

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Norogachi Construction, Inc.**

**Case No: 19-0496-PWH**

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected subcontractor, Norogachi Construction, Inc. (Norogachi), submitted a request for review of a Civil Wage And Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on October 24, 2019, with respect to work performed on the 700 Block of K Street Project (Project), in the City of Sacramento, Sacramento County. The Assessment determined that \$1,723,008 was due in unpaid wages, and \$806,600 was due in statutory penalties. Subsequently, DLSE moved to amend the Assessment downwards to reflect that \$703,117.94 was due in unpaid wages and unpaid training fund contributions, and \$732,425 was due in statutory penalties. Prior to the hearing, the prime contractor on the Project, CFY Development, Inc. (CFY), entered into a settlement agreement with DLSE whereby it paid all unpaid wages and training fund contributions in full pursuant to the amended Assessment. The prime contractor withdrew its request for review of the Assessment, leaving Norogachi's request for review for determination.

Hearing Officer Michael R. Drayton held a Hearing on the Merits on November 9, 2022. David Cross appeared as counsel for DLSE. There was no appearance on behalf of Norogachi. Deputy Labor Commissioner Thuy Pham testified in support of the Assessment. The Hearing Officer granted DLSE's motion to amend the Assessment downward. The Hearing Officer submitted the matter for decision upon the conclusion of the hearing on November 9, 2022.

The issues for decision are as follows:

1. Whether the Project was a public work subject to the payment of prevailing wages and the employment of apprentices.

2. Whether DLSE served the Assessment timely.
3. Whether Norogachi requested review timely.
4. Whether DLSE made its enforcement file available timely.
5. Whether DLSE used the correct prevailing wage classifications in the audit.
6. Whether DLSE used the correct prevailing wage determinations in the audit.
7. Whether the hours worked as listed in the audit were correct.
8. Whether DLSE used the correct mathematical calculations in the Assessment.
9. Whether Norogachi listed the wages paid to the workers correctly in the Certified Payroll Records (CPRs).
10. Whether Norogachi listed all hours worked in the CPRs.
11. Whether Norogachi paid all workers who worked overtime the correct overtime rate.
12. Whether Norogachi is liable for penalties under Labor Code section 1775.<sup>1</sup>
13. Whether Norogachi is liable for penalties under section 1813.
14. Whether Norogachi provided contract award information to the applicable apprenticeship committees timely.
15. Whether Norogachi requested dispatch of apprentices in all applicable crafts.
16. Whether Norogachi employed a sufficient number of registered apprentices on the Project.
17. Whether Norogachi is liable for penalties under section 1777.7.

For the reasons set forth below, the Director of Industrial Relations finds that DLSE carried its initial burden of presenting evidence at the Hearing that provided prima facie support for the Assessment, as amended. (See Cal. Code Regs., tit. 8, § 17250, subd. (a).) The evidence stood un rebutted, as no representative appeared for Norogachi. Thus, Norogachi failed to carry its burden to prove the bases for the

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<sup>1</sup> All further statutory references are to the Labor Code.

Assessment were incorrect. (Cal. Code Regs., tit. 8, § 17250, subd. (b).) Accordingly, the Director issues this Decision affirming the Assessment, as amended.

## **FACTS**

### Failure to Appear.

Norogachi filed the Request for Review timely. After doing so, Norogachi failed to appear for noticed prehearing conferences. Norogachi did not appear for or participate in the formal settlement conference during which the prime contractor settled the wage portion of the Assessment. The settlement did not release Norogachi from liability.

On October 17, 2022, the Hearing Officer's assistant served Norogachi with a written notice of the Hearing on the Merits scheduled for November 9, 2022. DLSE served Norogachi with the DLSE statement of issues, a list of witnesses, a list of exhibits, and Exhibits 1 through 18 before the Hearing on the Merits.

On November 9, 2022, no representative of Norogachi appeared at the Hearing on the Merits. The Hearing Officer proceeded to conduct the Hearing as noticed and scheduled in order to formulate a recommended decision as warranted by the evidence. (See Cal. Code Regs., tit. 8, § 17246, subd. (a) ["Upon the failure of any Party to appear at a duly noticed hearing, the Hearing Officer may proceed in that Party's absence and may recommend whatever decision is warranted by the available evidence, including any lawful inferences that can be drawn from an absence of proof by the non-appearing Party"].) The Hearing Officer admitted into evidence without objection DLSE Exhibit Numbers 1 through 18. DLSE investigator Thuy Pham testified about her investigation of the matter. Her testimony included discussion of the business records within the DLSE files, employee questionnaires received, Norogachi's CPRs, communications with Norogachi and admissions made therein, and her Penalty Review.

### The Project.

The Project entailed the rehabilitation of the 700 Block of K Street, located in the City of Sacramento, California. The Awarding Body, Sacramento Housing and Redevelopment Agency (SHRA) advertised for bids on the Project on December 9,

2014. CFY Development, Inc. was awarded the contract. CFY subcontracted with Norogachi to perform part of the work on the Project—material, labor, and equipment for the installation of all metal framing and drywall and drywall finishes—as documented by the subcontractor agreement between CFY and Norogachi and Norogachi’s CPRs. The subcontractor agreement informed Norogachi of the requirement to pay prevailing wages on the Project and to comply with all apprenticeship obligations; it incorporated specifically Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815. (DLSE Exhibit No. 9, pp. 64-65.) The owner of the Project filed a Notice of Completion on September 7, 2018. The Notice indicated a completion date of May 31, 2018. (DLSE Exhibit No. 8.)

The Assessment.

Pham testified that she opened an investigation into the Project based on a complaint filed with DLSE by Matthew Miller of the Northern California Carpenters, with Emilio Hipolito and union counsel Jolene Kramer. On November 2, 2017, DLSE sent out a Notice of Investigation and request for documents to all parties. On July 27, 2018, DLSE sent Norogachi a second request for CPRs, timecards, cancelled checks, cash receipts, work schedules, and proof of submission of DAS forms 140 and 142. On August 2018, Pham received from Norogachi only six weeks of CPRs (weekly payroll numbers 64-70). Ultimately, Pham received from CFY a copy of Norogachi’s CPRs.

Later, DLSE sent out questionnaires to 78 employees and received 35 responses. Pham utilized the employee questionnaire responses and CPRs to determine the appropriate crafts applicable to the workers on the Project and associated prevailing wage rate determinations.

Pham determined that the workers fell within the crafts of Drywall Installer/Lather (Carpenter), Taper/Taper Clean up, and Laborer. The prevailing wage determinations (PWDs) in effect on the bid advertisement date for those crafts were denominated NC-31-X-16-2014-2 (with Holiday Provisions No. 31-X-16), SAC-2014-02 (with Holiday Provisions No. 200-X-15), and No. NC-23-102-10-2014-3, respectively for Sacramento County. (DLSE Exhibit Nos. 10-14.)

Based on the employee questionnaire responses, the evidence showed that Norogachi paid many of the employees in the Drywall Installer (hangers) on a piece rate basis, not on an hourly rate as indicated in the CPRs. Likewise, Norogachi paid employees in the Taper classification piece rate. Using the employee questionnaire responses, Pham determined the number of hours the employees worked and applied the correct prevailing wage rates. The employees also reported that Norogachi did not pay them for all hours worked, failed to pay overtime, and that some were required to make kickback payments to Norogachi, which came out of their wages. Using the information gathered in her investigation, and giving credit to Norogachi for payments it made as shown on pay stubs issued by Norogachi to the workers—where pay stubs were available and matched the CPRs, Pham determined the amount of unpaid wages and the number of days each worker was underpaid the required prevailing wages. Pham summarized the information she gathered in the Penalty Review she prepared and about which she testified. (DLSE Exhibit No. 6.)

Norogachi paid no training fund contributions for the Project. The California Apprenticeship Council indicated that Norogachi had not paid training fund contributions during the four-year period October 2015 through October 2, 2019. (DLSE Exhibit No. 17.) Norogachi failed to provide contract award information or request apprentices, and Norogachi did not utilize apprentices on the Project. In response to Pham's request to Norogachi for information showing payment of training fund contributions and submission of DAS 140 (contract award information) and DAS 142 (request for dispatch of apprentices), Norogachi responded to Pham that they were "not applicable" to the Project.

Pham found that Norogachi's violations of the law were intentional. Despite being put on notice of the law by the subcontract, Norogachi failed to comply with both prevailing wage and apprentice requirements.

Pham issued the Assessment on October 24, 2019, within 17 months of the completion date. Norogachi filed a Request for Review on or about November 22, 2019. DLSE provided Norogachi with the form Notice of Opportunity to Review Evidence

Pursuant to Labor Code section 1742(b) on December 5, 2019. (DLSE Exhibit No. 5.)

On March 23, 2020, DLSE filed an Amended Assessment with the Hearing Officer. The amended Assessment found that the workers employed by Norogachi had been underpaid wages in the collective amount of \$684,263.44. In addition, Norogachi failed to make training fund contributions in the amount of \$18,854.50. Pham testified CFY paid the amount of the wages and training funds owed in the settlement of the Assessment. The Assessment found penalties under section 1775 were due in the amount of \$661,600, calculated at the rate of \$200 per violation for each of the 3,308 violations where workers were underpaid prevailing wages. The Assessment also found penalties under section 1813 were due in the sum of \$22,025, calculated at the rate of \$25 for each of the 881 violations where Norogachi failed to pay workers overtime correctly. The Assessment found penalties under section 1777.7 were due in the amount of \$48,800, calculated at the rate of \$100 per day, based on 488 calendar days of violation (from 11/09/16 through 03/11/2018) for failure to provide contract award information.

## **DISCUSSION**

The California Prevailing Wage Law (CPWL), set forth at Labor Code sections 1720 et seq., requires the payment of prevailing wages to workers employed on public works projects. The purpose of the CPWL was summarized by the California Supreme Court as follows:

The overall purpose of the prevailing wage law ... is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees.

*(Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 987, citations omitted (*Lusardi*).) DLSE enforces prevailing wage requirements not only for the benefit of workers but also “to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.” (§ 90.5, subd. (a) and see *Lusardi*, at p. 985.)

Section 1775, subdivision (a), requires that contractors and subcontractors pay the difference to workers paid less than the prevailing rate, and prescribes penalties for failing to pay the prevailing rate. Section 1775, subdivision (a)(2) grants the Labor Commissioner the discretion to mitigate the statutory maximum penalty per day in light of prescribed factors. Section 1813 prescribes a fixed penalty of \$25 for each instance of failure to pay the prevailing overtime rate when due.

When DLSE determines that a violation of the prevailing wage laws has occurred, DLSE issues a written civil wage and penalty assessment pursuant to section 1741. The assessment must be served within 18 months of the filing of a valid notice of completion. An affected contractor may appeal that assessment by filing a request for review under section 1742. DLSE transmits the request for review to the Director of the Department of Industrial Relations, who assigns an impartial hearing officer to conduct a hearing in the matter as necessary. (§ 1742, subd. (b).) At the hearing, DLSE has the initial burden of producing evidence that “provides prima facie support for the Assessment ....” (Cal. Code Regs. tit. 8, § 17250, subd. (a).) When that burden is met, “the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment ... is incorrect.” (Cal. Code Regs. tit. 8, § 17250, subd. (b); accord, § 1742, subd. (b).) At the conclusion of the hearing process, the Director issues a written decision affirming, modifying or dismissing the assessment. (§ 1742, subd. (b).)

The prevailing rate of pay for a given craft, classification, or type of worker is determined by the Director of Industrial Relations in accordance with the standards set forth in section 1773. The Director determines the rate for each locality in which public work is performed (as defined in section 1724), and publishes a general PWD for a craft,

to inform all interested parties and the public of the applicable prevailing wage rates. (§ 1773.) Contractors and subcontractors are deemed to have constructive notice of the applicable prevailing wage rates. (*Division of Labor Standards Enforcement v. Ericsson Information Systems* (1990) 221 Cal.App.3d 114, 125.)

In this matter, the record as a whole provides prima facie support for the Assessment. The contract indicated that the Project was a public work. Based on the evidence it collected, DLSE determined that Norogachi under reported hours in the amounts stated, underpaid prevailing wages in the amounts calculated through pay based on piece work and through kickbacks, failed to pay overtime, failed to pay training fund contributions, and failed to employ apprentices as required on the Project. (Cal. Code Regs. tit. 8, § 17250, subd. (a).)

Norogachi Failed to Pay the Required Prevailing Wage Rates, and DLSE Assessed Penalties Properly.

In this case, the record established the basis for the Assessment. DLSE presented evidence that it served the Assessment timely on October 24, 2019, within seventeen months of the Project completion on May 31, 2018, and that Norogachi filed a request for review timely. Further, that DLSE provided Norogachi with an opportunity to review the evidence to be used at the hearing. DLSE presented evidence that affected workers were underpaid prevailing wages and not paid overtime wages. DLSE used three PWDs in effect on the bid advertisement date: Drywall Installer/Lather (Carpenter) (NC-31-X-16-2014-200), Taper (SAC-2014-02), and Laborer and Related Classifications (No. NC-23-102-10-2014-3) for Sacramento County. Thus, the penalties imposed for failure to pay correct prevailing wages and overtime were appropriate.

Norogachi Failed to Notify Apprenticeship Committees, Failed to Request Dispatch, and Failed to Employ Apprentices in the Proper Ratio.

Sections 1777.5 through 1777.7 set forth the statutory requirements governing the employment of apprentices on public works projects. These requirements are addressed further in regulations promulgated by the California Apprenticeship Council. California Code of Regulations, title 8, section 227 provided, at the time of the Project, that the regulations "shall govern all actions pursuant to ... Labor Code Sections 1777.5



and 1777.7."

Section 1777.5, subdivision (e) states in part:

Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work.

Section 1777.5 and the applicable regulations require the hiring of apprentices to perform one hour of work for every five hours of work performed by journeymen in the applicable craft or trade (unless the contractor is exempt, which is inapplicable to the facts of this case). Further, regulation 230.1 [Cal. Code Regs., tit. 8, § 230.1] provides:

Contractors who are not already employing sufficient registered apprentices...to comply with the one-to-five ratio must request the dispatch of apprentices from the apprenticeship committees providing training in the applicable craft or trade and whose geographic area of operation includes the site of the public work...

When DLSE determines that a violation of the apprenticeship laws has occurred, it issues an assessment pursuant to section 1777.7. In the review of an assessment as to the 1:5 ratio requirement," ... the affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5." (§ 1777.7, subd. (c)(2)(B).)

In this case, the record established the basis for the imposition of penalties for apprenticeship violations. DLSE presented evidence that Norogachi failed to provide contract award information for applicable apprentice committees in the crafts of Drywall Installer, Laborer, and Taper. Further, Norogachi failed to request dispatch of apprentices in the crafts of Drywall Installer, Laborer, and Taper, and failed to employ any apprentices during the time that Norogachi employed journeymen on the Project between November 9, 2016 and March 11, 2018.

Accordingly, DLSE's evidence constitutes prima facie support for the Assessment. Norogachi, in turn, presented no evidence to disprove the bases for, or accuracy of, the Assessment, nor did Norogachi shown an abuse of discretion in DLSE's determination of the amount of penalties under sections 1775 and 1777.7. Therefore, the Assessment is

affirmed as amended.

Based on the foregoing, the Director makes the following findings:

### **FINDINGS AND ORDER**

1. The Project was a public work subject to the payment of prevailing wages and the employment of apprentices.
2. DLSE served the Civil Wage and Penalty Assessment timely in accordance with section 1741.
3. Affected contractor Norogachi Construction, Inc., filed a timely Request for Review of the Civil Wage and Penalty Assessment issued by DLSE with respect to the Project.
4. DLSE provided Norogachi Construction, Inc., timely with the evidence to be used at the Hearing on Merits.)
5. The workers listed in the audit performed work in Sacramento County during the pendency of the Project and were entitled to be paid the journeyman rate for that work in their respective crafts.
6. Norogachi underpaid prevailing wages to its employees on the Project.
7. Norogachi failed to pay training fund contributions for its employees on the Project.
8. DLSE did not abuse its discretion in setting section 1775 penalties at the rate of \$200 per violation, and the resulting total penalty of \$661,600 as modified for 3,308 violations, is affirmed.
9. Penalties under section 1813 at the rate of \$25 per violation are due for 881 violations on the Project, for a total of \$22,025 in penalties.
10. Norogachi Construction, Inc., failed to provide contract award information to applicable apprenticeship committees for the crafts of Drywall Installer and Laborer.

11. Norogachi Construction, Inc., employed journeymen in the crafts of Drywall Installer and Laborer, but failed to employ any apprentices in those two crafts.
12. DLSE did not abuse its discretion in setting section 1777.7 penalties at the rate of \$100 per violation are due for 488 days that journeymen worked on the Project, for a total of \$48,800 in penalties.

The amounts found due in the Assessment, as affirmed by this Decision, are as follows:

<b>Basis of the Assessment</b>	<b>Amount</b>
Penalties under section 1775:	\$ 661,600.00
Penalties under section 1813:	\$ 22,025.00
Penalties under section 1777.7	\$ 48,800.00
<b>TOTAL:</b>	<b>\$ 732,425.00</b>

The Civil Wage and Penalty Assessment, as amended, is affirmed as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings that shall be served with this Decision on the parties.

Dated: 5/31/24

  
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**Katrina S. Hagen, Director**  
 California Department of Industrial Relations