

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

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H. THOMAS CADELL, JR., *Chief Counsel*

August 4, 1994

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Re: Jurisdiction of California Labor Commissioner and/or
The IWC Orders

Dear Mr. Armstrong:

This is intended to reply to your letter of June 29, 1994, which presented a list of five (5) employee classifications and asked for an opinion regarding the applicability of the IWC Orders to those workers.

You presented the following classifications of employees and asked the DLSE to confirm that those employees are not covered by the IWC Orders. I will address the categories and give you the reasons for my responses:

1. Employees who perform work on federal military bases in California are not covered by the IWC Orders.

This is as a result of the fact that unless there exists language in the document ceding property to the federal government which retains to the state the right to enforce specific laws (e.g., labor laws) that right is not retained by the State of California. This conclusion has nothing to do with the case of *Rodriguez v. Gaylord*, 429 F.Supp. 797 (D.C. Haw. 1977) [erroneously reported in your letter as *United States v. Finazzo*] The *Gaylord* case involved the Guam minimum wage law. Because Guam was an unincorporated territory its government has only those powers conferred by Congress. California as a state enjoys certain sovereign rights.

2. Employees (California based or otherwise) when they are engaged in temporary oil spill clean-up and training outside of the three-mile limit operations when these employees travel to, work out of or are temporarily housed at a port outside of the State of California to perform such work are not covered by the IWC Orders.

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The case of *Fuller v. Golden Age Fisheries* 14 F.3d 1405 (9th Cir.1994) correctly distinguishes between the Ninth Circuit's ruling in *Pacific Merchant Shipping v. Aubry*, 918 F.2d 1409 (9th Cir. 1990). The State of California has never contended that its wage laws would apply to maritime workers who engaged in foreign, intercoastal, or coastwise voyages or who were not residing in California, operating out of California ports and not visiting ports in any other state or nation.

3. Employees who are temporarily employed in another state may or may not be covered by the IWC Orders depending on the duration of the employment. This answer would cover those you have listed as Group 3 Employees.
4. California residents employed in either temporary or full-time oil spill clean-up and training operations whether inside or outside of the three-mile limit who commute daily from ports in California are covered by the IWC Orders when they are so employed.

The fact that the work is done pursuant to a contract entered into under the Service Contract Act does not affect the jurisdiction of the State of California. As a matter of fact, the federal government specifically recognizes that the provisions of the Service Contract Act are minimums and applicable state minimum labor standards will apply. The fact that the equipment used is owned by the federal government does not affect the state's interest so long as the work is not performed on a federal reservation or on a vessel operated by federal authorities over which the state does not have jurisdiction.

Most of the so-called defense plants in the State of California are owned by the federal government and the machine tools within those plants are owned by the federal government. The locations and the equipment are merely leased by the contractor to perform the contract(s) for the government. That does not preclude the state from enforcing its minimum labor standards at these locations.

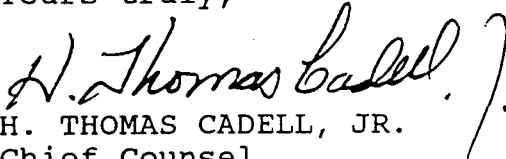
5. California residents employed on Navy-owned vessels employed in either temporary or full-time oil spill clean-up and training operations whether inside or outside of the three-mile limit who commute daily from ports in California may, or may not be covered by the IWC Orders depending on who operates the vessel.

If the vessel is owned and operated by federal personnel then the State of California would not have jurisdiction. On the other hand, if the vessel or equipment is owned by the Navy, leased to the contractor and operated by civilian personnel, there is no impediment to California jurisdiction.

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If you have any questions concerning the answers contained in this letter, please give me a call and we'll discuss them.

Yours truly,


H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw

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