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December 23, 2022

Katrina Hagen
Director, Department of Industrial Relations
160 Promenade Circle, Suite 300,
Sacramento, CA 95834

Subject: AB 1851 and the Prevailing Wage On-Haul Standard

Our associations – which represent contractors, trucking employers and material suppliers across the State – are concerned that the Department of Industrial Relations (DIR) may interpret the application of Assembly Bill 1851 (AB 1851) as a change to the current application of prevailing wage for on-haul trucking. Additionally, we request that the Department provide guidance on this matter as soon as possible to head off any unnecessary confusion or disadvantage in bidding to concerned stakeholders.

As you know, the California Labor Code section 1772 and subsequent case law has helped establish the scope of coverage of prevailing wage. Specifically, this section has deemed that workers employed “in the execution” of a public work contract should be deemed to be employed on a public work.

Authored by Assemblymember Robert Rivas, AB 1851 sought to clarify if on-haul trucking at public works projects must be paid a prevailing wage. This clarification was sought by the bill sponsors and author based on their belief that “a series of recent California Supreme Court decisions (commonly known as the *Kaanaana*, *Mendoza*, and *Busker* decisions) found that because on-haul trucking is not specifically mentioned in statute as comprising part of a public works project, it is unclear whether it falls under prevailing wage requirements” (AB 1851 Fact Sheet).

Negotiations with stakeholders resulted in chaptered bill language that clarifies the intent of the author, sponsors, and stakeholders that AB 1851 simply restores the status quo prior to the above referenced supreme court decisions. This was accomplished by:

1. Underscoring that prevailing wage is paid to an individual truck driver if their work is integrated into the flow process of construction (*O.G. Sansone Co. v. Department of Transportation* [Civ. No. 45232. Court of Appeals of California, Second Appellate District, Division Three. February 19, 1976.]
2. Stating the intent of the Legislature in enacting “paragraph (2) of subdivision (a) of Section 1720.3 of the Labor Code to restore, as of the effective date of this act, the holding of *O. G. Sansone Co. v. Department of Transportation* (1976) 55 Cal.App.3d 434,....



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...and its subsequent interpretations, as it relates to the on hauling of materials used for paving, grading, and fill onto a public works site.”

This measure was passed and signed into law without any opposition from the signatories of this letter because of the willingness of the author and his sponsors to negotiate a statute that clarified the current application of prevailing wage as it relates to on-haul trucking. We ask that the DIR mitigate any confusion in the construction industry with respect to AB 1851 with written guidance indicating the current situation as it existed prior to the Court’s opinions in *Mendoza* and *Busker* and that no new standard was created by AB 1851.

Thank you in advance for your attention and review of this request.

Sincerely,

Chris O’Connor, Associated General Contractors of California

Robert Dugan, California Construction and Industrial Materials Association

Scott Govenar, Construction Employers’ Association

Chris Shimoda, California Trucking Association

Todd Bloomstine, Southern California Contractors Association

Eddie Bernacchi, United Contractors