STATE OF CALIFORNIA
GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
525 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102

ADDRESS REPLY TO:
P.O. BOX 603
San Francisco, CA 94102

IN REPLY REFER TO:

Legal Section

September 8, 1987

Susan R. Brechbill
Assistant Chief Counsel
U.S. Department of Energy
San Francisco Operations Office
1333 Broadway
Oakland, CA 94612

Re: Vacation Benefits Under the Service Contract Act

Dear Ms. Brechbill:

Your letter to Commissioner Aubry dated August 24, 1987 regarding payment of vacation benefits in the State of California by contractors performing services for the federal government under the Service Contract Act has been referred to this office for response.

The Division of Labor Standards Enforcement is aware of the requirements of the Service Contract Act and the U.S. Department of Labor Regulations found at 29 CFR §4.173 concerning the obligation of the contractor to pay vacation pay and the provision in the federal rules which states that "no segment of time smaller than one year need be considered in computing the employer's vacation liability". However, these regulations are simply designed to insure that the employer is complying with the requirements of the Service Contract Act; not the applicable state law. The regulations provide a minimum standard, not a maximum.

There is no language in the Service Contract Act which could be construed to manifest an intent by Congress that the Act should preempt state law. As a matter of fact, the Department of Labor recognizes that contractors working under the provisions of federal contracts have obligations under state law. (See U.S. Department of Labor Memorandum No. 143, dated December 23, 1985, which I have attached)

I am also enclosing a copy of a letter which Mr. Aubry sent to Mary Maloney Roberts of the law firm of Corbett & Kane regarding the same subject. That letter sets out in detail the position of the Division in this matter. As you will note, Mr. Aubry's letter to Ms. Roberts indicates that he believes that the Department of Labor should change the vacation portion of the Wage Determination in California to require proration and, thus, to conform to California law. I note that you make the same observation in your letter of August 24th.

I can find no law which would allow this agency to fail to apply the California law to the contractors in question. Such a failure would, in my opinion, be a violation of the mandate the California Legislature has placed upon the Division and its officers.

If you have any further questions or comments on this subject please feel free to contact the undersigned.

Yours truly,

H. Thomas Cadell

H. THOMAS CADELL, JR.
Chief Counsel

c.c. w/o encls.
Lloyd W. Aubry, Jr.
James Curry
Simon Reyes

1987.09.08

DEC 23 1985

MEMORANDUM NO. 143

TO: ALL CONTRACTING AGENCIES OF THE FEDERAL GOVERNMENT AND THE DISTRICT OF COLUMBIA

FROM: HERBERT J. COHEN
Deputy Administrator (Original is signed)

SUBJECT: Repeal of Daily Overtime Compensation Requirements Applicable to Employees Performing on Federal and Federally Assisted Contracts

On November 8, 1985, the Department of Defense Authorization Act of 1986, Pub. L. No. 99-145, was enacted into law.

A provision of this law amends the Contract Work Hours and Safety Standards Act (CWHSSA) and the Walsh-Healey Public Contracts Act (PCA) to eliminate the requirement that contractors pay employees performing on Federal or Federally assisted construction contracts, and Federal service or supply contracts, time and one-half their basic rates of pay for hours worked in excess of 8 hours per day on or after January 1, 1986. Overtime compensation will continue to be required under these statutes for hours worked in excess of 40 hours per week.

Revisions to the applicable contract labor standards regulations (29 CFR Parts 4 and 5 and 41 CFR Part 50-201) to delete references to these daily overtime requirements will be published in the near future.

Contracting agencies should be aware that certain contractors may continue to have obligations to pay daily overtime compensation pursuant to State or local laws, collective bargaining agreements, or employment contracts after January 1, 1986. However, whether contractual provisions agreed to prior to January 1, 1986, requiring overtime compensation after 8 hours of work can be enforced after January 1, 1986, is a question of contract law between the parties independent of the Department of Labor=s authority under CWHSSA and PCA. Accordingly, the Department will take no action to enforce daily overtime requirements with respect to hours worked on any Federal contracts after January 1, 1986.