

SixTen and Associates

Mandate Reimbursement Services

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August 16, 2002

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Chapter 938, Statutes of 2001
Test Claim 01-TC-28
Clovis Unified School District
Prevailing Wage Rate

RECEIVED

AUG 19 2002

**COMMISSION ON
STATE MANDATES**

Dear Ms. Higashi:

Please find enclosed pages 46 through 55 of the above referenced test claim, along with seven copies, as I understand that the package sent to you inadvertently omitted these pages.

Please accept my regrets for any inconvenience that this may have caused you and your staff.

Sincerely,



Keith B. Petersen

C: Distribution List Attached

1 first time, an awarding body is required to meet with contractors and/or subcontractors
2 upon their request. As the holder of the funds withheld, as a party to the contract, and as
3 the beneficiary of any surety bond, the awarding body, for the first time, will be required,
4 when necessary, to participate in settlement meetings between contractors,
5 subcontractors, and the Labor Commissioner.

6 Chapter 954, Statutes of 2000, Section 13, adds a new Labor Code Section
7 1742.1⁵⁸ which will be operative on January 1, 2005. New section 1742.1, operative on

⁵⁸Labor Code Section 1742.1, as added by Chapter 954, Statutes of 2000,
Section 13, and operative after January 1, 2005:

" (a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the administrative law judge that he or she had substantial grounds for believing the assessment or notice to be in error, the administrative law judge shall waive payment of the liquidated damages. Any liquidated damages collected shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request

1 January 1, 2005, is substantially similar to Section 1742.1 operative until January 1,
2 2005, except that the administrative law judge, rather than the Director of Industrial
3 Relations, may waive payment of liquidated damages if the administrative law judge,
4 rather than the Director of Industrial Relations, finds substantial grounds for believing the
5 assessment or notice to be in error. An awarding body will continue to perform the same
6 duties as required currently in Section 1742.1.

7 Chapter 954, Statutes of 2000, Section 14, added Labor Code Section 1743⁵⁹ to

from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking administrative review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

This section shall become operative on January 1, 2005.”

⁵⁹Labor Code Section 1743, added by Chapter 954, Statutes of 2000, Section 14:

“ (a) The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon. The Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor.

1 attach joint and several liability to a contractor and subcontractor for all amounts due
2 pursuant to a final order under this chapter. The amount collected will be first satisfy the
3 wage claim, then penalties. Wages for workers who cannot be located are placed in the
4 Industrial Relations trust fund pursuant to Labor Code Section 96.7. The final order is
5 binding on a bonding company that secures the payment of wages and a surety on a
6 bond.

7 C. Wages - Prevailing Wage Rates (After 1974)

8 Chapter 281, Statutes of 1976, Section 2, amended Labor Code Section 1770⁶⁰ to

(b) From the amount collected, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(c) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund.

(d) A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review.”

⁶⁰Labor Code Section 1770, added by Chapter 90, Statutes of 1937, Section 1770, as amended by Chapter 281, Statutes of 1976, Section 2:

“~~The body awarding the contract or authorizing the public work~~ Director of the Department of Industrial Relations shall determine the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773, and the director's determination in the matter shall be final except as provided in Section 1773.4 and ~~1773.6~~. Nothing in this article, however, shall prohibit the payment of more than the

1 require the Director of Industrial Relations, rather than the awarding body, to determine
2 the general prevailing rate of per diem wages. The reference to the prevailing rate
3 determination made by the Director of Industrial Relations as provided in Labor Code
4 Section 1773.6 was deleted.

5 Chapter 281, Statutes of 1976, Section 3, amended Labor Code Section 1773⁶¹ to

general prevailing rate of wages to any workman employed on public work. Nothing in
this act shall permit any overtime work in violation of Article 3 of this chapter.”

⁶¹Labor Code Section 1773, added by Chapter 90, Statutes of 1937, Section
1773, as amended by Chapter 281, Statutes of 1976, Section 3:

“The body awarding any contract for public work, or otherwise undertaking any
public work, shall ~~ascertain~~ obtain the general prevailing rate of per diem wages and the
general prevailing rate for holiday and overtime work in the locality in which the public
work is to be performed for each craft, classification, or type of workman needed to
execute the contract from the Director of the Department of Industrial Relations. The
holidays upon which such rates shall be paid need not be specified by the awarding
body, but shall be all holidays recognized in the collective bargaining agreement
applicable to the particular craft, classification or type of workman employed on the
project.

In determining such rates, the ~~awarding body~~ Director of the Department of
Industrial Relations shall ascertain and consider the applicable wage rates established
by collective bargaining agreements and such rates as may have been predetermined
for federal public works, within the locality and in the nearest labor market area. Where
such rates do not constitute the rates actually prevailing in the locality, the ~~awarding
body director~~ shall obtain and consider further data from the labor organizations and
employers or employer associations concerned, including the recognized collective
bargaining representatives for the particular craft, classification or type of work involved.
The rate fixed for each craft, classification or type of work shall be not less than the
prevailing rate paid in such craft, classification or type of work.

If the ~~awarding body director~~ determines that the rate of prevailing wage for any
craft, classification or type of workman is the rate established by a collective bargaining
agreement, the ~~awarding body director~~ may adopt such rate by reference as provided
for in such agreement and such determination shall be effective for the life of such

1 require the awarding body to obtain, rather than ascertain, the general prevailing rate of
2 per diem wages of the public works contract. Now, for the first time, an awarding body,
3 rather than ascertaining the wage rates, must obtain the prevailing wage rate from the
4 Director of the Department of Industrial Relations.

5 Chapter 281, Statutes of 1976, Section 4, amended Labor Code Section 1773.1⁶²
6 to include travel time and subsistence pay in the definition of per diem wages.

7 Chapter 281, Statutes of 1976, Section 6, amended Labor Code Section 1773.6⁶³

agreement or until the ~~awarding body~~ director determines that another rate should be adopted.

⁶²Labor Code Section 1773.1, added by Chapter 2173, Statutes of 1959, Section 1, as amended by Chapter 281, Statutes of 1976, Section 4:

"Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.8, apprenticeship or other training programs authorized by Section 3093, and similar purposes, when the term "per diem wages" is used in this chapter or in any other statute applicable to public works.

For the purpose of determining such per diem wages for contracts entered into with the state, the representative of any craft, classification or type of workman needed to execute the contracts entered into with the state shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within 10 days after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever filed 30 days prior to the call for bids."

⁶³Labor Code Section 1773.6, added by Chapter 1706, Statutes of 1953, Section 6, as amended by Chapter 281, Statutes of 1976, Section 6:

~~"Where the body awarding the contract or authorizing the public work is the State Department of Public Works, the Department of General Services, or the State Department of Water Resources or any division thereof, it shall file, quarterly, its~~

1 to delete the requirement of the Director of Industrial Relations to immediately notify the
2 awarding body of prevailing rates. Now, the Director must make such change available,
3 with no reference to time.

4 Chapter 538, Statutes of 1976, Section 2, added Labor Code Section 1777.7⁶⁴ to
5 require a contractor, who willfully fails to comply with Section 1777.5 of the Labor Code,
6 be barred from bidding on public works contracts for one year, and the awarding body

~~determination of general prevailing rates of per diem wages for those localities in which
public work is to be performed, in the office of the Director of Industrial Relations,
commencing not later than January 10, 1954. Such determination shall be final except
as hereinafter provided. If during any quarterly period the Director of Industrial Relations
shall determine that there has been a change in any prevailing rate of per diem wages in
any locality he shall immediately notify make such change available to the awarding
body of such change and his determination shall be final. Such determination by the
Director of Industrial Relations shall not be effective as to any contract for which the
notice to bidders has been published."~~

⁶⁴Labor Code Section 1777.7, as added by Chapter 538, Statutes of 1976,
Section 2:

"In the event a licensed contractor willfully fails to comply with the provisions of
Section 1777.5, such licensee shall be denied the right to bid on any public works
contract for a period of one year from the date the determination of noncompliance is
made by the Administrator of Apprenticeship and, notwithstanding the provisions of
Section 1727, upon receipt of such a determination the awarding body shall withhold
from contract progress payments then due or to become due the sum of five thousand
dollars (\$5,000). Any determination shall be issued after a full investigation, a fair and
impartial hearing, and reasonable notice thereof in accordance with reasonable rules
and procedures prescribed by the California Apprenticeship Council. Any funds withheld
by the awarding body pursuant to this section shall be released to the contractor upon
issuance of an order to that effect by the administrator, or upon completion of the
contract.

The interpretation and enforcement of Section 1777.5 and 1777.7 shall be in
accordance with the rules and procedures of the California Apprenticeship Council."

1 was required to withhold from contract progress payments the sum of five thousand
2 dollars after determination by the Administrator of Apprenticeship that the contractor
3 willfully failed to comply with Section 1777.5. The awarding body was required to
4 withhold the sum until it received an order releasing it or until completion of the contract.

5 Chapter 599, Statutes of 1976, Section 1, amended Labor Code Section 1776⁶⁵ to
6 require the awarding body to retain a copy of the payroll records of a worker supplied by
7 a contractor and subcontractor for 90 days after completion of the contract. If a
8 complaint regarding prevailing wage rates has been filed with the awarding body or the
9 Division of Labor Standards Enforcement, then the contractor or subcontractor, upon

⁶⁵Labor Code Section 1776, added by Chapter 90, Statutes of 1937, Section 1776, as amended by Chapter 599, Statutes of 1976, Section 1:

"Every Each contractor and subcontractor shall keep an accurate payroll record showing the name, occupation, address, social security number, work classification, straight time and overtime hours worked each day and week, and the per diem wages paid to each workman journeyman, apprentice or worker employed by him in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the body awarding the contract and to the Division of Labor Law Enforcement. The contractor's and subcontractor's payroll records shall be available for inspection at all reasonable hours, and a copy shall be made available to the employees or his authorized representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards. The body awarding the contract may charge a reasonable fee for copying such records. The body awarding the contract shall be required to retain the records filed pursuant to this section of 90 days after completion of the contract. After a complaint has been filed with the awarding body or the Division of Labor Standards Enforcement alleging that a contractor or subcontractor has paid less than the prevailing wage on a public works project, the contractor or subcontractor shall upon written notice from either the awarding body or the Division of Labor Standards Enforcement within 10 days file with the body awarding the contract a certified copy of the payroll records."

1 written notice from either the awarding body or the Division of Labor Standards
2 Enforcement, shall file with the awarding body a certified copy of the payroll records.

3 Chapter 861, Statutes of 1976, Section 2, amended Labor Code Section 1771⁶⁶ to
4 exempt public works projects of five hundred dollars or less from the general prevailing
5 wage rate law.

6 Chapter 1179, Statutes of 1976, Section 2, amended Labor Code Section 1777.5⁶⁷

⁶⁶Labor Code Section 1771, added by Chapter 90, Statutes of 1937, Section 1771, as amended by Chapter 861, Statutes of 1976, Section 2:

“Except for public works projects of five hundred dollars (\$500) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.”

⁶⁷Labor Code Section 1777.5, added by Chapter 872, Statutes of 1937, page 2424, as amended by Chapter 1179, Statutes of 1976, Section 2:

“Nothing in this chapter shall prevent the employment of properly indentured registered apprentices upon public works.

Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is indentured registered.

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3, of the Labor Code, are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he is training.

When the contractor to whom the contract is awarded by the state or any political

subdivision, or any subcontractor under him, in performing any of the work under the contract or subcontract, employs workmen in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area of the site of the public work or industry affected; provided, however, that the approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject contractor or subcontractor, shall arrange for the dispatch of apprentices to the contractor or subcontractor in order to comply with this section. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities. Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one apprentice for each five journeymen, except as otherwise provided in this section.

The contractor or subcontractor, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the contractor that he employs apprentices in such craft or trade in the state on all of his contracts on an annual average of not less than one apprentice to each eight five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 ratio as set forth in this section. This section shall not apply to prime contracts of general contractors involving less than thirty thousand dollars (\$30,000) or 20 working days or to contracts of subcontractors specialty contractors not bidding for work through a general or prime contractor, involving less than two thousand dollars (\$2,000) or fewer than five working days.

"Apprenticeable craft or trade," as used in this section, shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the

Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(a) In the event unemployment for the previous three-month period in such area exceeds an average of 15 percent, or

(b) In the event the number of apprentices in training in such area exceeds a ratio of 1 to 5, or

(c) If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either (1) on a statewide basis, or (2) on a local basis.

(d) If assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When such exemptions are granted to an organization which represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, provided they are already covered by the local apprenticeship standards.

A contractor to whom the contract is awarded, or any subcontractor under him, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The contractor or subcontractor may add the amount of such contributions in computing his bid for the contract. The Division of Labor Law Standards Enforcement is authorized to enforce the payment of such contributions to the fund or funds as set forth in Section 227.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. Such stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

~~In the event a contractor willfully fails to comply with this section, such contractor~~

1 first time, an awarding body is required to meet with contractors and/or subcontractors
2 upon their request. As the holder of the funds withheld, as a party to the contract, and as
3 the beneficiary of any surety bond, the awarding body, for the first time, will be required,
4 when necessary, to participate in settlement meetings between contractors,
5 subcontractors, and the Labor Commissioner.

6 Chapter 954, Statutes of 2000, Section 13, adds a new Labor Code Section
7 1742.1⁵⁸ which will be operative on January 1, 2005. New section 1742.1, operative on

⁵⁸Labor Code Section 1742.1, as added by Chapter 954, Statutes of 2000,
Section 13, and operative after January 1, 2005:

" (a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the administrative law judge that he or she had substantial grounds for believing the assessment or notice to be in error, the administrative law judge shall waive payment of the liquidated damages. Any liquidated damages collected shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request

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3 Relations, may waive payment of liquidated damages if the administrative law judge,
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5 assessment or notice to be in error. An awarding body will continue to perform the same
6 duties as required currently in Section 1742.1.

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from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking administrative review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

This section shall become operative on January 1, 2005.”

⁵⁹Labor Code Section 1743, added by Chapter 954, Statutes of 2000, Section 14:

“ (a) The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon. The Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor.

1 attach joint and several liability to a contractor and subcontractor for all amounts due
2 pursuant to a final order under this chapter. The amount collected will be first satisfy the
3 wage claim, then penalties. Wages for workers who cannot be located are placed in the
4 Industrial Relations trust fund pursuant to Labor Code Section 96.7. The final order is
5 binding on a bonding company that secures the payment of wages and a surety on a
6 bond.

7 C. Wages - Prevailing Wage Rates (After 1974)

8 Chapter 281, Statutes of 1976, Section 2, amended Labor Code Section 1770⁶⁰ to

(b) From the amount collected, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(c) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund.

(d) A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review."

⁶⁰Labor Code Section 1770, added by Chapter 90, Statutes of 1937, Section 1770, as amended by Chapter 281, Statutes of 1976, Section 2:

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1 require the Director of Industrial Relations, rather than the awarding body, to determine
2 the general prevailing rate of per diem wages. The reference to the prevailing rate
3 determination made by the Director of Industrial Relations as provided in Labor Code
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⁶¹Labor Code Section 1773, added by Chapter 90, Statutes of 1937, Section 1773, as amended by Chapter 281, Statutes of 1976, Section 3:

“The body awarding any contract for public work, or otherwise undertaking any public work, shall ~~ascertain~~ obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of workman needed to execute the contract from the Director of the Department of Industrial Relations. The holidays upon which such rates shall be paid need not be specified by the awarding body, but shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workman employed on the project.

In determining such rates, the ~~awarding body~~ Director of the Department of Industrial Relations shall ascertain and consider the applicable wage rates established by collective bargaining agreements and such rates as may have been predetermined for federal public works, within the locality and in the nearest labor market area. Where such rates do not constitute the rates actually prevailing in the locality, the ~~awarding body~~ director shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized collective bargaining representatives for the particular craft, classification or type of work involved. The rate fixed for each craft, classification or type of work shall be not less than the prevailing rate paid in such craft, classification or type of work.

If the ~~awarding body~~ director determines that the rate of prevailing wage for any craft, classification or type of workman is the rate established by a collective bargaining agreement, the ~~awarding body~~ director may adopt such rate by reference as provided for in such agreement and such determination shall be effective for the life of such

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For the purpose of determining such per diem wages for contracts entered into with the state, the representative of any craft, classification or type of workman needed to execute the contracts entered into with the state shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within 10 days after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever filed 30 days prior to the call for bids."

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and procedures prescribed by the California Apprenticeship Council. Any funds withheld
by the awarding body pursuant to this section shall be released to the contractor upon
issuance of an order to that effect by the administrator, or upon completion of the
contract.

The interpretation and enforcement of Section 1777.5 and 1777.7 shall be in
accordance with the rules and procedures of the California Apprenticeship Council."

1 was required to withhold from contract progress payments the sum of five thousand
2 dollars after determination by the Administrator of Apprenticeship that the contractor
3 willfully failed to comply with Section 1777.5. The awarding body was required to
4 withhold the sum until it received an order releasing it or until completion of the contract.

5 Chapter 599, Statutes of 1976, Section 1, amended Labor Code Section 1776⁶⁵ to
6 require the awarding body to retain a copy of the payroll records of a worker supplied by
7 a contractor and subcontractor for 90 days after completion of the contract. If a
8 complaint regarding prevailing wage rates has been filed with the awarding body or the
9 Division of Labor Standards Enforcement, then the contractor or subcontractor, upon

⁶⁵Labor Code Section 1776, added by Chapter 90, Statutes of 1937, Section 1776, as amended by Chapter 599, Statutes of 1976, Section 1:

“Every Each contractor and subcontractor shall keep an accurate payroll record showing the name, occupation, address, social security number, work classification, straight time and overtime hours worked each day and week, and the per diem wages paid to each workman journeyman, apprentice or worker employed by him in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the body awarding the contract and to the Division of Labor Law Enforcement. The contractor’s and subcontractor’s payroll records shall be available for inspection at all reasonable hours, and a copy shall be made available to the employees or his authorized representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards. The body awarding the contract may charge a reasonable fee for copying such records. The body awarding the contract shall be required to retain the records filed pursuant to this section of 90 days after completion of the contract. After a complaint has been filed with the awarding body or the Division of Labor Standards Enforcement alleging that a contractor or subcontractor has paid less than the prevailing wage on a public works project, the contractor or subcontractor shall upon written notice from either the awarding body or the Division of Labor Standards Enforcement within 10 days file with the body awarding the contract a certified copy of the payroll records.”

1 written notice from either the awarding body or the Division of Labor Standards
2 Enforcement, shall file with the awarding body a certified copy of the payroll records.

3 Chapter 861, Statutes of 1976, Section 2, amended Labor Code Section 1771⁶⁶ to
4 exempt public works projects of five hundred dollars or less from the general prevailing
5 wage rate law.

6 Chapter 1179, Statutes of 1976, Section 2, amended Labor Code Section 1777.5⁶⁷

⁶⁶Labor Code Section 1771, added by Chapter 90, Statutes of 1937, Section 1771, as amended by Chapter 861, Statutes of 1976, Section 2:

“Except for public works projects of five hundred dollars (\$500) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.”

⁶⁷Labor Code Section 1777.5, added by Chapter 872, Statutes of 1937, page 2424, as amended by Chapter 1179, Statutes of 1976, Section 2:

“Nothing in this chapter shall prevent the employment of properly indentured registered apprentices upon public works.

Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is indentured registered.

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3, of the Labor Code, are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he is training.

When the contractor to whom the contract is awarded by the state or any political

subdivision, or any subcontractor under him, in performing any of the work under the contract or subcontract, employs workmen in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area of ~~the site of the public work or industry affected~~; provided, however, that the approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject contractor or subcontractor, shall arrange for the dispatch of apprentices to the contractor or subcontractor in order to comply with this section. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities. Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one apprentice for each five journeymen, except as otherwise provided in this section.

The contractor or subcontractor, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the contractor that he employs apprentices in such craft or trade in the state on all of his contracts on an annual average of not less than one apprentice to each eight five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 ratio as set forth in this section. This section shall not apply to prime contracts of general contractors involving less than thirty thousand dollars (\$30,000) or 20 working days or to contracts of subcontractors specialty contractors not bidding for work through a general or prime contractor, involving less than two thousand dollars (\$2,000) or fewer than five working days.

"Apprenticeable craft or trade," as used in this section, shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the

Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(a) In the event unemployment for the previous three-month period in such area exceeds an average of 15 percent, or

(b) In the event the number of apprentices in training in such area exceeds a ratio of 1 to 5, or

(c) If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either (1) on a statewide basis, or (2) on a local basis.

(d) If assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When such exemptions are granted to an organization which represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, provided they are already covered by the local apprenticeship standards.

A contractor to whom the contract is awarded, or any subcontractor under him, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The contractor or subcontractor may add the amount of such contributions in computing his bid for the contract. The Division of Labor ~~Law~~ Standards Enforcement is authorized to enforce the payment of such contributions to the fund or funds as set forth in Section 227.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. Such stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

~~In the event a contractor willfully fails to comply with this section, such contractor~~

1 first time, an awarding body is required to meet with contractors and/or subcontractors
2 upon their request. As the holder of the funds withheld, as a party to the contract, and as
3 the beneficiary of any surety bond, the awarding body, for the first time, will be required,
4 when necessary, to participate in settlement meetings between contractors,
5 subcontractors, and the Labor Commissioner.

6 Chapter 954, Statutes of 2000, Section 13, adds a new Labor Code Section
7 1742.1⁵⁸ which will be operative on January 1, 2005. New section 1742.1, operative on

⁵⁸Labor Code Section 1742.1, as added by Chapter 954, Statutes of 2000,
Section 13, and operative after January 1, 2005:

" (a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the administrative law judge that he or she had substantial grounds for believing the assessment or notice to be in error, the administrative law judge shall waive payment of the liquidated damages. Any liquidated damages collected shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request

1 January 1, 2005, is substantially similar to Section 1742.1 operative until January 1,
2 2005, except that the administrative law judge, rather than the Director of Industrial
3 Relations, may waive payment of liquidated damages if the administrative law judge,
4 rather than the Director of Industrial Relations, finds substantial grounds for believing the
5 assessment or notice to be in error. An awarding body will continue to perform the same
6 duties as required currently in Section 1742.1.

7 Chapter 954, Statutes of 2000, Section 14, added Labor Code Section 1743⁵⁹ to

from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking administrative review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

This section shall become operative on January 1, 2005.”

⁵⁹Labor Code Section 1743, added by Chapter 954, Statutes of 2000, Section 14:

“ (a) The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon. The Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor.

1 attach joint and several liability to a contractor and subcontractor for all amounts due
2 pursuant to a final order under this chapter. The amount collected will be first satisfy the
3 wage claim, then penalties. Wages for workers who cannot be located are placed in the
4 Industrial Relations trust fund pursuant to Labor Code Section 96.7. The final order is
5 binding on a bonding company that secures the payment of wages and a surety on a
6 bond.

7 C. Wages - Prevailing Wage Rates (After 1974)

8 Chapter 281, Statutes of 1976, Section 2, amended Labor Code Section 1770⁶⁰ to

(b) From the amount collected, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(c) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund.

(d) A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review."

⁶⁰Labor Code Section 1770, added by Chapter 90, Statutes of 1937, Section 1770, as amended by Chapter 281, Statutes of 1976, Section 2:

~~"The body awarding the contract or authorizing the public work~~ Director of the Department of Industrial Relations shall determine the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773, and the director's determination in the matter shall be final except as provided in Section 1773.4 and ~~1773.6~~. Nothing in this article, however, shall prohibit the payment of more than the

1 require the Director of Industrial Relations, rather than the awarding body, to determine
2 the general prevailing rate of per diem wages. The reference to the prevailing rate
3 determination made by the Director of Industrial Relations as provided in Labor Code
4 Section 1773.6 was deleted.

5 Chapter 281, Statutes of 1976, Section 3, amended Labor Code Section 1773⁶¹ to

general prevailing rate of wages to any workman employed on public work. Nothing in
this act shall permit any overtime work in violation of Article 3 of this chapter.”

⁶¹Labor Code Section 1773, added by Chapter 90, Statutes of 1937, Section
1773, as amended by Chapter 281, Statutes of 1976, Section 3:

“The body awarding any contract for public work, or otherwise undertaking any
public work, shall ~~ascertain~~ obtain the general prevailing rate of per diem wages and the
general prevailing rate for holiday and overtime work in the locality in which the public
work is to be performed for each craft, classification, or type of workman needed to
execute the contract from the Director of the Department of Industrial Relations. The
holidays upon which such rates shall be paid need not be specified by the awarding
body, but shall be all holidays recognized in the collective bargaining agreement
applicable to the particular craft, classification or type of workman employed on the
project.

In determining such rates, the ~~awarding body~~ Director of the Department of
Industrial Relations shall ascertain and consider the applicable wage rates established
by collective bargaining agreements and such rates as may have been predetermined
for federal public works, within the locality and in the nearest labor market area. Where
such rates do not constitute the rates actually prevailing in the locality, the ~~awarding
body director~~ shall obtain and consider further data from the labor organizations and
employers or employer associations concerned, including the recognized collective
bargaining representatives for the particular craft, classification or type of work involved.
The rate fixed for each craft, classification or type of work shall be not less than the
prevailing rate paid in such craft, classification or type of work.

If the ~~awarding body director~~ determines that the rate of prevailing wage for any
craft, classification or type of workman is the rate established by a collective bargaining
agreement, the ~~awarding body director~~ may adopt such rate by reference as provided
for in such agreement and such determination shall be effective for the life of such

1 require the awarding body to obtain, rather than ascertain, the general prevailing rate of
2 per diem wages of the public works contract. Now, for the first time, an awarding body,
3 rather than ascertaining the wage rates, must obtain the prevailing wage rate from the
4 Director of the Department of Industrial Relations.

5 Chapter 281, Statutes of 1976, Section 4, amended Labor Code Section 1773.1⁶²
6 to include travel time and subsistence pay in the definition of per diem wages.

7 Chapter 281, Statutes of 1976, Section 6, amended Labor Code Section 1773.6⁶³

agreement or until the awarding body director determines that another rate should be adopted.

⁶²Labor Code Section 1773.1, added by Chapter 2173, Statutes of 1959, Section 1, as amended by Chapter 281, Statutes of 1976, Section 4:

"Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.8, apprenticeship or other training programs authorized by Section 3093, and similar purposes, when the term "per diem wages" is used in this chapter or in any other statute applicable to public works.

For the purpose of determining such per diem wages for contracts entered into with the state, the representative of any craft, classification or type of workman needed to execute the contracts entered into with the state shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within 10 days after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever filed 30 days prior to the call for bids."

⁶³Labor Code Section 1773.6, added by Chapter 1706, Statutes of 1953, Section 6, as amended by Chapter 281, Statutes of 1976, Section 6:

~~"Where the body awarding the contract or authorizing the public work is the State Department of Public Works, the Department of General Services, or the State Department of Water Resources or any division thereof, it shall file, quarterly, its~~

1 to delete the requirement of the Director of Industrial Relations to immediately notify the
2 awarding body of prevailing rates. Now, the Director must make such change available,
3 with no reference to time.

4 Chapter 538, Statutes of 1976, Section 2, added Labor Code Section 1777.7⁶⁴ to
5 require a contractor, who willfully fails to comply with Section 1777.5 of the Labor Code,
6 be barred from bidding on public works contracts for one year, and the awarding body

~~determination of general prevailing rates of per diem wages for those localities in which
public work is to be performed, in the office of the Director of Industrial Relations,
commencing not later than January 10, 1954. Such determination shall be final except
as hereinafter provided: If during any quarterly period the Director of Industrial Relations
shall determine that there has been a change in any prevailing rate of per diem wages in
any locality he shall immediately notify make such change available to the awarding
body of such change and his determination shall be final. Such determination by the
Director of Industrial Relations shall not be effective as to any contract for which the
notice to bidders has been published."~~

⁶⁴Labor Code Section 1777.7, as added by Chapter 538, Statutes of 1976,
Section 2:

"In the event a licensed contractor willfully fails to comply with the provisions of
Section 1777.5, such licensee shall be denied the right to bid on any public works
contract for a period of one year from the date the determination of noncompliance is
made by the Administrator of Apprenticeship and, notwithstanding the provisions of
Section 1727, upon receipt of such a determination the awarding body shall withhold
from contract progress payments then due or to become due the sum of five thousand
dollars (\$5,000). Any determination shall be issued after a full investigation, a fair and
impartial hearing, and reasonable notice thereof in accordance with reasonable rules
and procedures prescribed by the California Apprenticeship Council. Any funds withheld
by the awarding body pursuant to this section shall be released to the contractor upon
issuance of an order to that effect by the administrator, or upon completion of the
contract.

The interpretation and enforcement of Section 1777.5 and 1777.7 shall be in
accordance with the rules and procedures of the California Apprenticeship Council."

1 was required to withhold from contract progress payments the sum of five thousand
2 dollars after determination by the Administrator of Apprenticeship that the contractor
3 willfully failed to comply with Section 1777.5. The awarding body was required to
4 withhold the sum until it received an order releasing it or until completion of the contract.

5 Chapter 599, Statutes of 1976, Section 1, amended Labor Code Section 1776⁶⁵ to
6 require the awarding body to retain a copy of the payroll records of a worker supplied by
7 a contractor and subcontractor for 90 days after completion of the contract. If a
8 complaint regarding prevailing wage rates has been filed with the awarding body or the
9 Division of Labor Standards Enforcement, then the contractor or subcontractor, upon

⁶⁵Labor Code Section 1776, added by Chapter 90, Statutes of 1937, Section 1776, as amended by Chapter 599, Statutes of 1976, Section 1:

"Every ~~Each~~ contractor and subcontractor shall keep an accurate payroll record showing the name, ~~occupation, address, social security number, work classification, straight time and overtime hours worked each day and week, and the per diem wages paid to each workman journeyman, apprentice or worker~~ employed by him in connection with the public work. ~~The record shall be kept open at all reasonable hours to the inspection of the body awarding the contract and to the Division of Labor Law Enforcement. The contractor's and subcontractor's payroll records shall be available for inspection at all reasonable hours, and a copy shall be made available to the employees or his authorized representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards. The body awarding the contract may charge a reasonable fee for copying such records. The body awarding the contract shall be required to retain the records filed pursuant to this section of 90 days after completion of the contract. After a complaint has been filed with the awarding body or the Division of Labor Standards Enforcement alleging that a contractor or subcontractor has paid less than the prevailing wage on a public works project, the contractor or subcontractor shall upon written notice from either the awarding body or the Division of Labor Standards Enforcement within 10 days file with the body awarding the contract a certified copy of the payroll records."~~

1 written notice from either the awarding body or the Division of Labor Standards
2 Enforcement, shall file with the awarding body a certified copy of the payroll records.

3 Chapter 861, Statutes of 1976, Section 2, amended Labor Code Section 1771⁶⁶ to
4 exempt public works projects of five hundred dollars or less from the general prevailing
5 wage rate law.

6 Chapter 1179, Statutes of 1976, Section 2, amended Labor Code Section 1777.5⁶⁷

⁶⁶Labor Code Section 1771, added by Chapter 90, Statutes of 1937, Section 1771, as amended by Chapter 861, Statutes of 1976, Section 2:

"Except for public works projects of five hundred dollars (\$500) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works."

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work."

⁶⁷Labor Code Section 1777.5, added by Chapter 872, Statutes of 1937, page 2424, as amended by Chapter 1179, Statutes of 1976, Section 2:

"Nothing in this chapter shall prevent the employment of properly indentured registered apprentices upon public works.

Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is indentured registered.

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3, of the Labor Code, are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he is training.

When the contractor to whom the contract is awarded by the state or any political

subdivision, or any subcontractor under him, in performing any of the work under the contract or subcontract, employs workmen in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area of the site of the public work or industry affected; provided, however, that the approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject contractor or subcontractor, shall arrange for the dispatch of apprentices to the contractor or subcontractor in order to comply with this section. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities. Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one apprentice for each five journeymen, except as otherwise provided in this section.

The contractor or subcontractor, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the contractor that he employs apprentices in such craft or trade in the state on all of his contracts on an annual average of not less than one apprentice to each eight five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 ratio as set forth in this section. This section shall not apply to prime contracts of general contractors involving less than thirty thousand dollars (\$30,000) or 20 working days or to contracts of subcontractors specialty contractors not bidding for work through a general or prime contractor, involving less than two thousand dollars (\$2,000) or fewer than five working days.

"Apprenticeable craft or trade," as used in this section, shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the

Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(a) In the event unemployment for the previous three-month period in such area exceeds an average of 15 percent, or

(b) In the event the number of apprentices in training in such area exceeds a ratio of 1 to 5, or

(c) If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either (1) on a statewide basis, or (2) on a local basis.

(d) If assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When such exemptions are granted to an organization which represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, provided they are already covered by the local apprenticeship standards.

A contractor to whom the contract is awarded, or any subcontractor under him, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The contractor or subcontractor may add the amount of such contributions in computing his bid for the contract. The Division of Labor ~~Law~~ Standards Enforcement is authorized to enforce the payment of such contributions to the fund or funds as set forth in Section 227.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. Such stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

~~In the event a contractor willfully fails to comply with this section, such contractor~~

1 first time, an awarding body is required to meet with contractors and/or subcontractors
2 upon their request. As the holder of the funds withheld, as a party to the contract, and as
3 the beneficiary of any surety bond, the awarding body, for the first time, will be required,
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5 subcontractors, and the Labor Commissioner.

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⁵⁸Labor Code Section 1742.1, as added by Chapter 954, Statutes of 2000,
Section 13, and operative after January 1, 2005:

“ (a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the administrative law judge that he or she had substantial grounds for believing the assessment or notice to be in error, the administrative law judge shall waive payment of the liquidated damages. Any liquidated damages collected shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request

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2 2005, except that the administrative law judge, rather than the Director of Industrial
3 Relations, may waive payment of liquidated damages if the administrative law judge,
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5 assessment or notice to be in error. An awarding body will continue to perform the same
6 duties as required currently in Section 1742.1.

7 Chapter 954, Statutes of 2000, Section 14, added Labor Code Section 1743⁵⁹ to

from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking administrative review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

This section shall become operative on January 1, 2005.”

⁵⁹Labor Code Section 1743, added by Chapter 954, Statutes of 2000, Section 14:

“ (a) The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon. The Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor.

1 attach joint and several liability to a contractor and subcontractor for all amounts due
2 pursuant to a final order under this chapter. The amount collected will be first satisfy the
3 wage claim, then penalties. Wages for workers who cannot be located are placed in the
4 Industrial Relations trust fund pursuant to Labor Code Section 96.7. The final order is
5 binding on a bonding company that secures the payment of wages and a surety on a
6 bond.

7 C. Wages - Prevailing Wage Rates (After 1974)

8 Chapter 281, Statutes of 1976, Section 2, amended Labor Code Section 1770⁶⁰ to

(b) From the amount collected, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(c) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund.

(d) A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review.”

⁶⁰Labor Code Section 1770, added by Chapter 90, Statutes of 1937, Section 1770, as amended by Chapter 281, Statutes of 1976, Section 2:

~~“The body awarding the contract or authorizing the public work~~ Director of the Department of Industrial Relations shall determine the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773, and the director's determination in the matter shall be final except as provided in Section 1773.4 and ~~1773.6~~. Nothing in this article, however, shall prohibit the payment of more than the

1 require the Director of Industrial Relations, rather than the awarding body, to determine
2 the general prevailing rate of per diem wages. The reference to the prevailing rate
3 determination made by the Director of Industrial Relations as provided in Labor Code
4 Section 1773.6 was deleted.

5 Chapter 281, Statutes of 1976, Section 3, amended Labor Code Section 1773⁶¹ to

general prevailing rate of wages to any workman employed on public work. Nothing in this act shall permit any overtime work in violation of Article 3 of this chapter.”

⁶¹Labor Code Section 1773, added by Chapter 90, Statutes of 1937, Section 1773, as amended by Chapter 281, Statutes of 1976, Section 3:

“The body awarding any contract for public work, or otherwise undertaking any public work, shall ~~ascertain~~ obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of workman needed to execute the contract from the Director of the Department of Industrial Relations. The holidays upon which such rates shall be paid need not be specified by the awarding body, but shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workman employed on the project.

In determining such rates, the ~~awarding body~~ Director of the Department of Industrial Relations shall ascertain and consider the applicable wage rates established by collective bargaining agreements and such rates as may have been predetermined for federal public works, within the locality and in the nearest labor market area. Where such rates do not constitute the rates actually prevailing in the locality, the ~~awarding body~~ director shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized collective bargaining representatives for the particular craft, classification or type of work involved. The rate fixed for each craft, classification or type of work shall be not less than the prevailing rate paid in such craft, classification or type of work.

If the ~~awarding body~~ director determines that the rate of prevailing wage for any craft, classification or type of workman is the rate established by a collective bargaining agreement, the ~~awarding body~~ director may adopt such rate by reference as provided for in such agreement and such determination shall be effective for the life of such

1 require the awarding body to obtain, rather than ascertain, the general prevailing rate of
2 per diem wages of the public works contract. Now, for the first time, an awarding body,
3 rather than ascertaining the wage rates, must obtain the prevailing wage rate from the
4 Director of the Department of Industrial Relations.

5 Chapter 281, Statutes of 1976, Section 4, amended Labor Code Section 1773.1⁶²
6 to include travel time and subsistence pay in the definition of per diem wages.

7 Chapter 281, Statutes of 1976, Section 6, amended Labor Code Section 1773.6⁶³

agreement or until the ~~awarding body~~ director determines that another rate should be adopted.

⁶²Labor Code Section 1773.1, added by Chapter 2173, Statutes of 1959, Section 1, as amended by Chapter 281, Statutes of 1976, Section 4:

"Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.8, apprenticeship or other training programs authorized by Section 3093, and similar purposes, when the term "per diem wages" is used in this chapter or in any other statute applicable to public works.

For the purpose of determining such per diem wages for contracts entered into with the state, the representative of any craft, classification or type of workman needed to execute the contracts entered into with the state shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within 10 days after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever filed 30 days prior to the call for bids."

⁶³Labor Code Section 1773.6, added by Chapter 1706, Statutes of 1953, Section 6, as amended by Chapter 281, Statutes of 1976, Section 6:

~~"Where the body awarding the contract or authorizing the public work is the State Department of Public Works, the Department of General Services, or the State Department of Water Resources or any division thereof, it shall file, quarterly, its~~

1 to delete the requirement of the Director of Industrial Relations to immediately notify the
2 awarding body of prevailing rates. Now, the Director must make such change available,
3 with no reference to time.

4 Chapter 538, Statutes of 1976, Section 2, added Labor Code Section 1777.7⁶⁴ to
5 require a contractor, who willfully fails to comply with Section 1777.5 of the Labor Code,
6 be barred from bidding on public works contracts for one year, and the awarding body

~~determination of general prevailing rates of per diem wages for those localities in which
public work is to be performed, in the office of the Director of Industrial Relations,
commencing not later than January 10, 1954. Such determination shall be final except
as hereinafter provided. If during any quarterly period the Director of Industrial Relations
shall determine that there has been a change in any prevailing rate of per diem wages in
any locality he shall immediately notify make such change available to the awarding
body of such change and his determination shall be final. Such determination by the
Director of Industrial Relations shall not be effective as to any contract for which the
notice to bidders has been published."~~

⁶⁴Labor Code Section 1777.7, as added by Chapter 538, Statutes of 1976,
Section 2:

"In the event a licensed contractor willfully fails to comply with the provisions of
Section 1777.5, such licensee shall be denied the right to bid on any public works
contract for a period of one year from the date the determination of noncompliance is
made by the Administrator of Apprenticeship and, notwithstanding the provisions of
Section 1727, upon receipt of such a determination the awarding body shall withhold
from contract progress payments then due or to become due the sum of five thousand
dollars (\$5,000). Any determination shall be issued after a full investigation, a fair and
impartial hearing, and reasonable notice thereof in accordance with reasonable rules
and procedures prescribed by the California Apprenticeship Council. Any funds withheld
by the awarding body pursuant to this section shall be released to the contractor upon
issuance of an order to that effect by the administrator, or upon completion of the
contract.

The interpretation and enforcement of Section 1777.5 and 1777.7 shall be in
accordance with the rules and procedures of the California Apprenticeship Council."

1 was required to withhold from contract progress payments the sum of five thousand
2 dollars after determination by the Administrator of Apprenticeship that the contractor
3 willfully failed to comply with Section 1777.5. The awarding body was required to
4 withhold the sum until it received an order releasing it or until completion of the contract.

5 Chapter 599, Statutes of 1976, Section 1, amended Labor Code Section 1776⁶⁵ to
6 require the awarding body to retain a copy of the payroll records of a worker supplied by
7 a contractor and subcontractor for 90 days after completion of the contract. If a
8 complaint regarding prevailing wage rates has been filed with the awarding body or the
9 Division of Labor Standards Enforcement, then the contractor or subcontractor, upon

⁶⁵Labor Code Section 1776, added by Chapter 90, Statutes of 1937, Section 1776, as amended by Chapter 599, Statutes of 1976, Section 1:

“Every Each contractor and subcontractor shall keep an accurate payroll record showing the name, occupation, address, social security number, work classification, straight time and overtime hours worked each day and week, and the per diem wages paid to each workman journeyman, apprentice or worker employed by him in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the body awarding the contract and to the Division of Labor Law Enforcement. The contractor’s and subcontractor’s payroll records shall be available for inspection at all reasonable hours, and a copy shall be made available to the employees or his authorized representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards. The body awarding the contract may charge a reasonable fee for copying such records. The body awarding the contract shall be required to retain the records filed pursuant to this section of 90 days after completion of the contract. After a complaint has been filed with the awarding body or the Division of Labor Standards Enforcement alleging that a contractor or subcontractor has paid less than the prevailing wage on a public works project, the contractor or subcontractor shall upon written notice from either the awarding body or the Division of Labor Standards Enforcement within 10 days file with the body awarding the contract a certified copy of the payroll records.”

1 written notice from either the awarding body or the Division of Labor Standards
2 Enforcement, shall file with the awarding body a certified copy of the payroll records.

3 Chapter 861, Statutes of 1976, Section 2, amended Labor Code Section 1771⁶⁶ to
4 exempt public works projects of five hundred dollars or less from the general prevailing
5 wage rate law.

6 Chapter 1179, Statutes of 1976, Section 2, amended Labor Code Section 1777.5⁶⁷

⁶⁶Labor Code Section 1771, added by Chapter 90, Statutes of 1937, Section 1771, as amended by Chapter 861, Statutes of 1976, Section 2:

“Except for public works projects of five hundred dollars (\$500) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.”

⁶⁷Labor Code Section 1777.5, added by Chapter 872, Statutes of 1937, page 2424, as amended by Chapter 1179, Statutes of 1976, Section 2:

“Nothing in this chapter shall prevent the employment of properly indentured registered apprentices upon public works.

Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is indentured registered.

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3, of the Labor Code, are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he is training.

When the contractor to whom the contract is awarded by the state or any political

subdivision, or any subcontractor under him, in performing any of the work under the contract or subcontract, employs workmen in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area of ~~the site of the public work or industry affected; provided, however, that the approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject contractor or subcontractor, shall arrange for the dispatch of apprentices to the contractor or subcontractor in order to comply with this section. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities.~~ Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one apprentice for each five journeymen, except as otherwise provided in this section.

The contractor or subcontractor, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the contractor that he employs apprentices in such craft or trade in the state on all of his contracts on an annual average of not less than one apprentice to each ~~eight~~ five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 ratio as set forth in this section. This section shall not apply to ~~prime contracts of general contractors~~ involving less than thirty thousand dollars (\$30,000) or 20 working days or to contracts of ~~subcontractors~~ specialty contractors not bidding for work through a general or prime contractor, involving less than two thousand dollars (\$2,000) or fewer than five working days.

"Apprenticeable craft or trade," as used in this section, shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the

Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(a) In the event unemployment for the previous three-month period in such area exceeds an average of 15 percent, or

(b) In the event the number of apprentices in training in such area exceeds a ratio of 1 to 5, or

(c) If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either (1) on a statewide basis, or (2) on a local basis.

(d) If assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When such exemptions are granted to an organization which represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, provided they are already covered by the local apprenticeship standards.

A contractor to whom the contract is awarded, or any subcontractor under him, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The contractor or subcontractor may add the amount of such contributions in computing his bid for the contract. The Division of Labor Law Standards Enforcement is authorized to enforce the payment of such contributions to the fund or funds as set forth in Section 227.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. Such stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

~~In the event a contractor willfully fails to comply with this section, such contractor~~