

S251135

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

JOHN BUSKER,

Plaintiff-Appellant,

v.

WABTEC Corporation, et al.,

Defendants-Respondents.

SUPREME COURT
FILED

MAR 25 2019

Jorge Navarrete Clerk

Deputy

On Certification from the
United States Court of Appeals for the Ninth Circuit, Case No. 17-55165
Judge Otis D. Wright, II, Case No. 2-15-cv-08194-ODW-AFM

RESPONDENTS' REQUEST FOR JUDICIAL NOTICE

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Counsel for Defendants-Respondents
WABTEC Corporation, et al.

To the Court, all parties, and their counsel of record:

Please take notice that, pursuant to California Evidence Code sections 451 and 452, and Rules 8.252, 3.1113(l), and 3.1306(c) of the California Rules of Court, Respondents Wabtec Corporation, et al. (“Wabtec”) respectfully request that the Court take judicial notice of the following:

1. Legislative History

Wabtec requests that the Court take judicial notice of the following legislative history documents, which are cited in Wabtec’s Answer Brief on the Merits:

Exhibit A: Enrolled Bill Report related to Senate Bill 975.

Exhibit B: Senate Bill 975, as amended in Assembly on June 25, 2001.

Exhibit C: Letter from the California Redevelopment Association to Senator Alarcon related to Senate Bill 975 (dated June 28, 2001).

Exhibit D: Newspaper article—from the Sacramento Bee, Taking from the Poor and Giving it to the Unions (Sept. 6, 2001)—located in the legislative history record related to Senate Bill 975.

Exhibit E: Senate Third Reading related to Senate Bill 1999, as amended August 23, 2000.

Exhibit F: Senate Bill 1581, as introduced on January 17, 1974.

Exhibit G: Letter from the Los Angeles City Unified School District to Senator Zenovich related to Senate Bill 1581 (dated March 18, 1974).

Exhibit H: Senate Bill 1581, as amended in Senate on April 3, 1974.

2. Department of Industrial Relations Determinations

Wabtec further requests that the Court take judicial notice of the public works determinations and decisions of the Department of Industrial

Relations that are cited in Wabtec's Answer Brief on the Merits, as listed in the Table of Authorities in that brief. Where indicated in Wabtec's brief, a copy of the determinations or decisions can be found in the Excerpts of Record ("ER") from the Ninth Circuit. For determinations dated 2002 and later for which no citation to the ER is provided in the brief, the determination can be found on the Department's website at <https://www.dir.ca.gov/OPRL/pwdecision.asp>. Pre-2002 determinations for which no ER citation is provided in the brief are attached to this Request for Judicial Notice as follows:

Exhibit I: *Installation of Playground Equipment, Public Works Determination 99-006 (Sept. 22, 1999).*

Exhibit J: *Installation of Gym Lockers, Public Works Determination 99-011 (Sept. 22, 1999).*

Exhibit K: *Foodservice Contract Design, Public Works Determination 99-024 (Sept. 22, 1999).*

Exhibit L: *Installation of Fencing, Public Works Determination 99-012 (Sept. 23, 1999).*

Exhibit M: *Installation of Signage by Marketshare, Public Works Determination 99-034 (Sept. 29, 1999).*

Exhibit N: *Installation of Gym Lockers, Bleachers, Basketball and Volleyball Equipment, Public Works Determination 99-050 (Nov. 10, 1999).*

Exhibit O: *Toilet Partition/Bathroom Accessories Installation, Public Works Determination 99-061 (Nov. 10, 1999).*

Exhibit P: *Metal Lockers and Metal Storage Shelving, Public Works Determination 99-060 (Nov. 30, 1999).*

The authenticity of each of the foregoing exhibits is established in the accompanying declarations of Jan Raymond (Exhibit Q) and Alice Loan (Exhibit R).

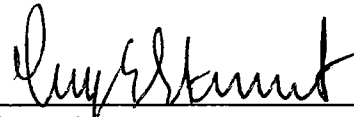
MEMORANDUM OF POINTS AND AUTHORITIES

Judicial notice of Exhibits A–H containing legislative history records is proper under subsection 452(c) of the California Evidence Code, which permits the Court to take judicial notice of “Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (*See Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 279 n.9 [holding that “committee reports . . . are indisputably proper subjects of judicial notice”].) Subsection 452(c) encompasses “legislative records relating to bills,” including, among other items, “[c]ommittee staff analyses” and “[r]elevant interim hearing materials, studies, case materials, and articles.” (Govt. Code, § 9080.) In addition, the Supreme Court has taken judicial notice of an enrolled bill report from the Department of Industrial Relations. (*Elsner v. Uyegaes* (2004) 34 Cal.4th 915, 934 n.19.) These exhibits are relevant to determining the proper interpretation of the Labor Code § 1720 *et seq.*

Judicial notice of Exhibits I–P containing records of the Department of Industrial Relations is also proper under subsection 452(c). (*See Sheet Metal Workers Internat. Assn., Local Union No. 104 v. Rea* (2007) 153 Cal. App. 4th 1071, 1075 n.4 [granting request for judicial notice of Department of Industrial Relations prevailing wage determinations].) These exhibits are relevant to determining the proper interpretation of the Labor Code § 1720 *et seq.*, which the Department has responsibility in administering.

Accordingly, Respondents respectfully request that the Court take judicial notice as described above.

Dated: March 25, 2019



Craig E. Stewart

*Counsel for Defendants-
Respondents*

WABTEC Corporation, et al.

Exhibit A

CONFIDENTIAL-Government Code §6254(l)		
Department/Board Industrial Relations (DIR)		Bill Number/Author: SB 975/Alarcon
Sponsor: State Building and Construction Trades Council		Related Bills AB 138; AB 1499 ('95); AB 2281 ('96)
<input type="checkbox"/> Admin Sponsored Proposal No.		Chaptering Order (if known) <input checked="" type="checkbox"/> Attachment
Subject: Public works; California Infrastructure and Economic Development Bank		

SUMMARY

This bill –

- (1) clarifies that all public works projects financed through the California Infrastructure and Economic Development Banks issuance of industrial development bonds (IDBs) must comply with provisions of the Labor Code pertaining to payment of prevailing wages;
- (2) amends the definition of "public works" in Labor Code section 1720(a) to include certain installation work, and defines the phrase "paid for in whole or in part out of public funds" in section 1720(a);
- (3) provides exemptions from prevailing wage requirements for certain private construction projects; certain private residential housing projects; and, the construction or rehabilitation of certain affordable housing financed with public funds; and
- (4) exempts from the definition of public funds certain state tax credits.

Departments That May Be Affected Industrial Relations, Transportation, General Services	
<input type="checkbox"/> New / Increased Fee <input type="checkbox"/> Governor's Appointment <input type="checkbox"/> Legislative Appointment <input type="checkbox"/> State Mandate <input type="checkbox"/> Urgency Clause	
Dept/Board Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:	Agency Secretary Position <input type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:
Division Chief Date <i>John Lee</i> <i>9/27/07</i>	Department Director Date <i>Stephen Smith</i> <i>9/29/07</i>

PURPOSE OF THE BILL

This measure has been introduced to address an inadvertent loophole in the California Infrastructure and Economic Development Bank Act that has allowed projects financed through the Infrastructure Bank's issuance of Industrial Development Bonds (IDBs) to escape prevailing wage law, codify existing regulations on prevailing wages and insure the "McIntosh" court case did not open new loopholes for the enforcement of prevailing wages in California.

RECOMMENDATION AND SUPPORTING ARGUMENTS

Sign.

ANALYSIS

The California Industrial Development Financing Act requires all agencies that are authorized to issue IDBs to ensure that prevailing wages are paid on private and public works projects financed through IDBs. This includes the multitude of financing authorities within the Treasurer's Office as well as local government agencies.

This bill would codify precedential administrative public works coverage determinations by the current Director of DIR regarding installation work and what constitutes "paid for in whole or in part out of public funds" under Labor Code section 1720(a). Specifically, the coverage determinations to be codified by this bill define as public funds a public entity's payment to a contractor by real property swaps or write-downs, reimbursement plans and grants as "public funds."

This bill would also reverse, in part, the holding regarding public funds contained in McIntosh v. Aubry (1993) 14 Cal.App.4th 1576, 18 Cal.Rptr.2d 860.

Section 2 (a)(1) of the bill would amend Labor Code section 1720(a) to include within the definition of public works "installation" paid for in whole or in part out of public funds.

This would codify existing DIR precedential public works determinations on installations issued by the current Director.¹ These precedential determinations reversed the policy of the

¹ Public Works Case No. 99-006, Installation of Playground equipment, City of Glendale, Division of Parks and Recreation, Sept. 22, 1999; Public Works Case No. 99-011, Installation of Gym Lockers, Jones-Campbell Company/Sequoia Union High School District, Sept. 22, 1999; Public Works Case No. 99-024, Foodservice Contract Design, James Madison Elementary School, San Leandro, Sept. 22, 1999; Public Works Case No. 99-012, Caltrans, San Diego Border Patrol and California Highway Patrol Facility, Installation of Fencing, National Fence, Sept. 23, 1999; Public Works Case No. 99-034, Valley View Elementary School, Pleasanton Unified School District, Installation of Signage by Marketshare, Inc., Sept. 29, 1999; Public Works Case No. 99-050, Installation of Gym Lockers, Bleachers, Basketball and Volleyball Equipment, Dennis J. Amoroso Construction/Southwest Interiors/Windsor UHSD, Nov. 10, 1999; Public Works Case No. 99-061, Toilet Partition/Bathroom Accessories Installation, Milpitas Unified School District; Public Works Case No. 99-060, Metal Lockers and Metal Storage Shelving, Santa Clara Police Facility, Nov. 10, 1999.

prior two administrations that installation does not rise to the level of construction and is therefore not a public work. Unless "installation" is included in the statutory definition of a public work, a future administration may legally rescind the precedential determinations and resort to the policy of the prior administrations.

Section 2 (b) of the bill would enact a comprehensive definition of the phrase "paid for in whole or in part out of public funds" in 1720(a):

(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.

The phrase "paid for in whole or in part out of public funds" heretofore has not been defined by statute. DIR's regulations include a definition of public funds as "Includes state, local and/or federal monies.

NOTE: Public funds do not include money loaned to a private entity where work is to be performed under private contract and where no portion of the work is supervised, owned, utilized or managed by an awarding body." As noted previously, public funds have been defined by court decision and DIR precedential determinations.

The definition of public funds contained in the bill would reverse the holding in McIntosh, supra, that a public entity's waiver of construction-related fees is not a payment out of public funds because it is a forbearance and not a direct payment. (BC 2) This bill would also codify certain DIR precedential determinations holding that payment out of public funds includes various forms of public subsidies.²

The language is somewhat unclear whether all loans or simply those with below-market interest rates would be within the definition of public funds. The former interpretation would conflict with DIR's longstanding practice and regulation. (BC 1)

The Department of Housing and Community Development (HCD) has objected to the inclusion of loans in section 2(b) because, according to HCD, the majority of the housing it

² These include payment or fees on behalf of a developer (Precedential Public Works Case No. 2000-015, Downtown Redevelopment Plan Projects, City of Vacaville); credits applied against repayment obligations (Precedential Public Works Case No. 2000-011, Town Square Project, City of King); forgiven loans (Precedential Public Works Case No. 2000-043, 13th and F Street Townhouse Project, City of Sacramento); and land swaps (Precedential Public Works Case No. 99-039, Riverview Business Center, Office Building D).

facilitates is funded with below market interest rate loans. The State Building Trades has agreed to clean up legislation on this point in January of 2002.

Section 2 (c)(1) would exempt private residential housing projects built on private property and “not built pursuant to an agreement with a state agency, or a redevelopment agency or local housing authority. This section was added at the request of the California Building Industries Association.

Section 2 (c)(2)(A) provides an exemption from prevailing wages for an otherwise private project where the construction contractor, as a condition of regulatory approval for the otherwise private project, is required to build necessary infrastructure paid by the public entity in an amount not to exceed the cost of the infrastructure work and where the public entity retains no proprietary interest in the private project. Prevailing wage requirements would attach to only the infrastructure work.

Under some circumstances, this provision would conflict with DIR Precedential Public Works Case No. 2000-016, Vineyard Creek Hotel and Conference Center, Redevelopment Agency of the City of Santa Rosa, October 16, 2000, which held that private construction would be subject to prevailing wages if it and the publicly funded off-site improvements were a single, interdependent and integrated work however the exemption is justified in preventing the imposition of prevailing wages on large projects with only one component being in the public domain.

The factors considered by the Director in determining whether there is a single, interdependent and integrated work are: (1) the manner in which the construction is organized in view of, for example, bids, contracts, timing and workforce; (2) the physical layout of the project; (3) the oversight, direction and supervision of the work; (4) the financing and administration of the construction funds; and (5) the general interrelationship of the various aspects of the construction.

Section 2(c)(2)(a) would render the criteria inapplicable to situations involving private projects and infrastructure work, while not precluding their application where the work being analyzed does not include publicly mandated infrastructure work (e.g. the construction of a hotel and a conference center.)

Section 2(c)(2)(B) exempts from prevailing wage obligations projects in which a public entity provides “de minimus” subsidy to a private developer.³ This language was added at the request of the CBIA but will require a definition of “de minimus” by DIR. While giving DIR increased flexibility in finding non-coverage it will slightly increase the Departments Administrative burden.

³ De minimus is defined in Barron’s Law Dictionary (4th Ed. 1996) as “insignificant, minute, frivolous. Something or some act which is ‘de minimus’ in interest is one which does not rise to the level of importance to be dealt with judicially.” One court defined it as “Trifles – matters of a few dollars or less.” The original Latin expression – “*de minimus non curat lex*” means “the law does not care for small things; the law does not bother with trifles.”

Section 2(c)(3) would exempt from coverage "the construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of section 33334.2 of the Health and Safety Code that are paid for solely with monies from a Low and Moderate Income Housing Fund established pursuant to section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds available pursuant to section 33334.2 or 33334.3 of the Health and Safety Code.

Section 2(c)(4) exempts from the definition of public funds tax credits provided pursuant to section 17053.49 or 23649 of the Revenue and Taxation Code. It is arguable whether the primary definition of public funds in section (b) includes tax credits and incentives because they are not listed in section (b) and it cannot, with certainty, be interpreted to include them. Nevertheless, the tax credits exempted in section (c)(4) are called "Manufacturers' Investment Credits ("MIC"). Under these credits, certain manufacturers operating in California are eligible for a six percent (6%) unlimited MIC. It can be used to offset income, including bank and corporations taxes, or franchise tax based upon the purchase or lease of manufacturing and related equipment which is "depreciable" under certain federal regulations and has California sales or use tax paid on its purchase. The credit also includes certain capitalized "direct" labor costs.

In addition "special purpose buildings and foundations," (i.e. clean rooms) for certain electronic manufacturers, semiconductor equipment manufacturers, commercial space satellite manufacturers, custom or prepackaged computer software manufacturers and property related to specified pharmaceutical activity are eligible for this credit.

As applied to public works projects, this credit seems to be available for construction or alteration of the above-enumerated facilities. If said construction receives MIC credits, then it would not be subject to the payment of prevailing wages.

Subsection (d) exempts three different housing funding programs from the requirement to pay prevailing wages. The first applies to "qualified residential rental projects . . . financed in whole or in part through the issuance of bonds that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with section 8369.80) of the Government Code on or before December 31, 2003. This exemption appears to apply to reduced rate mortgages given to schoolteachers and other professional staff willing to work in "low performing schools."

The second exemption applies to single family residential projects financed in whole or in part through the issuance of qualified mortgage revenue bonds or qualified veterans mortgage bonds, or with mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, on or before December 31, 2003. This exemption appears to be aimed at low-income housing and veterans mortgage assistance programs.

The last exemption involves housing assistance credits for construction of low-income and farm worker housing allocated under federal or state low-income housing tax credits on or before December 31, 2003.

Subsection (e) requires prevailing wages for any project that is subject to the requirement because of a statute, ordinance or regulation other than the Labor Code, and Title 8 specifies that prevailing wages must be paid. This would appear to uphold the application of prevailing wage requirements that exist in other state statutes and possibly the federal Davis-Bacon Act.

Subsection (f) states that for "purposes of this section, references to the Internal Revenue Code shall mean the Internal Revenue Code of 1986, as amended, and shall include the corresponding predecessor sections of the Internal Revenue Code of 1954, as amended.

This section is necessary so that the other statutory references to the federal Internal Revenue Code and California's Health and Safety Code, Government Code and Revenue and Taxation Code are clear as all relate to state and federal tax credits as defined initially in the 1986 Internal Revenue Code.

LEGISLATIVE HISTORY

Three bills by Republican legislators during former administrations all failed passage: AB 138 (Goldsmith, 1995) would have authorized a local agency to adopt a resolution or ordinance to exempt public works projects from prevailing wage requirements.

AB 1499 (Baldwin, 1995) would have required that any project that was funded 50% or more by public funds to be considered a public work, and would have repealed the application of public works requirements on private contracts on private property where more than 50% of the assignable square footage was leased to the State or a subdivision.

AB 2281 (Aguiar, 1996) would have excluded from public works any payment by a redevelopment agency to a private entity for an interest in land or any condition in an agreement used by the private entity for actions other than those defined as public works in current law.

Chapter 957 (AB 1901, Steinberg) of 2000 extended coverage of prevailing wages to the Downtown Rebound and Multi-Family Housing Program within the Department of Housing & Community Development.

SB 975 has been approved by both Houses of the Legislature as follows:

4/24/01 Senate Governmental Organizations Committee – Do Pass, 8 – 4
4/26/01 Senate Floor – Do Pass, 24-12
7/3/01 Assembly Jobs, Economic Development, & Economy, Do Pass as Amended, 7 – 3
9/4/01 Assembly Floor – Do Pass, 51 – 29
9/6/01 Senate Floor – Concurrence, 22 – 15

PROGRAM BACKGROUND

DIR is responsible for enforcing the California Labor Code requiring the payment of prevailing wages on public works project. Its Director is responsible for issuing public works

coverage determinations and general prevailing wage rates. (Lab. Code §§ 1770; 1773; 1773.5; tit. 8 Cal. Code Regs. §16100; Lusardi v. Aubry (1992) 1 Cal.4th 976, 4 Cal.Rptr.2d 837.)

OTHER STATES' INFORMATION

The federal government and the majority of the states have prevailing wage laws. These laws vary substantially in their scope of coverage, depending on the state.

FISCAL IMPACT

This bill would result in increased costs to DIR. Some staff would be necessary to perform the increased data collection and coverage analyses and respond to the increased public requests for coverage determinations and prevailing wages.

Under section (c)(2)(A), if requested, DIR would have to evaluate determine whether a public entity is funding an infrastructure project in excess of its cost.

Under (c)(2)(B), if requested, DIR would have to determine whether a public subsidy is de minimus in the context of a project by gathering information on the total cost of the project and the amount of public subsidy, the form of which may require valuation.

ECONOMIC IMPACT

Increased construction and administrative costs to public entities and increased wages to some construction workers.

LEGAL IMPACT

Increased litigation for DIR likely as controversies arise about interpretation of ambiguities and effect of new language.

SUPPORT/OPPOSITION

Support:

California State Council of Laborers
Philip Angelides, Treasurer, State of California
State Building and Construction Trades Council
State Council of Carpenters
IBEW
Pipetrades
Ironworkers
Teamsters
Operating Engineers
Sheet Metal Workers
Various Local Building Trades Councils

Opposition:

California Association of Sanitation Agencies
Association of California Water Agencies
Associated General Contractors
California Redevelopment Association
California State Association of Counties
Cities of Emeryville, Lakewood, Rosemead and Signal Hill
Consulting Engineers and Land Surveyors
Eastern Municipal Water District
Fresno Redevelopment Agency
League of California Cities

ARGUMENTS**Pro:**

The bill would close an inadvertent loophole in the California Infrastructure and Economic Development Bank Act that has allowed projects financed through the Infrastructure Bank's issuance of IDBs to escape coverage under the prevailing wage law.

It is contended that, to date, the Infrastructure Bank's authority to issue IDBs has primarily been used by local governments that are authorized under the California Industrial Development Financing Act to issue IDBs themselves, but who have chosen not to establish local authorities.

Proponents also fear that more and more local governments will avail themselves of the Infrastructure Bank's financing as a means to circumvent the State's prevailing wage law. Thus, it is believed imperative that the current loophole be closed so that wage and hour law consistency exists on all projects financed with IDBs.

The bill would also overrule the holding in McIntosh, *supra*, that waivers and forgiveness of fees do not constitute payments out of public funds, and would thus close a loophole in the prevailing wage law. It would also codify the holdings in a series of precedential determinations by the current Director of Industrial Relations, resulting in broader coverage under the prevailing wage law than existed under the interpretations of prior administrations, and will prevent reversal of those determinations by a future administration. Consequently, California construction workers will enjoy increased wages.

Con:

The bill may increase the cost of construction of public works, including low-income housing, at a time of decreased revenues due to an economic downturn, and may result in needed public improvements being deferred. Various ambiguities in the bill and opposition will result in increased litigation for the state and for local governments. The burden of implementation of the bill by DIR is very substantial.

To the Members of the California Senate:

I am returning Senate Bill 975 without my signature.

This bill would amend provisions of the Government Code and the Labor Code requiring payment of prevailing wages to workers on public works projects. It would add to Labor Code section 1720 an elaborate definition of the phrase "paid for in whole or in part out of public funds" as used in that section. Much of the definition would simply codify precedential coverage determinations by the Director of Industrial Relations, and thus would not change existing law. However, additional elements of the definition and exceptions thereto are unduly cumbersome and ambiguous. Consequently, these amendments would detract from the clarity of the statute. They likely would result in controversies and litigation over the meaning of the statute, thereby increasing administrative and legal costs to the state and to local governments.

While I strongly support California's prevailing wage law, I believe that its coverage is being adequately defined by the precedential determinations, and that the potential burdens of this bill would outweigh any benefits.

Sincerely,

GRAY DAVIS

To the Members of the California Senate:

I am signing Senate Bill No. 975, which would clarify that all public works projects financed through Industrial Development Bonds issued by the California Infrastructure and Economic Development Bank must comply with existing laws pertaining to prevailing wage laws.

The bill also amends Labor Code Section 1720 to clarify that prevailing wages are required when projects receive all manner of public subsidies.

The bill also provides sufficient, reasonable exemptions to the expanded public works coverage of the bill.

Senate Bill 975 ensures a level playing field for contractors and employees on publicly assisted construction projects.

Sincerely,

GRAY DAVIS

Exhibit B

AMENDED IN ASSEMBLY JUNE 25, 2001

SENATE BILL

No. 975

Introduced by Senator Alarcon

February 23, 2001

An act to amend Section 63036 of the Government Code, *and to amend Section 1720 of the Labor Code*, relating to the California infrastructure and economic development.

LEGISLATIVE COUNSEL'S DIGEST

SB 975, as amended, Alarcon. California Infrastructure and Economic Development Bank.

Existing law, the Bergeson-Peace Infrastructure and Economic Development Bank Act, establishes the California Infrastructure and Economic Development Bank in the Trade and Commerce Agency. The act requires public works financed by the bank to comply with certain laws applicable to payment of prevailing wages on public works.

This bill would require any of those public works financed through the use of industrial development bonds under the California Industrial Development Financing Act to comply with those laws relating to payment of prevailing wages.

Existing law generally defines "public works" to include construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds.

This bill would redefine "public works" to include installation and provide that "paid for in whole or in part with public funds" includes certain payments, transfers, and performances of work.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 63036 of the Government Code is
2 amended to read:

3 63036. It is the intent of the Legislature that the activities of
4 the bank be fully coordinated with any future legislative plan
5 involving growth management strategies designed to protect
6 California's land resource, and ensure its preservation and use it
7 in ways which are economically and socially desirable. Further, all
8 public works financed pursuant to this division, including those
9 projects financed through the use of industrial development bonds
10 under Title 10 (commencing with Section 91500), shall comply
11 with Chapter 1 (commencing with Section 1720) of Part 7 of
12 Division 2 of the Labor Code.

13 *SEC. 2. Section 1720 of the Labor Code is amended to read:*

14 1720. As used in this chapter, "public works" means:

15 (a) Construction, alteration, demolition, *installation*, or repair
16 work done under contract and paid for in whole or in part out of
17 public funds, except work done directly by any public utility
18 company pursuant to order of the Public Utilities Commission or
19 other public authority. For purposes of this subdivision,
20 "construction" includes work performed during the design and
21 preconstruction phases of construction including, but not limited
22 to, inspection and land surveying work.

23 (b) Work done for irrigation, utility, reclamation, and
24 improvement districts, and other districts of this type. "Public
25 work" shall not include the operation of the irrigation or drainage
26 system of any irrigation or reclamation district, except as used in
27 Section 1778 relating to retaining wages.

28 (c) Street, sewer, or other improvement work done under the
29 direction and supervision or by the authority of any officer or
30 public body of the state, or of any political subdivision or district
31 thereof, whether the political subdivision or district operates under
32 a freeholder's charter or not.

33 (d) The laying of carpet done under a building
34 lease-maintenance contract and paid for out of public funds.

35 (e) The laying of carpet in a public building done under
36 contract and paid for in whole or part out of public funds.

37 (f) Public transportation demonstration projects authorized
38 pursuant to Section 143 of the Streets and Highways Code.

1 (g) *For purposes of this section, "paid for in whole or in part*
2 *out of public funds" includes, but is not limited to, the payment of*
3 *money or the equivalent of money by a public agency directly to or*
4 *on behalf of the public works contractor or developer, performance*
5 *of work in execution of the project, transfer of an asset of value for*
6 *less than fair market price, or payment or waiver of fees, costs,*
7 *rents, or other obligations that would normally be required in the*
8 *execution of the contract.*

O

Exhibit C



CALIFORNIA
REDEVELOPMENT
ASSOCIATION

1400 K Street
Suite 204
Sacramento
CA 95814
(916) 448-8760
Fax (916) 448-9197

June 28, 2001

Senator Richard Alarcon
State Capitol, Room 4035
Sacramento, CA 94248-0001

Post-It® Fax Note	7671	Date	6/29	# of pages	1
To	Sen. Alarcon		From	Ken Emanuels	
Co./Dept.			Co.		
Phone #			Phone #		
Fax #			Fax #		

SB 975 off

RECEIVED
JUN 29 2001

Subject: CRA Opposition to SB 975 (Alarcon), as amended June 25, 2001

BY:

Dear Senator,

The California Redevelopment Association Board of Directors has reviewed your SB 975, as amended June 25, 2001, and has determined to oppose the measure.

Since Sept. 2000, the State Department of Industrial Relations has issued seven coverage determinations on redevelopment projects, all of which applied the prevailing wage requirement to these projects and their private components

SB 975 appears to codify in statute the DIR coverage determinations for the apparent purpose of precluding a successful court challenge to the DIR. SB 975 provides that "paid for in whole or in part out of public funds" includes the payment of money or the equivalent of money by a public agency directly to or on behalf of the public works contractor or developer, performance of work in execution of the project, transfer of an asset of value for less than fair market price, or payment or waiver of fees, costs, rents or other obligations that would normally be required in the execution of the contract." In fact, the inclusion of "transfer of an asset of value for less than fair market price" goes beyond any DIR determination to date.

The California Redevelopment Association opposes SB 975 because the requirement to pay prevailing wages for both the public and private components of projects will increase from 10% to 30% the construction costs for many affordable housing and commercial projects. The agency typically bears this increased cost, which can make it even more difficult for the project to succeed. Specifically, when a construction contract is paid for by a public agency, we agree that prevailing wages should be paid. However, the sale of land to a developer has nothing to do with the actual construction contract and should not trigger the prevailing wage mandate, as SB 975 requires.

Of course we would be pleased to discuss our opposition with you at your convenience.

Sincerely,

Kenneth Emanuels

cc: Assembly Committee on Jobs, Economic Development and the Economy
William A. Carlson, Executive Director, CRA
David F. Beatty, McDonough Holland & Allen

Exhibit D

OTHER VIEWS

Taking from the poor and giving it to the unions

California is facing a severe housing shortage that is especially tough on low-income people. But Democrats in the Legislature are poised to pass a new law that would make it even more expensive to build homes and apartments for the poor.

The bill, which has cleared the Assembly and was pending in the Senate Wednesday, is a favor to the core constituency of the Democratic Party: organized labor. But it is opposed by advocates for the disadvantaged, who say the party's legislators are abandoning those most in need.

SB 975 would require builders of subsidized low-income housing to pay prevailing wages, which in most places amounts to union wages. Housing advocates say the bill, if it becomes law, would raise the cost of their developments by 15 percent to 30 percent, forcing them to abandon some projects altogether.

"These units house people who make 20 percent to 50 percent of what the construction trade workers do," says Michael Lane, an analyst for Self-Help Enterprises, which builds housing for the poor in Visalia. "We do not think it is good public policy to raise the trades

from underbidding on Northern jobs by using nonunion workers, many of whom were black. It essentially eliminates any advantage to a company using nonunion labor. The California law requires contractors to

pay prevailing wages on public construction jobs. SB 975 would extend that to private housing built or rehabilitated with any state or local grants, loans, tax credits, bond proceeds, fee waivers or other forms of assistance.

An exemption in the bill for housing built entirely with redevelopment agency money is meaningless, advocates say, because almost all low-income housing is subsidized by a combination of grants and loans from various agencies, making it subject to the prevailing wage.

Housing and redevelopment agencies typically fill the final gap between the market cost of building a housing project and the lower, subsidized rent or selling price after the developer has obtained grants from other state and fed-

eral agencies. If the new state-mandated wages force up the cost of construction on the entire project, the unfunded gap would become a canyon.

A recent project funded in part by the Sacramento Housing and Redevelopment Agency illustrates the problem. The agency contributed a \$907,000 subsidy to help build the first 54 homes in a planned 300-unit community for first-time home buyers in Del Paso Heights. But if the prevailing wage standard had been applied to the project, the cost would have increased by about \$1.4 million, more than doubling the size of the gap the agency needed to fill.

"There is nowhere else for them to go for the money," says Anne Moore, the agency's executive director.

The new wage standard would apply even to the construction workers hired to help with "sweat equity" projects, where much of the work is done by the eventual homeowner in exchange for a break in the housing price. In those cases, the low-income home buyer would have to pour in even more sweat to compensate for the higher wages paid to carpenters who help frame the homes.

Sen. Richard Alarcon, the San

Fernando Democrat who is carrying the bill, says many urban areas, including his city, already pay prevailing wages for low-income housing projects. There is no reason, he says, that the rest of the state can't do the same.

And Alarcon has an interesting take on the politics of the issue, insisting that his union allies will be more likely to throw their clout behind low-income housing if the agencies that build the homes are required to pay higher wages. "There's a benefit in the future for labor to support affordable housing projects," he says. "There's absolutely no reason for them to support the now."

Cynical as it sounds, that strategy in work in the long run, forcing all taxpayers to pay more to support the high wages Alarcon's bill would mandate. But for now, the bill is a kind of Rorschach test. Hood in reverse, taking money and evading it to the middle class.

□ □ □

The Bee's Daniel Weintraub can be reached at (916) 321-1914 or at dweintraub@sacbee.com.



DANIEL WEINTRAUB

Exhibit E

SENATE THIRD READING
 SB 1999 (Burton)
 As Amended August 23, 2000
 Majority vote

SENATE VOTE: 23-13

LABOR AND EMPLOYMENT 6-2 APPROPRIATIONS 13-5

Ayes: Steinberg, Gallegos, Keeley, Migden,
 Wildman, Shelley

Ayes: Migden, Alquist, Aroner, Cedillo,
 Corbett, Kuehl, Papan, Romero,
 Shelley, Thomson, Wesson, Wiggins,
 Wright

Nays: Margett, Oller

Nays: Campbell, Ackerman, Ashburn,
 Maldonado, Zettel

SUMMARY: Provides that for purposes of public works laws, "construction" includes work performed during the design and pre-construction phases of construction including, but not limited to, inspection and land surveying work. Specifically, this bill:

- 1) Clarifies that workers entitled to prevailing wage on construction jobs, are entitled to prevailing wage rates during the design and pre-construction phases of a public works construction projects.
- 2) Clarifies that workers providing construction inspection and land surveying work on public works projects are entitled to prevailing wage.

EXISTING LAW:

- 1) Provides that "public works" includes construction, demolition, or repair work done under contract and paid for in whole or in part out of public funds. (Labor Code Section 1720)
- 2) Defines "public works contract" as "an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind." (Public Contract Code Section 1101)
- 3) Provides that workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work. (Labor Code Section 1772)
- 4) Provides that "workman" includes "laborer, workman, or mechanic." (Labor Code Section 1723)
- 5) Provides that "contractor" and "subcontractor" include a contractor, subcontractor, licensee, officer, agent, or representative thereof, acting in that capacity, when working on public

works projects, as defined. (Labor Code Section 1722.1)

- 6) Provides that all workers employed on public works shall be paid prevailing wage. (Labor Code Section 1771) Requires that public works contractors employ workers in any apprenticeable trade or craft to employ apprentices at a ratio, as defined.
- 7) Provides that the Department of Industrial Relations (Department) has the authority to determine whether a project is a "public works" and shall determine the prevailing wage for workers employed on public works.

FISCAL EFFECT: According to the Assembly Appropriations Committee analysis this bill has no direct state fiscal impact, but merely codifies current administrative decisions of the Department interpreting prevailing wage law.

COMMENTS: This bill codifies current Department practice by including construction inspectors and land surveyors among those workers deemed to be employed upon public works and by insuring that workers entitled to prevailing wage during the construction phase of a public works project will get prevailing wage on the design and pre-construction phases of a project.

On June 9, 2000, the Department issued a decision in Public Works Case No. 99-046 finding that construction inspectors hired to do inspection for compliance with applicable building codes and other standards for a public works project were deemed to be employed upon public works and therefore entitled to prevailing wage. In the case, part of the public works contract provided for "construction inspection for compliance with applicable building codes" and other standards. The inspectors argued that they should be paid prevailing wage pursuant to the state's public works laws because their work was part of a public works contract. The general contractor and the subcontractor that hired the inspectors argued that because the inspectors were not involved in actual construction, demolition, or repair work, as specified in Section 1720 of the Labor Code, they were not covered by the prevailing wage laws.

The Department declined to interpret Section 1720 so narrowly, finding that the inspectors were covered under prevailing wage law because "workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." (Labor Code Section 1772.) The Department rejected an argument that Section 1723 of the Labor Code (which states that "workmen" entitled to prevailing wage includes laborers, workmen and mechanics) precluded a finding that inspectors were also covered by the prevailing wage laws, noting that Section 1723 does not state that "inspectors" are not "workmen" that can be covered by the prevailing wage laws. The Department also found that the subcontractor employing the inspectors fit squarely under the definition of subcontractor in the prevailing wage laws despite the fact that the subcontract involved construction management duties.

This bill codifies much of the Department's June 9, 2000, decision by including "inspectors" in the definition of "construction" for purposes of public works. This bill also insures that workers earning the prevailing wage in the construction phase of a project will also be entitled to that wage for the same type of work done during the design and pre-construction phases of a project, even if that work is done pursuant to a services contract or otherwise, as the Department found.

This bill also codifies Department regulation and practice of covering land surveyors under prevailing wage law. (8 Cal.Code Reg. 16001(c); 70 Ops. Atty. Gen.Cal. 92 (1987).)

Analysis Prepared by: Frances Fort / L. & E. / (916) 319-2091

FN: 0006298

Exhibit F

Introduced by Senator Zenovich

January 17, 1974

An act to amend Section 1720 of the Labor Code, and to add Chapter 17 (commencing with Section 7300) to Division 7 of Title 1 of the Government Code, relating to public lease-purchase contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1581, as introduced, Zenovich. Lease-purchase contracts.

Requires lease-purchase contracts entered into by the state, local agencies, or political subdivisions to be subject to the Labor Code provisions relating to prevailing wage rates and apprenticeship.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 17 (commencing with Section
2 7300) is added to Division 7 of Title 1 of the Government
3 Code, to read:

4

5 CHAPTER 17. PUBLIC LEASE-PURCHASE CONTRACTS

6

7 7300. All lease-purchase contracts entered into by the
8 state, or any local governmental agency or political
9 subdivision, shall contain both of the following provisions:

10 (a) All workmen employed under such lease-purchase
11 contract shall be paid not less than the general prevailing
12 wage rate, determined in the manner provided for in
13 Article 2 (commencing with Section 1770) of Chapter 1
14 of Part 7 of Division 2 of the Labor Code with regard to

1 public works.

2 (b) The contracting parties shall comply with all
3 provisions relating to apprentices and apprenticeship
4 contained in Chapter 4 (commencing with Section 3070)
5 of Division 3 of the Labor Code.

6 SEC. 2. Section 1720 of the Labor Code is amended to
7 read:

8 1720. As used in this chapter "public works" means:

9 (a) Construction, alteration, demolition or repair
10 work done under contract and paid for in whole or in part
11 out of public funds, except work done directly by any
12 public utility company pursuant to order of the Public
13 Utilities Commission or other public authority.

14 (b) Work done for irrigation, utility, reclamation and
15 improvement districts, and other districts of this type.
16 "Public work" shall not include the operation of the
17 irrigation or drainage system of any irrigation or
18 reclamation district, except as used in Section 1778
19 relating to retaining wages.

20 (c) Street, sewer or other improvement work done
21 under the direction and supervision or by the authority
22 of any officer or public body of the state, or of any political
23 subdivision or district thereof, whether such political
24 subdivision or district operates under a freeholder's
25 charter or not.

26 (d) The laying of carpet done under a building
27 lease-maintenance contract and paid for out of public
28 funds.

29 (e) The laying of carpet in a public building done
30 under contract and paid for in whole or part out of public
31 funds.

32 (f) *For the purposes of Article 2 (commencing with*
33 *Section 1770) of this chapter only, lease-purchase*
34 *contracts entered into by the state, or any local agency or*
35 *political subdivision.*

Exhibit G

Los Angeles City Unified School District

ADMINISTRATIVE OFFICES: 450 NORTH GRAND AVENUE, LOS ANGELES, CALIFORNIA
MAILING ADDRESS: BOX 3307, LOS ANGELES, CALIFORNIA 90051

WILLIAM J. JOHNSTON
Superintendent of Schools

WILLIAM L. LUCAS
Assistant Superintendent
Government Relations

March 18, 1974

The Honorable George N. Zenovich
Senator, 16th District
California State Legislature
State Capitol, Room 2054
Sacramento, California 95814

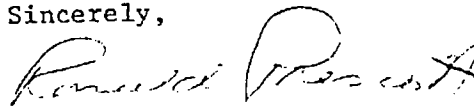
Dear Senator Zenovich:

The staff of the Los Angeles Unified School District has analyzed your Senate Bill 1581 and we regret that we must oppose this measure in its present form. We have a suggestion for an amendment, however, which would remove the basis of our opposition.

While we have no objection to the prevailing wage provisions in lease-purchase contracts related to buildings, the bill as written would also seem to apply to lease-purchase contracts involving personal property, such as school buses, to which the provisions are not as readily applicable.

If the legislation were amended to restrict the provisions to the lease-purchase of buildings, our objections would be removed. Accordingly, we would suggest that line 10, page 2 be amended to include "or lease purchase" after "contract". It would further clarify the matter if Section 1720(f) were amended in line 35, page 2 by changing the final period to a comma, and adding "for any of the purposes (a) through (e)."

Sincerely,



Ronald Prescott
Administrative Coordinator
Legislation

RP:EGL:su

Exhibit H

Introduced by Senator Zenovich

January 17, 1974

An act to amend Section 1720 of the Labor Code, and to add Chapter 17 (commencing with Section 7300) to Division 7 of Title 1 of the Government Code, relating to public lease-purchase contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1581, as amended, Zenovich. Lease-purchase contracts.

Requires lease-purchase contracts *for buildings* entered into by the state, local agencies, or political subdivisions to be subject to the Labor Code provisions relating to prevailing wage rates and apprenticeship.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 17 (commencing with Section
2 7300) is added to Divison 7 of Title 1 of the Government
3 Code, to read:

4

5 CHAPTER 17. PUBLIC LEASE-PURCHASE CONTRACTS

6

7 7300. All lease-purchase contracts *for buildings*
8 entered into by the state, or any local governmental
9 agency or political subdivision, shall contain both of the
10 following provisions:

11 (a) All workmen employed under such lease-purchase
12 contract shall be paid not less than the general prevailing

1 wage rate, determined in the manner provided for in
2 Article 2 (commencing with Section 1770) of Chapter 1
3 of Part 7 of Division 2 of the Labor Code with regard to
4 public works.

5 (b) The contracting parties shall comply with all
6 provisions relating to apprentices and apprenticeship
7 contained in Chapter 4 (commencing with Section 3070)
8 of Division 3 of the Labor Code.

9 SEC. 2. Section 1720 of the Labor Code is amended to
10 read:

11 1720. As used in this chapter "public works" means:

12 (a) Construction, alteration, demolition or repair
13 work done under contract *or lease-purchase* and paid for
14 in whole or in part out of public funds, except work done
15 directly by any public utility company pursuant to order
16 of the Public Utilities Commission or other public
17 authority.

18 (b) Work done for irrigation, utility, reclamation and
19 improvement districts, and other districts of this type.
20 "Public work" shall not include the operation of the
21 irrigation or drainage system of any irrigation or
22 reclamation district, except as used in Section 1778
23 relating to retaining wages.

24 (c) Street, sewer or other improvement work done
25 under the direction and supervision or by the authority
26 of any officer or public body of the state, or of any political
27 subdivision or district thereof, whether such political
28 subdivision or district operates under a freeholder's
29 charter or not.

30 (d) The laying of carpet done under a building
31 lease-maintenance contract and paid for out of public
32 funds.

33 (e) The laying of carpet in a public building done
34 under contract and paid for in whole or part out of public
35 funds.

36 (f) For the purposes of Article 2 (commencing with
37 Section 1770) of this chapter only, lease-purchase
38 contracts *for buildings* entered into by the state, or any
39 local agency or political subdivision, *for any of the*
40 *purposes (a) through (e), inclusive.*

O

Exhibit I



FAX TRANSMISSION

Urgent Action Needed Original will follow by mail As You Requested For Your Information

DATE: January 28, 2019

TO: Alice M. Loan

COMPANY/ORGANIZATION: Jones Day

NUMBER OF PAGES: 14

FROM: Ramil Noche, Research Data Specialist

SUBJECT: Copies of Public Works Coverage Determination from before 2002

MESSAGE

This is in response to your email received on January 17, 2019, requesting copies of the following Public Works Coverage Determinations:

- 1) Public Works Case No. 99-006, Installation of Playground equipment, City of Glendale, Division of Parks and Recreation, Sept. 22, 1999
- 2) Public Works Case No. 99-011, Installation of Gym Lockers, Jones-Campbell Company/Sequoia Union High School District, Sept. 22, 1999
- 3) Public Works Case No. 99-024, Foodservice Contract Design, James Madison Elementary School, San Leandro, Sept. 22, 1999
- 4) Public Works Case No. 99-012, Caltrans. San Diego Border Patrol and California Highway Patrol Facility, Installation of Fencing, National Fence, Sept. 23, 1999
- 5) Public Works Case No. 99-034, Valley View Elementary School. Pleasanton Unified School District, Installation of Signage by Marketshare, Inc. Sept. 29, 1999;
- 6) Public Works Case No. 99-050, Installation of Gym Lockers, Bleachers, Basketball and Volleyball Equipment, Dennis J. Amoroso Construction/Southwest Interiors/Windsor UHSD. Nov. 10, 1999
- 7) Public Works Case No. 99-061, Toilet Partition/Bathroom Accessories Installation, Milpitas Unified School District
- 8) Public Works Case No. 99-060, Metal Lockers and Metal Storage Shelving, Santa Clara Police Facility, Nov. 10, 1999.

Attached are copies of the above coverage determinations responsive to your request.

If you have further questions, please contact the Prevailing Wage Unit at the aforementioned address or call (415) 703-4774.

RN:jh

DEPARTMENT OF INDUSTRIAL RELATIONS

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



September 22, 1999

John Pearson
City of Glendale
Division of Parks and Recreation
613 East Broadway, Suite 120
Glendale, CA 91206

RE: Public Works Case #99-006
Installation of Playground Equipment
City of Glendale Division of Parks and Recreation

Dear Mr. Pearson:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above referenced project under the California prevailing wage laws, and is made pursuant to Title 8, California Code of Regulations section 16001(a). Based upon my review of the documents submitted and an analysis of the relevant facts as presented, I have determined that the installation of playground equipment for the City of Glendale Parks and Recreation is a public work within the meaning of Labor Code section 1720(a).

Labor Code section 1720(a) public works to mean "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds..."

In this case, the installation of the playground equipment involves construction done under contract and paid for with public funds. For this reason, it is a public works for which prevailing wages must be paid.

I hope this determination letter satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Stephen J. Smith".

Stephen J. Smith
Director

cc: Daniel M. Curtin, Chief Deputy Director and Acting Chief, DLSR
Marcy Vacura Saunders, Labor Commissioner
Henry P. Nunn, III, Chief, DAS
Vanessa L. Holton, Assistant Chief Counsel

Exhibit J

DEPARTMENT OF INDUSTRIAL RELATIONS

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



September 22, 1999

Mr. Craig Campbell
Jones-Campbell Co.
P.O. Box 277788
Sacramento, CA 95827

RE: Public Works Case #99-011
Installation of Gym Lockers
Jones-Campbell Company/Sequoia Union High School District

Dear Mr. Campbell:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under the California prevailing wage laws, and is made pursuant to Title 8, California Code of Regulations section 16001(a). Based upon my review of the documents submitted, an analysis of the relevant facts as presented, and information supplied in follow-up telephone conversations, I have determined that the on-site installation of lockers is a public work within the meaning of Labor Code section 1720(a).

In this case, the Sequoia Union High School District and Jones-Campbell Company have entered into a contract for the installation of lockers at Menlo-Atherton High School. The work includes removing the old lockers and installing new lockers. The installation includes on site assembly, which consists of bolting the lockers to existing concrete pads. Once the lockers are in place, they are permanently anchored to the walls.

Labor Code section 1720(a) defines public works to mean "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds..."

In this case, the installation of the gym lockers involves construction done under contract and paid for with public funds for which prevailing wages must be paid.

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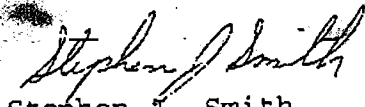
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Letter to Mr. Craig Campbell, Jones-Campbell Co.
RE: Public Works Case #99-011
Installation of Gym Lockers
Jones-Campbell Company/Sequoia Union High School District
September 22, 1999
Page 2

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Stephen J. Smith
Director

cc: Daniel M. Curtin, Chief Deputy Director and Acting Chief, DLSR
Marcy Vacura Saunders, Labor Commissioner
Henry P. Nunn, III, Chief, DAS
Vanessa L. Holton, Assistant Chief Counsel

Exhibit K

DEPARTMENT OF INDUSTRIAL RELATIONS

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



September 22, 1999

Ms. Judith A. Cannedy
Credit Manager
U.S. Foodservice Contract Design
9844 Business Park Drive, Suite A
Sacramento, CA 95827

RE: Public Works Case #99-024
U.S. Foodservice Contract Design
James Madison Elementary School, San Leandro

Dear Ms. Cannedy:

This constitutes the determination of the Director of the Department of Industrial Relations regarding coverage of Targeted Specialties, Inc./U.S. Foodservice Contract Design ("U.S. Foodservice") on the above named project. This coverage determination is made under the public works laws and pursuant to Title 8, California Code of Regulations section 16000(a). Based upon my review of the documents submitted, and for the following reasons, it is my determination that the work performed by U.S. Foodservice on the James Madison Elementary School Renovation and Expansion Project ("Project") is a public work for which prevailing wages must be paid.

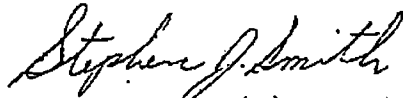
W.A. Thomas Company, Inc. ("Thomas") is the general contractor on the Project. U.S. Foodservice, a subcontractor, will install kitchen equipment, tables, and countertops at the school. This work involves removal of the equipment from the shipping crates and setting, leveling and securing the equipment to a wall or counter using hand tools.

Labor Code section 1720 generally defines public works to mean "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds..." Labor Code section 1772 states: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." The reconstruction and expansion work on the Project by Thomas' employees is a public works for which Thomas is paying its employees prevailing wages. The work performed by U.S. Foodservice constitutes construction. In addition, it is performed at the public work site and is essential to the school

Letter to Ms. Judith A. Cannedy
RE: Public Works Case #99-024
U.S. Foodservice Contract Design
James Madison Elementary School, San Leandro
September 21, 1999
Page 2

facility project. As U.S. Foodservice's work is in the execution of a public works contract, its employees are also deemed to be employed upon a public work under Labor Code section 1772 and must be paid prevailing wages.

Sincerely,



Stephen J. Smith
Director

cc: Daniel M. Curtin, Chief Deputy Director and Acting Chief, DLSR
Marcy Vacura Saunders, Labor Commissioner
Henry P. Nunn, III, Chief, DAS
Vanessa L. Holton, Assistant Chief Counsel

Exhibit L

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-3050



September 23, 1999

Adela Blades
Dist. Labor Compliance Officer
Department of Transportation
P.O. Box 85406
San Diego, CA 92186-5406

RE: Public Works Case #99-012
Caltrans, San Diego Border Patrol and California Highway
Patrol Facility
Installation of Fencing, National Fence

Dear Ms. Blades:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under the California prevailing wage laws, and is made pursuant Title 8, California Code of Regulations section 16001(a). Based upon my review of the documents submitted, an analysis of the relevant facts as presented, and information supplied in follow-up telephone conversations, I have determined that the installation of temporary and permanent fencing in this case is a public work which requires the payment of prevailing wages.

Labor Code section 1720(a) defines public works to mean "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds..." Under Labor Code section 1772, workers "employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work."

According to the information provided in your request letter of January 26, 1999, the work performed involves erecting a temporary fence around the Border Patrol and California Highway Patrol facility reconstruction project. Posts will be placed three feet into the ground and temporary CL6 fencing will be placed around the posts. It will then be dismantled, erected again temporarily, and then dismantled again. The third time it will be erected as a permanent fence using concrete footings to hold the metal posts.

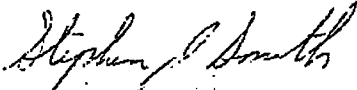
The fencing installation is construction done under contract and paid for with public funds. As such, it is a public work under section 1720(a). In addition, the fencing work is part of the

Letter to Adela Blades
Department of Transportation
RE: Public Works Case #99-012
Caltrans, San Diego Border Patrol and CHP Facility
Installation of Fencing, National Fence
September 23, 1999
Page 2

larger public works facility reconstruction project. Therefore, under Labor Code section 1772, the workers employed by National Fence are deemed to be employed upon a public work and must be paid prevailing wages.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Stephen J. Smith
Director

cc: Daniel M. Curtin, Chief Deputy Director and Acting Chief, DLSR
Marcy Vacura Saunders, Labor Commissioner
Henry P. Nunn, III, Chief, DAS
Vanessa L. Holton, Assistant Chief Counsel

Exhibit M

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR - LEGAL UNIT
455 GOLDEN GATE AVENUE
San Francisco, CA 94102



ADDRESS REPLY TO:
Office of the Director - Legal Unit
P.O. Box 420603
San Francisco, CA 94142
(415) 703-4240
FAX No.: (415) 703-4277

September 29, 1999

Elizabeth B. Relosa
Marketshare, Inc.
2001 Tarob Court
Milpitas, CA 95035

Re: Public Works Case No.99-034
Valley View Elementary School, Pleasanton Unified
School District, Installation of Signage by
Marketshare, Inc.

Dear Ms. Relosa,

This constitutes the determination of the Director of the Department of Industrial Relations regarding coverage of the above-named project under the California prevailing wage laws and pursuant to Title 8 California Code of Regulations section 16000(a). Based upon my review of the documents submitted, and for the following reasons, it is my determination that the on-site work performed by Marketshare, Inc., in relation to the Valley View Elementary School construction, is a public work for which prevailing wages must be paid.

West Bay Builders (West) is the general contractor on the construction of the Valley View Elementary School. West has contracted with Marketshare, Inc. to design, manufacture and install various signage as part of the construction of the elementary school.

The on-site installation of the signs consists of measuring and attaching panel, wall-mount and exit signs, using hand tools, electrical drills and battery-operated drills. The installation on the signs will be performed as the buildings are completed.

Labor Code section 1720 generally defines public works to mean "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds... ." Under Labor Code section 1772, "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work."

The construction of the Valley View Elementary School is a public work on which West is required to pay its employees prevailing wages. The installation of the signage constitutes construction.

Letter to Elizabeth Relosa
Re: PW#99-034
September 29, 1999
Page 2

Because it is done under contract and paid for with public funds, it is a public work under section 1720(a). In addition, because it is part of the scope of work under West's contract with the school district, the signage work is in the execution of a public works contract under section 1772. Accordingly, Marketshare employees installing the signage must be paid prevailing wages.

With respect to your question regarding work classification, please contact the prevailing wage unit of the Division of Labor Statistics and Research at (415) 703-4774.

Sincerely,



Stephen J. Smith
Director

cc: Daniel M. Curtin, Chief Deputy Director and
Acting Chief, DLSR
Marcy Vacura Saunders, Labor Commissioner
Henry P. Nunn, III, Chief, DAS
Vanessa L. Holton, Assistant Chief Counsel

Exhibit N

DEPARTMENT OF INDUSTRIAL RELATIONS

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



November 10, 1999

Ms. Sarah Farley
Farley and Associates
3145 Geary Blvd., #440
San Francisco, CA 94118-3316

Re: Public Works Case No. 99-050
Installation of Gym Lockers, Bleachers, Basketball and
Volleyball Equipment
Dennis J. Amoroso Construction Co., Southwest Interiors,
Inc./Windsor Unified High School District

Dear Ms. Farley:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under the California prevailing wage laws, and is made pursuant to Title 8 California Code of Regulations (C.C.R.) section 16001(a). Based upon my review of the documents submitted, an analysis of the relevant facts as presented, and information supplied in follow-up telephone conversations, I have determined that the on-site installation of lockers, bleachers, basketball and volleyball equipment is a public work within the meaning of Labor Code section 1720(a).

In this case, the Windsor Unified High School District and Dennis J. Amoroso Construction Company have entered into a contract for the construction of the New Windsor High School. Dennis J. Amoroso Construction Company has, in turn, entered into a contract with Southwest Interiors, Inc. for the installation of lockers, bleachers, and basketball and volleyball equipment at the school. The work involves installing new lockers, bleachers, basketball and volleyball equipment in the new high school. The installation includes on-site assembly, which consists of bolting the lockers to existing concrete pads, and assembling and installing prefabricated basketball backstops, volleyball equipment and telescoping bleachers.

Labor Code section 1720(a) defines public works to mean: "Construction, alteration, demolition, or repair work done

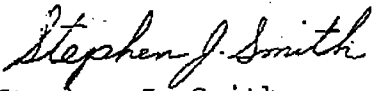
Letter to Ms. Sarah Farley
Re: PW #99-050
November 10, 1999
Page 2

under contract and paid for in whole or in part out of public funds..." Labor Code section 1772 states: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work."

In this case, the installation of the gym lockers, bleachers, basketball and volleyball equipment involves construction done under contract and paid for with public funds for which prevailing wages must be paid. In addition, the locker installation work is part of a larger public works construction project. Therefore, under Labor Code section 1772, the workers employed by the subcontractor, Southwest Interiors, Inc., are deemed to be employed upon a public work and must be paid prevailing wages.

I hope this determination letter satisfactorily answers your inquiry.

Sincerely,



Stephen J. Smith
Director

cc: Daniel M. Curtin, Chief Deputy Director and
Acting Chief, DLSR
Marcy Vacura Saunders, Labor Commissioner, DLSE
Henry P. Nunn, III, Chief, DAS
Vanessa L. Holton, Assistant Chief Counsel
Dennis J. Amoroso Construction Company
Ray Walters, Southwest Interiors

(ch/PW#99-050 DET LTR/11-2-99)

Exhibit O

DEPARTMENT OF INDUSTRIAL RELATIONS

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



November 10, 1999

Mr. Daniel Miner
General Partner
Roger's Supply
6735 32nd St., Unit G
North Highlands, CA 95660

Re: Public Works Case #99-061
Toilet Partition/Bathroom Accessories Installation
Zanker Elementary School, Milpitas Unified School District

Dear Mr. Miner:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under the California prevailing wage laws, and is made pursuant to Title 8, California Code of Regulations section 16001(a). Based upon my review of the documents submitted and the analysis of the relevant facts as presented, I have determined that the on-site installation of toilet partitions and bathroom accessories by Roger's Supply on the above listed construction project is a public work within the meaning of Labor Code sections 1720(a) and 1772.

In this case, Roger's Supply employees review the lay-out drawings, mark and mount floor and wall brackets, position the panels for mounting, install U-brackets for the installation of doors and then attach headrails above the panels and doors when appropriate. In addition, the employees bolt toilet accessories on to the panels and existing walls.

Labor Code section 1720(a) defines public works to mean "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds..."

Labor Code section 1772 states: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work."

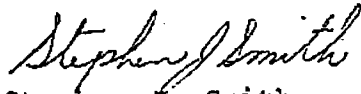
In this case, the installation of toilet partitions and bathroom accessories involves construction done under contract and paid for with public funds. For this reason, it is a public works project under section 1720(a). In addition, in the contract you have submitted, it is clear that the installation is being

Letter to Daniel Miner
Re; PW #99-061
November 10, 1999
Page 2

performed under a subcontract with the general contractor, who is engaged in the performance of a larger construction project. As such, the toilet partition installation work is also covered under Labor Code section 1772 as it is in the execution of a public works contract. For these reasons, prevailing wages must be paid.

I hope this determination letter satisfactorily answers your inquiry.

Sincerely,



Stephen J. Smith
Director

cc: Daniel M. Curtin, Chief Deputy Director and Acting Chief, DLSR
Marcy Vacura Saunders, Labor Commissioner, DLSE
Henry P. Nunn, III, Chief, DAS
Vanessa L. Holton, Assistant Chief Counsel
D.L. Falk Construction

Exhibit P

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-8050



November 30, 1999

Mr. Christopher E. Bruce
Inner Space Engineering Corporation
1730 South Amphlett Blvd., Suite 114
San Mateo, CA 94402

RE: Public Works Case #99-060
Metal Lockers and Metal Storage Shelving
Santa Clara Police Facility

Dear Mr. Bruce:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under the California prevailing wage laws, and is made pursuant to Title 8, California Code of Regulations section 16001(a). Based upon my review of the documents submitted and analysis of the relevant facts as presented, I have determined that the on-site installation of lockers and shelves is a public work within the meaning of Labor Code sections 1720(a) and 1772.

Labor Code section 1720(a) defines public works to mean "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds..."

Labor Code section 1772 states: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work."

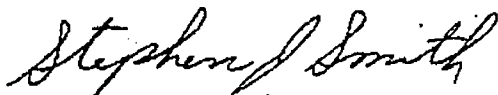
In this case, the installation of metal lockers and metal storage shelves involves construction done under contract and paid for with public funds. For this reason, it is a public works for which prevailing wages must be paid. In addition, in the agreements you have submitted, it is clear that the installation is being performed under a subcontract with the general contractor, who is engaged in the performance of a larger construction project. As part of this, the general contractor is providing the finished pads for the lockers and shelves and the subcontractor is assembling and installing the lockers and shelves on site to fit room conditions before the lockers and shelves are made secure using bolts and rivets to anchor them to interior walls and floors.

Letter to Mr. Christopher D. Bruce
RE: Public Works Case #99-060
Metal Locker and Shelving Installation
Santa Clara Police Facility
November 30, 1999
Page 2

As such, the locker and shelving installation work is also covered under Labor Code section 1772 as it is in the execution of a public works contract.

I hope this determination letter satisfactorily answers your inquiry.

Sincerely,



Stephen J. Smith
Director

cc: Daniel M. Curtin, Chief Deputy Director and Acting Chief, DLSR
Marcy Vacura Saunders, Labor Commissioner
Henry P. Nunn, III, Chief, DAS
Vanessa L. Holton, Assistant Chief Counsel
James Parissenti, City of Santa Clara
S. J. Amoroso Construction Co., Inc.

Exhibit Q

DECLARATION OF JAN RAYMOND

I, Jan Raymond, declare:

- I have personal knowledge of the facts I state below, and if I were called to be a witness, I could competently testify about what I have written in this declaration.

- I am an attorney licensed to practice by the California State Bar, State Bar number 88703. My business is researching the history and intent of legislative and regulatory enactments and adoptions; I have over 30 years' experience in research and analysis of legislative and regulatory intent. In cooperation with persons working under my supervision, I undertook to research the legislative history of Labor Code sections 1720 and 1772.

- Attorneys at Jones Day in this case engaged my research services in January 2019. In the course of my research, I found legislative history materials—related to Labor Code sections 1720 and 1772—that are attached to the Request for Judicial Notice as Exhibits A–H.

- **Exhibit A** is a true and correct copy of an Enrolled Bill Report written by the Department of Industrial Relations related to Senate Bill 975.

- **Exhibit B** is a true and correct copy of Senate Bill 975, as amended in Assembly on June 25, 2001.

- **Exhibit C** is a true and correct copy of a letter from the California Redevelopment Association to Senator Alarcon related to Senate Bill 975 (dated June 28, 2001).

- **Exhibit D** is a true and correct copy of newspaper article—from the Sacramento Bee, Taking from the Poor and Giving it to the Unions (Sept. 6, 2001)—located in the legislative history record related to Senate Bill 975.

- **Exhibit E** is a true and correct copy of the Senate Third Reading related

to Senate Bill 1999, as amended August 23, 2000.

- **Exhibit F** is a true and correct copy of Senate Bill 1581, as introduced on January 17, 1974.

- **Exhibit G** is a true and correct copy of a letter from the Los Angeles City Unified School District to Senator Zenovich related to Senate Bill 1581 (dated March 18, 1974).

- **Exhibit H** is a true and correct copy of Senate Bill 1581, as amended in Senate on April 3, 1974.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Berkeley, California this 25th day of March, 2019

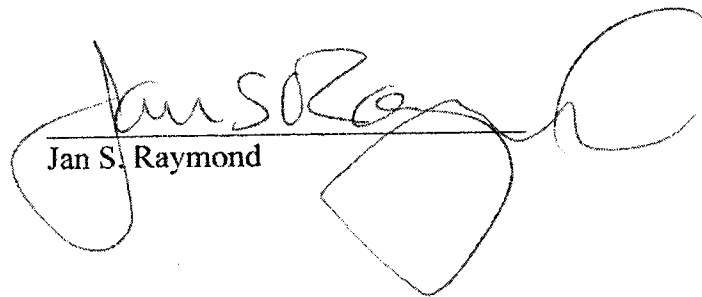

Jan S. Raymond

Exhibit R

DECLARATION OF ALICE LOAN

I, Alice Loan, declare:

1. I have personal knowledge of the facts I state below, and if I were called to be a witness, I could competently testify about what I have written in this declaration.
2. I am employed by Jones Day as a research librarian in its Chicago office.
3. On January 17, 2019, on behalf of a Jones Day attorney working on this case, I made a public records request to the California Department of Industrial Relations by using its website, <https://www.dir.ca.gov/dlse/DLSE-PRARs.htm>, and emailing the Department at statistics@dir.ca.gov.
4. I requested eight public works coverage determinations made by the Department of Industrial Relations.
5. On January 28, 2019, I received from the Department of Industrial Relations the public works coverage determinations described in the following paragraphs and attached to Respondents' Request for Judicial Notice.
6. **Exhibit I** is a true and correct copy of the cover page I received from the Department acknowledging my public records request and also a true and correct copy of *Installation of Playground Equipment*, Public Works Determination 99-006 (Sept. 22, 1999).
7. **Exhibit J** is a true and correct copy of *Installation of Gym Lockers*, Public Works Determination 99-011 (Sept. 22, 1999).
8. **Exhibit K** is a true and correct copy of *Foodservice Contract Design*, Public Works Determination 99-024 (Sept. 22, 1999).

9. **Exhibit L** is a true and correct copy of *Installation of Fencing*, Public Works Determination 99-012 (Sept. 23, 1999).

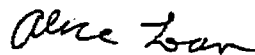
10. **Exhibit M** is a true and correct copy of *Installation of Signage by Marketshare*, Public Works Determination 99-034 (Sept. 29, 1999).

11. **Exhibit N** is a true and correct copy of *Installation of Gym Lockers, Bleachers, Basketball and Volleyball Equipment*, Public Works Determination 99-050 (Nov. 10, 1999).

12. **Exhibit O** is a true and correct copy of *Toilet Partition/Bathroom Accessories Installation*, Public Works Determination 99-061 (Nov. 10, 1999).

13. **Exhibit P** is a true and correct copy of *Metal Lockers and Metal Storage Shelving*, Public Works Determination 99-060 (Nov. 30, 1999).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Chicago, Illinois on March 25, 2019.



Alice Loan

PROOF OF SERVICE

I, Margaret Landsborough, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 California Street, 26th Floor, San Francisco, California 94104. On March 25, 2019, I served a copy of the within document(s):

RESPONDENTS' REQUEST FOR JUDICIAL NOTICE

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Richard Earl Donahoo
Donahoo & Associates, LLP
440 W. 1st Street, Suite 101
Tustin, CA 92780

Attorney for Plaintiff and Appellant

Thomas G. Foley, Jr.
Kevin D. Gamarni
Foley, Bezek, Behle & Curtis, LLP
15 West Carrillo Street
Santa Barbara, CA 93101

Attorneys for Plaintiff and Appellant

Stuart B. Esner
Holly N. Boyer
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234 East Colorado Blvd., Suite 975
Pasadena, CA 91101

*Attorneys for Plaintiff and
Appellant*

Todd L. Nunn
K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158

Attorney for Respondents

Molly Dwyer, Clerk of the Court
United States Court of Appeals
For the Ninth Circuit
The James R. Browning Courthouse
95 7th Street
San Francisco, CA 94103

Appellate Court

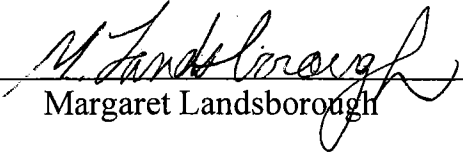
Judge Otis D. Wright II
United States District Court Central
District of California
First Street Courthouse – Ctr 5D, 5th Fl.
350 W. 1st Street
Los Angeles, CA 90012

Trial Court

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 25, 2019, at San Francisco, California.


Margaret Landsborough