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June 16, 2006

*Via Overnight Delivery*

Silvestre Rojas  
Research Analyst  
Department of Industrial Relations  
Prevailing Wage Unit  
455 Golden Gate Avenue, Ninth Floor  
San Francisco, CA 94102-0603

Re: Review of Prevailing Wage Rates -- Laborer Classification  
Request for Information Regarding Use of Funds – ISF and LECET

Dear Mr. Rojas:

This office represents the Northern California District Council of Laborers (“NCDCL”) and the California Laborers-Employers Cooperation and Education Trust (“California LECET”), who provide the following response to the Department’s April 24, 2006 decision to review the wage rates for the Laborer classification.

Under attack from the ABC is a portion of the “Training and Other” employer payments, specifically eight cents designated for the Industry Stabilization Fund (“ISF”) and four cents designated to California LECET. The ABC contends the ISF and California LECET funds are being used for “political contributions or activities.” In the April 24 letter, the Department requested the NCDCL provide the DLSR with documents showing how the California LECET funds are being used.

Representatives from the Associated General Contractors are responding in a separate letter concerning the ISF contributions. Rather than repeat the analysis of Senate Bill 868, we join in the cogent analysis submitted by the Associated General Contractors.

### GENERAL OBJECTIONS TO REQUEST FOR INFORMATION

Before turning to the merits, we must object to the breadth of the Department’s request. As we interpret the request, the Department seeks all information regarding the use of the contributions to California LECET. The Department has specified that it would like to review by laws, articles of incorporation, trust agreements creating each fund, general disbursement information, trust records, IRS letters, Campaign Disclosure Statements (Cal. Form 406) and “any other documents that show the purpose and use of these funds.” We believe the Department’s request is overly

broad and requires the disclosure of trade secrets and confidential financial information that is otherwise protected from disclosure. See, e.g., Cal. Constitution, Art. 1, §1; Civ. Code §3426, *et seq.* [trade secrets]; *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652 [financial information].

The Department can only act within the scope of its legislative grant of authority. The request for financial records and the Department's intent to scrutinize those records to determine how contributions made under Labor Code section 1773.1 is far in excess of the Department's authority. As in the past, the Department cites no authority to support its demand for documents or the proposition that the Department has the power to control how the contributions are spent by the receiving entities.

As the Associated General Contractors point out, and as the Laborers have pointed out in the past, employer contributions to the types of funds specified in Labor Code section 1773.1, subsections (7), (8) and (9), have long been a legitimate component of labor costs industry wide. The Department is acting in an arbitrary and capricious manner by singling out the Laborer classification and scrutinizing the use of its contributions. If the Department's interpretation of Labor Code section 1773.1 is correct, it must be enforced industry wide, not simply against the Laborer classification.

Notwithstanding these objections, and without waiving any objections, the NCDCL provides the following information and documents to conclusively establish that the contributions to California LECET are not used for political activities or contributions.

#### **LABOR CODE SECTION 1773.1**

In 2003, the Legislature amended Labor Code section 1773.1<sup>1</sup> to allow certain additional types of contributions to be included in the per diem wage rate. Senate Bill 868 added three additional categories of employer payments to the per diem wage rate:

- (7) Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code), to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works;
- (8) Industry and advancement any collective bargaining agreements administrative fees, provided that these payments are required under a collective bargaining agreement pertaining to the particular craft, classification, or type of work within the locality or the nearest labor market at issue.
- (9) Other purposes similar to those specified in paragraphs (1) to (8) inclusive.

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<sup>1</sup> Unless otherwise specified, all further statutory references are to the Labor Code.

The purpose of SB 868 and the amendment to section 1773.1 is to “enforce the prevailing wage requirement as well as secure future construction work, thereby benefiting workers with greater pay and greater long-term job security.” (See Senate Rules Committee, Senate Floor Analysis, Comments, SB 868, 9/10/2003.)

SB 868 did nothing more than amend the types of contributions that could be included in the calculation of the per diem rate of wages. While the Department is authorized to determine the prevailing wage rate under §1773, nothing in SB 868, section 1773.1 or any other provision of the Labor Code, or the Regulations dictates how the contributions may be spent or authorizes the Department to control such expenditures.

### **LECET’S MISSION**

The Laborers-Employers Cooperation and Education Trust is an entity established pursuant to 29 U.S.C. section 175a. It brings the Laborers’ International Union of North America (LIUNA) and its signatory contractors together to address issues of importance to the industry. Working together, LIUNA and LECET assist in securing projects and jobs, increasing union-sector market share, advertising the services of signatory contractors, developing a workforce through outreach and education, and advancing shared market-related interests.

California LECET, a construction industry labor-management committee, is a partnership between LIUNA's District Councils and Local Unions in California, and their signatory contractors who employ Laborers on their construction jobsites throughout the State. California LECET is dedicated to the competitiveness and growth of the California Union Laborers and their signatory contractor partners. Its primary mission is to create and implement strategies that establish and support long-term cooperative partnerships, and to generate productive opportunities through increased market share.

The primary objectives of California LECET are, among others, to:

- Promote the interests of union contractors in California and the California Union Laborers they employ in the construction markets throughout the State;
- Improve relations between affiliated Local Unions and their signatory contractors; and
- Assume a leadership role in determining the future of the construction industry throughout the State.

LECET expends its funds and efforts to carry out this mission. The enclosed Agreement and Declaration of Trust for the California Laborers-Employers Cooperation and Education Trust confirms provides additional detail regarding California LECET’s mission.

### **CALIFORNIA LECET’S EXPENDITURES**

The contributions to LECET meet the requirements of section 1773.1. As is evident from the enclosed Vendor Transaction Lists, the funds expended by California LECET are well within the

types of contributions recognized in section 1773.1(a) (7) and (8), for industry advancement, and workforce development and other purposes similar to those specified in Labor Code sections 1773.1(a)(1) through (8), as permitted under subsection (a)(9).

California LECET does not make any political contributions. As a result, there are no California Form 460s or the federal equivalent to be produced. California LECET has a single letter from the IRS pertaining to the failure to timely file a Form 990. The issue was resolved when Cal. LECET submitted a proof of mailing to the IRS. Because that letter is not relevant to the issues at hand, it is not enclosed. However, should the Department feel it is necessary to review that document, please advise us and it will be produced.

With respect to the expenditures detailed on the Transaction Lists, California LECET provides the following information:

- The California Construction Education & Research Foundation (“CCERF”) is an entity that works with California LECET for industry advancement and promotion. Together California LECET and CCERF sponsor career days at various high schools to introduce young men and women to the idea of a career in the building trades and to explain apprenticeship programs. This type of outreach and industry advancement is well within the broad language of section 1773.1(a)(8).
- The payments made to the California State Council of Laborers Legislative Department are for rent on the premises formerly occupied by California LECET in the Laborers Legislative Department building. These payments were made pursuant to a lease agreement between California LECET and the building owner, not for political purposes.
- Payments made to the Employment Development Department are for payroll and state tax purposes.
- California LECET is a sponsor of The Engineering Contractors’ Association, the Southern California Contractors Association, the Alliance for Quality Construction and the Western Council of Construction Consumers. These Associations are dedicated to the development and advancement of the building trades industry. This type of activity clearly qualifies as industry advancement as permitted by section 1773.1(a)(8).

The remaining expenditures on the Vendor Transaction List are self-explanatory. The NCDCL and California LECET are willing to provide additional information regarding the information contained in the Vendor Transaction List in response to specific inquiries by the Department.

#### **NATIONAL LECET EXPENDITURES**

It appears the Department has been misled by the proponent of this scheme to reduce the contributions specifically authorized by SB 868. Apparently the ABC is relying on documents showing that the National LECET reported contributions in 2004 and 2005 for the Transportation Equity Act, and for Superfund/Brownfield’s hazardous waste issues. These

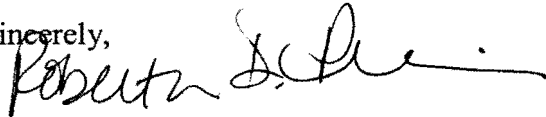
expenditures are *not* the expenditures of California LECET. California LECET is the *only* entity that receives contributions from the California prevailing wage "other" contributions. California LECET does not provide any portion of the funding it receives to National LECET. There is simply no connection between these two organizations that justifies the request being made by the ABC. Absent credible evidence that funds from the "Other" contributions are provided to National LECET, the Department has no authority to reduce the agreed upon contribution to California LECET based on the reported expenditures of National LECET. Evidence regarding the expenditures of the National LECET organization is totally irrelevant to the scope of the Director's legislatively authorized inquiry.

### CONCLUSION

The evidence provided with this letter clearly establishes that contributions to California LECET comply with the provisions of section 1773.1(a) and that no expenditures are being made for "political contributions or activities." The Department must accept the four-cent contribution made to LECET and incorporate it into the upcoming general prevailing wage determinations.

Please feel free to contact the undersigned should the Department need any additional information to make its determination regarding the California LECET contribution.

Sincerely,



Barry E. Hinkle  
Patricia M. Gates  
Roberta D. Perkins

RDP/jys

cc: *Via First Class Mail Only*

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Enclosures