantling of the modular units is also subject to prevailing wage requirements under sections 1771 and 1772 as the work is being performed in execution of a contract for public work. The statutory term “execution” was interpreted by the Court of Appeal in *Williams v. SnSands Corporation* (2007) 156 Cal.App.4th 742 in the context of hauling materials away from the public work project site. Citing a prior case (*O.G. Sansone Co. v. Department of Transportation* (1976)

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<sup>2</sup> Mobile Modular also argues that the dismantling of the classrooms is not “installation” under recent amendments to the California Prevailing Wage Law. Those changes were enacted by Assembly Bill (AB) 1598 (stats. 2012, ch. 810, § 1.) The Legislature enacted AB 1598 to specify in section 1720, subdivision (a)(1) that “installation” includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems. The legislative history supports Mobile Modular’s argument, showing the bill was intended to address differences in prior coverage determinations as between freestanding and affixed modular office systems and to ensure both types of systems were subject to the prevailing wage laws. (See Sen. Rules Co., Off. of Sen. Floor Analyses, 3d reading analysis of AB 1598 (2011-2012 Reg. Sess.) as amended Apr. 26, 2012.)

55 Cal.App.3d 434) and relying on dictionary definitions of “execution,” *Williams* found that in section 1772, “the use of ‘execution’ in the phrase ‘in the execution of any contract for public work,’ plainly means the carrying out and completion of all provisions of the contract.” (*Ibid.*, at p. 750.)

Construing both section 1772 and the material supplier exemption, *Sansone* and *Williams* “set forth general framework for considering whether certain functions are integral to the performance of a public works contract.” (*Sheet Metal Workers’ Internat. Ass’n. Local 104 v. Duncan* (2014) 229 Cal.App.4th 192, 205-206 (*Local 104*.) *Sansone* concerned “on-hauling” of standard aggregate subbase material onto the site of a highway public works project, and *Williams* addressed “off-hauling” excess dirt and rock from a public works construction site. Borrowing from other court cases, *Sansone* and *Williams* identified specific factors to consider: whether the prime contractor obtained the materials from a standard commercial supplier and whether hauled materials were immediately distributed onto the jobsite (*Sansone*); whether the transport was required to carry out a term of the public works contract, whether the work performed on the project site or another site integrally connected to the project site, and whether the work was performed off the actual construction site was nevertheless necessary to accomplish or fulfill the contract (*Williams*). (*Local 104, id.*, at p. 206.) Mobile Modular cites the statement in *Williams* that just because it was necessary to remove certain materials from the construction area does not mean that the work was related to the performance of a public works contract (*Williams, supra*, 156 Cal.App.4th, at p. 753) or part of “an integrated aspect of the ‘flow’ process of construction” (*Sansone, supra*, 55 Cal.App.3d at p. 444.)

Because the specific *Sansone* and *Williams* factors arose in the context of hauling materials, they are limited in an analysis of activities in another context, such as dismantling the modular classrooms in this case, where “distinct activities ... give rise to different concerns in the context of the prevailing wage law.” (*Local 104, supra*, 229 Cal.App.4th at p. 206.) Mobile Modular argues that the retrieval of classrooms is not required to carry out a term of the public works contract. An objective reading of the Lease Agreements, however, dictates otherwise. Mobile Modular was contractually obligated under the Lease Agreements both to install and remove the classrooms. Further, similar to the contractual obligation of the prime contractor in *Sansone* to furnish aggregate sub base material to the highway project, Mobile Modular was specifically required to remove the ramp and skirting and lift the modular classrooms off the District’s property. It is evident that in order to take those steps, Mobile Modular was also required to detach the wooden supports and load the classrooms onto trucks. Taking the cue from *Williams*, the question under section 1772 is whether, in the dismantling and removal activities, Mobile Modular was “conducting an operation truly independent of the performance of the general contract for public works, as opposed to conducting work that was integral to the performance of that general contract.” (*Williams, supra*, at p. 752.) Under the Lease Agreements, the dismantling and removal activities, all of which took place at the District’s site, were not “truly independent” of the performance of the contract but, instead, were part and parcel of that contract.<sup>3</sup>

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<sup>3</sup> No party to this matter argues that the actual transport of the modular classrooms, once they are loaded onto trucks, was done “in the execution of” a public works contract. Further, no evidence was presented to clarify where the classrooms were transported once the trucks were loaded at District’s site. Applying the above-referenced specific factors identified in *Williams*, an off-hauling case, the actual hauling would likely not be covered work since the hauling took place off the District’s site and the classrooms were presumably being returned to a site which bore no relation to the District’s site.

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For the foregoing reasons, the dismantling and removal of modular classrooms is public work that is subject to California's prevailing wage requirements.

I hope this letter satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Christine Baker". The signature is written in black ink and is positioned above the typed name and title.

Christine Baker  
Director