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August 5, 2003

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

CITY OF LONG BEACH v. DEPARTMENT OF INDUSTRIAL RELATIONS

Recently, in *City of Long Beach v. Department of Industrial Relations*,¹ the California Court of Appeal for the Second District (Los Angeles) ruled in favor of the California Department of Industrial Relations. The Court held that California charter cities (such as San Diego) must require their contractors to pay prevailing wages on all city public works projects in accordance with the California Labor Code.

At issue in the Long Beach case was the City of Long Beach's [Long Beach] Agreement with the Los Angeles Society for Prevention of Cruelty to Animals for the construction of an animal shelter and administrative headquarters. Under this agreement, Long Beach contributed \$1.5 million to the construction of the facility which would also provide kennels and office space for the Long Beach animal control department. The agreement provided that Long Beach funds would be segregated and used only for investigation and analysis of the shelter property, permit applications, filing and other fees and charges, as well as design and preconstruction costs. The shelter is intended to serve the entire county of Los Angeles and parts of Orange County.

Long Beach took the position the project was not a public works project, but even if it was, State prevailing wages did not apply because the project was strictly a municipal affair of a charter city. The Department of Industrial Relations concluded the project was a public work and not exempt from prevailing wages by reason of Long Beach's status as a charter city.

¹ The Clerk for the California Court of Appeal for the Second District has indicated the opinion was posted on the evening of July 14, 2003.

The Second District Court of Appeal ruled the project was subject to the State's prevailing wage laws because it was a public work and was not strictly a municipal affair. Further, and most importantly, the court declined to follow longstanding case law and held that the State's prevailing wage laws are themselves a matter of statewide concern.² As such, the court held that charter cities "must comply with the state prevailing wage law when they engage private sector employees on public works."

This ruling will become final as to the Second District in mid-August of this year, and will become a published precedential decision unless the California Supreme Court orders review of the decision or orders that the opinion not be published. Long Beach has indicated it will file a petition for review with the Supreme Court. The California League of Cities is also expected to coordinate the filing of a friend of the court brief requesting the Supreme Court hear this matter and overturn the appellate court's decision. The City of San Diego [City] has not taken a position on this matter.

If this ruling stands, there is an argument that the City must pay prevailing wages on all of its public works projects that fall within the parameters of the State prevailing wage laws. If the Supreme Court does not review the decision and permits the decision to remain published, there will exist a split in the court rulings on this matter.³ Specifically, the Second District Appellate Court (Los Angeles) will have held that the State's prevailing wage laws are a matter of statewide concern and apply to the municipal affair public works projects of charter cities. On the other hand, the Fourth District Court of Appeal (San Diego) has held that the State's prevailing wage laws do not apply to the municipal affair public works projects of a charter city. If the Long Beach case remains published resulting in this split in the Appellate Court districts, the City should determine what actions to take with respect to its municipal affair public works contracts.

If the City does follow the ruling, all current public works municipal affairs projects falling within the parameters of the Labor Code, such as libraries, fire and police stations, and park and recreation centers, will be subject to prevailing wage. The City Manager has estimated this could result in a \$6.8 million increase in the Library Construction Program, a \$2.3 million increase in the Fire and Rescue Facilities Program, an increase of \$16 million in municipal sewer fund expenditures for the fiscal years 2004 - 2010, and a \$25 million increase in the water fund expenditures over the next five years.

The City is currently not taking a position on this appeal. We will update you on the

² The existing case law includes the California Supreme Court ruling in *City of Pasadena v. Charleville*, 215 Cal. 384 (1932), overruled in part on other grounds by *Purdy & Fitzpatrick v. State*, 71 Cal. 2d 566 (1969), and the Fourth District Court of Appeal ruling in *Vial v. City of San Diego*, 122 Cal. App. 3d 346 (1981).

³ Under the legal doctrine of *stare decisis*, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal. 2d 450, 455 (1962). When appellate courts decisions are in conflict, however, the lower courts must make a choice between the conflicting decisions. *Id.* at 456.

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filing of Long Beach's Petition and the impact of any future court rulings on the City's public works projects.

Respectfully submitted,

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Attachment
RC-2003-21