

DEPARTMENT OF INDUSTRIAL RELATIONS

## DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102  
(415) 703-4863

ANNE HIPSHMAN, Assistant Chief Counsel

August 20, 2003

*Tansil*  
Honorable Allan ~~Hardcastle~~  
Presiding Judge  
Sonoma County Superior Court  
600 Administration Drive, Room 107  
Santa Rosa, CA 95403

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GRAND JURYOK  
-MT  
8/27/03

Re: Response by the State Labor Commissioner to the Final  
Report of the Sonoma County Grand Jury

Dear Judge Hardcastle:

Pursuant to the request, made in the letter to Chuck Cake, Director of the Department of Industrial Relations, State of California, dated July 8, 2003 authored by J.R. Simpson, Foreperson, this letter constitutes a formal response to the report of the Grand Jury entitled "Prevailing Wages." Foreperson Simpson's letter states that a response should be directed to you.

This matter was directed to the Division of Labor Standards Enforcement (the State Labor Commissioner's Office) for a response since the subject of the investigation and recommendations of the grand jury pertain to issues over which this Division has jurisdiction.

Both the Department of Industrial Relations and the State Labor Commissioner's office have enjoyed an amicable relationship with the courts in the County of Sonoma. This Department is interested in cooperating with the County of Sonoma and its various component agencies in ensuring that this relationship continues into the future.

This Division has reviewed the Findings and Recommendations of the 2002-2003 Grand Jury with respect to the issue of prevailing wages, found on pages 38-40 of the Sonoma County Grand Jury's final Report, and makes the following responses:

**Responses to Findings**

**F2.** Contract awarding bodies are left with the decision whether to monitor proper wage payment, or to allow the burden of monitoring to be on the contractors and labor organizations.

**Response:** State law places the burden for monitoring a project subject to the State's prevailing wage laws on the awarding body.

**F3.** Enforcement of the Prevailing Wage Law is carried out by the State Department of Industrial Relations.

**Response:** Various Divisions within the State Department of Industrial Relations are responsible for carrying out the provisions of the State's prevailing wage laws. For example the Division of Labor Statistics and Research (DLSR) conducts surveys to assist in a determination of the proper prevailing wage by category of worker and geographic area. The Division of Labor Standards Enforcement is responsible for investigating claims that workers on projects, subject to the Prevailing Wage laws, are paid in accordance with those provisions. The Director of the Department of Industrial Relations is responsible for setting the prevailing wage by county and category of worker; determining whether a project is covered by the prevailing wage laws; and holding hearings to determine violations of the labor standards provisions of the prevailing wage laws, brought by DLSE.

**F4.** The statute allows only 180 days from the "notice of completion" of a project to conclude any wage investigation.

**Response:** The statute of limitations, for DLSE to a wage and penalty assessment for violation of labor standards laws on a project subject to the prevailing wage laws is 180 days from the filing of a valid notice of completion with the recorder's office in each county where work on that project was performed, or 180 days after acceptance of the projects whichever occurs last. This time deadline is extended by another 180 days if the awarding body is still holding funds payable to a contractor allegedly in violation. Then the wage and penalty assessment can still be issued up to the total of the funds withheld. (See California Labor Code §1741)

Note: Even if the Grand Jury's finding was completely correct, the limitations period for enforcement is not as short as it seems. In many cases, claims for violations of labor standards laws occurring during the course of the project are filed and

can be addressed prior to completion of the project.

**F5:** Department of Industrial Relations records show that between January 1, 2000 and September 15, 2002 Eighty-nine investigations have been reported pertaining to agencies in Sonoma County as follows:

- \_50% are "Under Investigation"
- \_26% are "Statute Expired"
- \_14% are "Wages or Penalties Paid"
- \_10% are "No Violations"

**Response:** It is difficult for DLSE to respond to these statistics, as there is no explanation contained in the report indicating their source. If more information could be provided, such as the details for the 26% where the "statute expired" a more meaningful response might be possible. For example, how much time was left on the statute when the complaint was filed? Was the complaint filed before the expiration of the statute of limitations? What, if any, investigation had DLSE undertaken during the statute period? What was the type of violation, and scope with respect to numbers of workers involved and severity?

With respect to the 50% "under investigation" DLSE believes that this would represent a very high percentage of response given the Labor Commissioner's resources and the high numbers of claims received. As these cases are finalized, the numbers in the "wages and penalties paid" and "no violations found" categories will increase.

#### Response to Recommendations

**R1:** Every public Department in Sonoma County shall actively monitor and review payroll records for accurate wage payment, and fully comply with the law by notifying the DIR whenever non-compliance is encountered.

**Response:** The State Labor Commissioner certainly agrees with this recommendation and only adds that the sooner notification of a potential violation is received from an awarding body, the better chance DLSE has to promptly investigate and remedy any violations.

**R2:** The California Department of Industrial Relations shall work closely with public agencies to redesign it's wage enforcement protocol, which is seriously lacking.

**Response:** The Labor Commissioner's enforcement protocol is primarily driven by the requirements of the prevailing wage

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statutes. The DLSE is responsible for statewide enforcement of labor standards on prevailing wage projects, which necessarily involves working with representatives of awarding bodies in most cities and counties in this State. Those standards have recently been redesigned within the parameters allowed due to the Department's dwindling resources. The DLSE does not agree that the Department's enforcement protocol is lacking, but is very interested in working with representatives of Sonoma County who have any suggestions.

**R3:** Fines and penalties for infractions of prevailing wage laws should be, at minimum, doubled from their current amounts to discourage noncompliance.

**Response:** The level of fines prescribed in the prevailing wage laws are set by statute. Neither the DLSE nor the DIR has the authority to increase those fines and penalties. Any such changes would require legislative action.

**R4:** California Department of Industrial Relations shall provide the citizens of Sonoma County with ongoing up-to-date, investigation statistics via their website.

**Response:** DLSE would like to have the capability of posting all statistics regarding the processing of prevailing wage cases, on our website, available to members of the public, including Sonoma County. However, at this time, given the constraints imposed by the recent budget reductions, implementation of any such plan would have to be some time in the future. At this time, the DLSE has a data base program, working on a partial basis, tracking some of the cases and statistics in the area of prevailing wage investigations.

If you have any questions, or if the Department can be of further assistance in evaluating the Grand Jury Report, please let us know.

Very Truly Yours,

  
Chuck Cake

cc: Arthur Lujan  
Sam Rodriguez  
Anne Stevason