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DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
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MILES E. LOCKER, *Chief Counsel*

GRAY DAVIS, Governor

April 9, 2001

Kirk C. Rascoe, Director
Equal Opportunity Section
Los Angeles Unified School District
P.O. Box 512298
Los Angeles, CA 90051-0298

Re: Overtime Payment for Saturday and Sunday Work

Dear Mr. Rascoe:

This in response to your letter of October 3, 2000 to State Labor Commissioner Arthur Lujan, in which you inquired about the applicability of the exceptions contained in section 16200 of Title 8 of the California Code of Regulations (CCR) to the requirement set out in a prevailing wage determination to pay overtime for Saturday or Sunday work. At the outset, please accept my apology for the delay in providing this response.

Your inquiry specifically relates to an exchange of correspondence between a painting contractor, Jay Cook of Cook Coatings, and Maria Robbins, Deputy Chief of the Division of Labor Statistics and Research (DLSR), and a subsequent letter to the Labor Commissioner (also copied to your office) from Gabriel Perea, the Business Manager for Local 38 of the Roofers Union. In a fax to DLSR, Cook wrote: "We are a roofing company. We are doing a roofing job for the school district. The work can only be done on weekends (due to children in school during the week). Do we have to pay Saturday and Sunday rates? Or just the straight time rate?"

From the ensuing correspondence, it would appear that the Los Angeles Unified School District was the awarding body for this particular roofing job. The applicable prevailing wage, as set forth in the governing prevailing wage determination, is based upon the Roofers' Union collective bargaining agreement, which provides an overtime rate for work performed on Saturdays (at time and a half) and Sundays or holidays (at double time).

In her response to Cook Coatings, Maria Robbins explained that the applicable regulation, found at 8 CCR §16200(a)(3)(F), provides for certain narrowly drawn exceptions to the requirement to pay overtime as indicated, and otherwise required, under a wage determination where the rate is established by a collective bargaining agreement that the Director of Industrial Relations has determined to be the general prevailing rate. This is the full text of this regulation:

> (F) Overtime. Overtime will be paid as indicated in the wage determination.
>
> EXCEPTION: 1: If a workweek other than Monday through Friday is a fixed business practice or is required by the awarding body, no overtime payment is required for the first eight hours on Saturday or Sunday.
>
> EXCEPTION: 2: If the collective bargaining agreement provides for Saturday and Sunday work at straight-time, no overtime payment is required for the first eight hours on Saturday or Sunday.
>
> EXCEPTION: 3: If the awarding body determines that work cannot be performed during normal business hours or work is necessary at off hours to avoid danger to life or property, no overtime is required for the first eight hours in any one calendar day, and 40 hours during any one calendar week.
>
> EXCEPTION: 4: No overtime payment is required for less than 40 hours in a standard work week or for less than eight hours in a calendar workday unless specified in the collective bargaining agreement used as the basis for the prevailing wage determination.

Obviously, Exception 2 is not applicable here, because the applicable collective bargaining agreement dos not permit the use of a straight time rate for any work performed on Saturdays and Sundays. Likewise, Exception 4 is not applicable because the collective bargaining agreement, which is used as the basis for the prevailing wage determination, requires an overtime rate for all work performed on Saturdays and Sundays.

This then brings us to the two exceptions which *may* be applicable here, namely, Exceptions 1 and 3. Under Exception 1, overtime will not be required for the first eight hours of work on Saturday or Sunday if a workweek other than Monday to Friday, is required by the awarding body. This exception would apply if the School District is expressly requiring a contractor to work on Saturday or Sunday. This exception does not excuse the

contractor from the statutory obligation to pay overtime for all hours worked in excess of 8 in any one day, or in excess of 40 in any one week.

Under Exception 3, overtime will not be required for Saturday or Sunday work "if the awarding body determines that work cannot be performed during normal business hours or work is necessary during off hours to avoid danger to life or property." This exception would apply if, in order to avoid danger to persons or property that would result if the work were done during normal business hours, the School District prohibits the contractor from completing the work during normal business hours on Monday through Friday, and permits the contractor to instead do the work on weekends. Once again, this exception does not excuse the contractor from the obligation to pay overtime for al hours worked in excess of 8 in any one day, or in excess of 40 in any one week.

Thus, notwithstanding the requirement that is set out in the prevailing wage determination (and based upon the collective bargaining agreement upon which the determination was adopted) to pay overtime for Saturday and Sunday work, such overtime will not be required if the facts support application of one of the above-discussed exceptions. The School District would be in a particularly good position to know of any facts that could support the application of Exceptions 1 and 3, above, in that Exception 1 is triggered by the awarding body requiring a contractor to work on Saturdays or Sundays instead of days within the normal Monday to Friday workweek, and Exception 3 is triggered by the awarding body prohibiting the contractor, for safety reasons, from working during the normal workweek, and instead, permitting the contractor to perform the work during the weekend. The awarding body -- not the contractor -- is the actor responsible for triggering the events that lead to the application of one of these exceptions.

However, exceptions from remedial provisions must be read narrowly, and limited to instances where the specific facts allowing the exception are found. Thus, for enforcement purposes, the Division of Labor Standards Enforcement (DLSE) will require that in order for a contractor to fall within Exceptions 1 or 3, the contractor must show that an officer, employee or agent of the awarding body with authority to act on behalf of the awarding body in regards to the execution, modification, or enforcement of public works contracts took the action which triggered the exception. In other words, the fact that a school teacher or school principal tells a contractor to stop working on a school day, and instead, to get the work done over the weekend, would not likely excuse the contractor from the obligation to pay

overtime for weekend work as required by the prevailing wage determination. Furthermore, to qualify for Exception 3, the danger to persons or property that causes the awarding body to prohibit work during regular business hours must be a real danger, under an objective standard, in order to excuse the contractor from the obligation to pay overtime for weekend work as required by a prevailing wage determination. The use of an objective standard is necessary to prevent subterfuge whereby an awarding body could collude with a contractor to avoid weekend overtime obligations under the prevailing wage determination. Thus, in those instances where a contractor is relying upon Exception 3, the DLSE will require overtime for weekend work, if required by the prevailing wage determination, if the contractor was prohibited by the awarding body from working during normal weekday business hours for reasons other than safety -- e.g., for the convenience of the awarding body's employees,. etc.

Finally, DLSE will require overtime for weekend work as required by the applicable prevailing wage determination, and will not permit the contractor to avoid this overtime obligation pursuant to Exceptions 1 or 3, if the contractor had agreed to fully perform the work during a period of time, such as a summer vacation while the school is closed to students and teachers, when it could have done all of the work during weekday business hours, but failed, through no fault of the awarding body, to complete the work during that time. In that instance, the only reason the work cannot be performed during normal weekday hours is because of the contractor's failure to get the job done during the allotted period of time in which it was supposed to have been completed. By having failed to perform the work in a timely fashion, the contractor places the awarding body in the position of having to prohibit weekday work for safety reasons -- safety concerns that would not have existed during a school vacation. This limitation is consistent with the purpose behind these Exceptions, which we believe is to excuse the contractor from the obligation to pay overtime for weekend work when the weekend work is occasioned by certain narrowly defined circumstances that are truly beyond the contractor's control.

Thank you for your interest in the enforcement of the prevailing wage laws. Do not hesitate to contact us with any other questions.

Sincerely,

Miles E. Locker
Chief Counsel

2001.04.09

cc: Arthur Lujan
Tom Grogan
Roger Miller
Greg Rupp
Nance Steffen
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