

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Southland Construction**

Case No. 10-0284-PWH

From a Notice of Withholding issued by:

**California Department of Transportation**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected contractor Southland Construction (Southland) submitted a timely request for review of the Notice of Withholding (Notice) issued by California Department of Transportation (Caltrans) with respect to the replacement and upgrade of bridge railing construction on a State highway in and near La Canada-Flintridge and Pasadena at various locations from the La Canada Arch Bridge to the Sidehill Viaduct Bridge (Project) in Los Angeles County. The Notice determined that \$17,171.43 in unpaid prevailing wages and statutory penalties was due. A Hearing on the Merits was conducted on February 14, March 22, March 24, September 6, and September 7, 2011,<sup>1</sup> in Los Angeles, California, before Hearing Officer Christine L. Harwell. Reza Mohamedi, owner, appeared in pro per for Southland and Alice L. Ramsey appeared for Caltrans. The matter was submitted for decision on November 7, 2011, after post-hearing briefing.

The issues for decision are:

- Whether the Notice correctly found that Southland had failed to report and pay the required prevailing wages for all hours worked on the Project by the affected workers.
- Whether the Notice correctly reclassified the affected workers from the Laborer, Group 1 prevailing wage rate to the Operating Engineer Group 3 or 4 or Teamster

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<sup>1</sup> There was a five month interruption between commencement and completion of the hearing because of a documented medical necessity on the part of Southland's owner.

Group III or IV rates for some of their work on the Project.

- Whether Southland failed to pay the applicable training fund fees for its employees to the California Apprenticeship Council or an approved apprenticeship training trust fund as required.
- Whether Caltrans' September 15, 2010, Notice of Withholding was served within the statutory time limit.
- Whether Caltrans abused its discretion in assessing penalties under Labor Code section 1775<sup>2</sup> at the maximum rate of \$50.00 per violation.
- Whether Southland failed to pay the required prevailing wage rates for overtime work and is therefore liable for penalties under section 1813.
- Whether Southland has demonstrated substantial grounds for appealing the Notice, entitling it to a waiver of liquidated damages.

The Director finds that Caltrans' Notice was timely and that Southland has failed to carry its burden of proving that the basis of the Notice was incorrect, except as to certain wages assessed for Carlos Esquivel. Therefore, the Director issues this Decision affirming and modifying the Notice. Southland has not proven the existence of grounds for a waiver of liquidated damages.

#### **Facts**

Caltrans advertised the Project for bid on December 11, 2008. Caltrans awarded the contract to Southland on December 29, 2008, to perform structural and non-structural retrofit work on three highway bridges that required the upgrade of concrete barriers and the bridges. Southland subcontracted most of the structural bridge work to ACL Construction Co., Inc. (ACL) and ACL's workers are not the subject of the Notice. The non-structural work, including traffic control, demolition and removal of the bridge deck, construction and installation of metal rails, paving with asphalt, installing signage and water pollution controls, was handled by Southland's crew of workers. Southland workers worked on the Project from approximately June 8, 2009, through December 19,

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<sup>2</sup> All further statutory references are to the California Labor Code, unless otherwise indicated.

2009. Southland workers performed flagging for traffic control; they dug up and removed asphalt, installed metal railings, and laid or set carbon fiber, in addition to affixing signage. The project was accepted on June 14, 2010.

Applicable Prevailing Wage Determinations (PWDs): The following applicable PWDs and scopes of work were in effect on the bid advertisement date:

Laborer, Group 1 (SC-23-102-2-2008-1): This is the rate used in the Notice for work involving Asphalt Material; Concrete; Demolition; Flagmen; Laborer, General or Construction; Laborer, General Clean-up; Plugging, Filling of Shee-Bolt Holes, Dry Packing of concrete and Patching; Post Hole Digger (Manual; Tarmen and Mortar Men); Traffic Control by any method and Wire Mesh Pulling; Expansion Joint Caulking by any method (including preparation and clean-up), Laborer, Concrete and Traffic Control Pilot Truck, Vehicle Operator in connection with Laborers' work.<sup>3</sup>

Operating Engineer, Group 3 (SC-23-63-2-2008-2) this is the rate used in the Notice for work involving Asphalt Rubber Blend Operator, or Bobcat or similar type (Skid Steer) operation.<sup>4</sup>

Operating Engineer, Group 4 (SC-23-63-2-2008-2) This is the rate used in the Notice for work involving Asphalt Plant Foreman, Backhoe Operator (min-man or similar type), boring machine operator, Boxman or Mixerman (asphalt or concrete), Excavator Track/Rubber – Tired (operating weight under 21,000 lbs), Guard Rail Post Driver Operator, Power Concrete Saw Operator, Roller Operator, Screed Operator (asphalt or concrete).<sup>5</sup>

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<sup>3</sup> Throughout the relevant time period, the prevailing hourly wage due under the Laborer, Group 1 PWH was \$40.42 comprised of a base rate of \$26.33, fringe benefits totaling \$13.45 and a training fund contribution of \$0.64. Daily overtime and Saturday work required time and one-half and Sunday and holiday work required double time.

<sup>4</sup> Throughout the relevant time period, the prevailing hourly wage due under the Operating Engineer Group 3 PWH was \$33.990 comprised of a base rate of \$35.35, fringe benefits totaling \$15.99 and a training fund contribution of \$0.65. Daily overtime and Saturday work required time and one-half and Sunday and holiday work required double time

<sup>5</sup> Throughout the relevant time period, the prevailing hourly wage due under the Operating Engineer Group 4 PWH was \$54.980 comprised of a base rate of \$38.34, fringe benefits totaling \$15.99 and a training fund contribution of \$0.65. Daily overtime and Saturday work required time and one-half and Sunday and holiday work required double time

Teamster, Group III (SC-23-261-2-2008-1) This is the rate used in the Notice for work involving Drivers of Vehicles or Combination of Vehicles – 3 axles, Dump Truck less than 6 ½ yards water level.<sup>6</sup>

Teamster, Group IV (SC-23-261-2-2008-1) This is the rate used in the Notice for work involving Drivers of Transit Mix Truck-under 3 yards, Dumpcrete Truck Less than 6 ½ yards water level, Truck Repair helper.<sup>7</sup>

Work on the Project was inspected by various inspectors, some for the structural work and some for the “district” work, which was performed primarily by Southland and included demolition, clean-up and flagging. Commencing in September 2009, Rupert Duncan, a consultant inspector employed by AECOM Corporation Technologies, a contractor to Caltrans, was the full-time inspector for structural work, and Mansur Raziani, was the inspector for the district work. Duncan oversaw the “three bridge project” which he identified as including work on the La Canada Arch Bridge, the Slide Canyon barrier and the Sidehill Viaduct. Duncan and Raziani both kept daily diaries of the work done on their respective aspects of the Project.<sup>8</sup> The daily diaries prepared by both inspectors record: the total number and the names of the employees working on the Project for Southland and each of its subcontractors, the equipment used and by whom, the work performed by each of the workers, and the hours worked, which were normally 7:00 a.m. to 3:30 p.m. with one-half hour for lunch. Duncan and Raziani’s daily diaries record overtime work by Southland workers on some days. In addition to the two inspectors, the resident engineer for the Project, Ali Shalviri, visited the site approximately three times per week. Shalviri observed Southland workers using jackhammers to break up the asphalt, backhoe and bobcat equipment to remove the

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<sup>6</sup> Throughout the relevant time period, the prevailing hourly wage due under the Teamster Group III PWH was \$45.30 comprised of a base rate of \$26.72, fringe benefits totaling \$17.66 and a training fund contribution of \$0.65. Daily overtime and Saturday work required time and one-half and Sunday and holiday work required double time.

<sup>7</sup> Throughout the relevant time period, the prevailing hourly wage due under the Teamster Group IV PWH was \$45.49 comprised of a base rate of \$26.91, fringe benefits totaling \$17.66 and a training fund contribution of \$0.65. Daily overtime and Saturday work required time and one-half and Sunday and holiday work required double time.

<sup>8</sup> Duncan often filled in for Raziani by inspecting and preparing the daily diary for the “district” work.

broken asphalt, and a dump truck to take the material from the site. Shalviri believed that all of the equipment used belonged to Southland. Duncan identified Genaro (aka "Enaro") Banos (G. Banos) as the "lead" hand on the project, who, along with others, operated the Bobcat and a Backhoe with a breaker. Other equipment items the inspectors observed in use were cross saws and a roller, a Honda generator, and the dump truck.<sup>9</sup>

Southland had seventeen workers on the Project, many of whom were related, but only reported twelve workers on its Certified Payroll Records (CPRs). Southland classified all of the workers it reported as Laborer, Group 1 regardless of the nature of the work they performed. Southland reported very little overtime. There were five workers who were not reported on Southland's CPRs: Fidel Vargas, Javier Vasquez, Leopoldo Ortiz, Hernan Banos (H. Banos) and Alfredo Cisneros; none of these workers testified at hearing. Southland's owner, Reza Mohamedi, admitted that those five workers were not listed on Southland's CPRs but asserted that they were paid at the same rate as all the other workers in the amount of \$41.00 per hour, an amount in excess of the Laborer, Group 1, straight-time rate of \$40.42 per hour.

Southland called three workers to testify at hearing: G. Banos, Candido Delgado-Diaz (Delgado), and Jose Alfred Banos-Martel (Banos-Martel). The workers who testified did not dispute that Southland workers, including G. Banos, would sometimes operate the backhoe or bobcat. G. Banos agreed that he operated the Roller and other equipment on occasion.

Caltrans received written complaints from two workers: Osbaldo Alvarez, who worked on the Project from October 24, 2009 to December 4, 2009, and Esquivel, who worked on the Project for only a few days between October 23 and October 30, 2009. Alvarez claimed that he was not paid for all of his hours and that he performed work as a Laborer. Esquivel, who testified at hearing, claimed that he operated the backhoe during most of the time he worked on the project but was not paid at the Operating Engineer rate for doing so. Esquivel stated that Mohamedi told him when he was hired that he would

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<sup>9</sup> Southland attempted to serve Shalviri, Raziani and two other Caltrans inspectors on Friday, September 2, 2011, for them to testify at Hearing on September 6, 2011. Caltrans objected. Service of the subpoenas was not properly made so the individuals could not be compelled to appear. Nevertheless, Caltrans agreed to provide individuals that were available on September 7, 2011. Caltrans produced Shalviri but Raziani was unavailable.

only be paid \$19.00 per hour, but, Mohamedi instructed him, if asked, to tell any inspectors that he received \$41.00 per hour.

Esquivel also complained that he had not been paid for much of the work he performed on the Project.<sup>10</sup> Esquivel testified that he was given two separate checks to endorse but was allowed to keep only one of them (Southland check number 5057 for \$299.25). The second Southland check, number 5067, was made out to Esquivel for \$749.97, but Esquivel contends that it was retained by Mohamedi after he demanded that Esquivel endorse it. The issue of the second check is contested; Esquivel contends that Mohamedi took it back after directing Esquivel to sign it, but copies of the check appear in evidence with both Esquivel and Banos-Martel's endorsements. Banos-Martel testified that he paid Esquivel the amount of the check in cash and later deposited the check in his own bank account. Banos-Martel explained he did that as a favor to Esquivel because Esquivel did not have a bank account or adequate identification to enable Esquivel to cash the check himself. Esquivel, however, denied asking Banos-Martel to give him money for the check and demonstrated that he cashed the first check for \$299.25 at a bank with little difficulty (after the bank teller called Mohamedi to inquire whether the check was properly written it was cashed). The copy of the second check endorsed by both Banos-Martel and Esquivel does not contain a bank cancellation mark.

Esquivel asserted three additional complaints about Mohamedi and Southland's practices:

- He asserted that Mohamedi required that he pay back nearly \$45.00 from check number 5057 for "taxes."
- Esquivel claimed that Mohamedi, not Esquivel, wrote down the time worked on Esquivel's timecards, but that if Esquivel disagreed with the time recorded Mohamedi threatened that Esquivel would not be paid.

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<sup>10</sup> Mohamedi asserted that Esquivel's claim was that he worked alone on a day no other workers were present, however, only four days are assessed for Esquivel (October 26, 28, 29 and 30, 2009) and the inspector records reveal that each day other Southland workers were present.

- Esquivel claimed that Mohamedi was abusive and rude to Esquivel and other workers, in the end telling Esquivel he was not “worth” \$19.00 per hour.

After working on the Project for approximately five days over a two week period, Esquivel complained to Duncan about Southland. Duncan told him to file a complaint, and Esquivel left the job without having been fully paid because he was disgusted with the maltreatment and lack of pay. Esquivel also left because his wife needed him to travel home to Central California, where she lived. Thereafter, on December 8, 2009, Esquivel filed a complaint with Caltrans.

Caltrans conducted an investigation and determined that Southland had not reported its CPRs accurately since the beginning of the Project. Caltrans found that Southland had at least two versions of its CPRs, some handwritten and some typed, which were incomplete for lack of the contract number, statements of deductions, and check numbers. Caltrans experienced long delays in obtaining information it requested from Southland both throughout the project and during its investigation. Mohamedi had not only submitted duplicate versions of Southland’s CPRs which had conflicting information, it failed to submit CPRs for some weeks of work on the Project, and some payroll records were not produced by Southland until the time of hearing. Caltrans obtained the resident engineer and inspector reports, compared them to the payroll records they had received from Southland and determined that Southland had misclassified many of its workers and failed to report all its workers that worked on the Project. Caltrans also found that, for those workers that were reported, Southland had failed to record withholding information, hours worked, rate of pay and check numbers, and failed to accurately record straight time and overtime wages paid. When Caltrans was finally provided with copies of the paychecks purportedly paid by Southland, the check stubs contained no annotation of the hours worked or the rate of pay.<sup>11</sup>

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<sup>11</sup> Southland also produced copies of W-2 tax statements for 28 workers of Southland and ACL. Mohamedi claimed that Southland’s workers received two W-2 statements in 2009, but only one set was produced. There was no W-2 for Carlos Esquivel. Suzanne Herrera, a Caltrans legal department investigator, testified that of the 16 Southland workers, only 10 had social security numbers, and only three of those, Esquivel, A. Banos and G. Banos had valid numbers; however, other people were using the numbers of A. Banos and G. Banos. Without valid social security information it is not possible to determine what Southland reported for earnings.

The particulars of the Notice are as follows:

Misclassification: Two individuals, G. Banos and Esquivel, were reclassified as Operating Engineer Group 3 for certain days that Duncan's and Raziani's logs reflect that they were operating the bobcat. Cornellio Perez was also reclassified an Operator Group 4 for certain days he operated a roller and/or a backhoe. Two other individuals, H. Banos and Juan Mojica were classified as Teamsters, Group III for days Duncan's logs reflected that they operated the dump truck. Of these four individuals, H. Banos was not listed in Southland's CPRS at all; Mohamedi admitted that H. Banos worked for Southland on the Project, was paid "cash," and was not reported on Southland's CPRs.

Underpayment of prevailing wages: Caltrans' Notice applied full credit for Southland's assertion it paid the affected workers \$41.00 per hour (slightly more than the straight time Laborer 1 rate) to the workers Caltrans agreed were properly classified as Laborers, Group 1. As for those workers who were changed to higher paying classifications, credit was given for what Southland reported it paid and the balance was assessed as unpaid prevailing wages. Shortened lunchtime breaks claimed by Esquivel were not assessed for him or any worker. Some workers were found to have worked a full eight hour day on days that Southland had recorded them as working less than eight hours or not at all. In those instances, Caltrans credited what Southland recorded as paid and assessed the balance. In regard to one worker assessed on the Notice, Alfredo Banos (A. Banos), Mohamedi contended that even though Southland's CPRs showed that A. Banos worked only six and a half hours on September 8, 2009, he had been paid for eight hours and the CPR was in error. At hearing, Mohamedi demonstrated that he had produced a check that evidenced a full eight hour payment to A. Banos for that day. Caltrans agreed at the hearing that A. Banos had been fully paid for his work on September 8, 2009, but the assessment was not amended in its post hearing briefing.<sup>12</sup>

The claims of Esquivel (that he had received only one check and had been forced to sign a time card with fewer hours than he worked) resulted in the Notice's assessment

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<sup>12</sup> Correction of these two hours results in reduction of \$51.74 in wages, \$5.12 in training funds and elimination of one \$50.00 penalty under section 1775.

of essentially the same number of hours as Mohamedi had reported on Southland's CPRs, but with unpaid prevailing wages due in the amount of \$1,055.20. That amount was comprised of underpayments for Esquivel's work on three days as a Laborer Group 1 and one day as an Operating Engineer 3 for operating the backhoe.<sup>13</sup> No Saturday work and no other overtime was assessed for Esquivel. It does not appear that Caltrans credited Southland as paying either the \$299.25 Esquivel stated he received or the \$749.97 check he stated Mohamedi retained after Esquivel signed it.

Fringe benefits and training funds paid directly to workers: Southland did not make the required training fund contributions for its workers, instead Mohamedi said that the training funds were included as cash payments directly to the workers in the \$41.00 per hour wage rate paid to workers.<sup>14</sup> Based on that logic, Southland contends that no training funds are due. The Notice assessed against Southland the training fund portion of the prevailing wage due under the applicable PWDs for each hour worked by Southland's workers.

Failure to report or pay workers for all days and/or hours worked on the Project: For those individuals never reported on Southland's CPRs, H. Banos, Ortiz, Vasquez, Vargas and Cisneros, there was no objective evidence of what, if anything they were paid, so full wages for their work were assessed (H. Banos as a Teamster Group III for driving the dump truck on August 7, 2009, and each of the others as Laborers Group 1 for the single day they worked on the Project). Mohamedi admitted these workers were not listed on the CPRs, but asserted that they were paid \$41.00 per hour. He submitted "boilerplate" written statements from all of the workers, including Vargas, Ortiz and Cisneros, that generally asserted they had been paid the prevailing rate for their work on the Project.

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<sup>13</sup> Inspectors Raziani and Duncan's daily notes reflect that Esquivel worked 6 hours of undescribed Labor on October 26, 2009; he is not listed as working October 27, 2009; two hours of undescribed Labor on October 28, 2009, 8 hours operating the Bobcat Turbo #2 on October 29, 2009, 8 hours of operation of the Bobcat Turbo#2 on October 30, 2009, and an undetermined number of hours operating the Bobcat Turbo on both Monday, November 2, 2009 and Tuesday, November 3, 2009. Esquivel testified he did not work after October 30, 2009. Caltrans' Notice assessed 6 hours for October 26 as a Laborer, no hours on October 27, 2 hours for October 28, as a Laborer, 8 hours on October 29 as an Operating Engineer, Group 3, and 8 hours as a Laborer on October 30, 2009. No overtime was assessed in the Notice for Esquivel.

<sup>14</sup> Mohamedi initially claimed that he had made training fund contributions to a trust fund, but the record shows that the trust fund payments had been made by ACL for its workers on the structural portion of the job, not for Southland's nonstructural workers on the Project.

Mohamedi claims that Southland paid each of the five unreported workers \$420.00 in cash at their insistence and that one received an extra \$40.00 for gasoline.

Failure to pay overtime or weekend/holiday pay: Mohamedi denied that any overtime had been worked on the Project except for a few days in December 2009. Based on Caltrans review of the inspector logs, however, the Notice found that most of the affected workers had regularly worked overtime on the Project. Caltrans assessed \$950.00 in penalties under section 1813 for 38 overtime violations at the statutory rate of \$25.00 per violation in addition to the assessment of unpaid prevailing wages for the difference between the wages actually paid and the applicable overtime prevailing wage rates due to the workers for the work performed as recorded by the inspector records. The record shows that Southland paid overtime to A. Banos, G. Banos, Delgado and Cota for Saturday work on October 3, 2009, and to one worker, Cota, for overtime work on November 7, 2009.<sup>15</sup> Southland also paid overtime to six workers, Delgado, G. Banos, A. Banos, Cota, Roman Angeles and Zepiho Gomez during the week ending December 19, 2009. Caltrans applied the amount Southland paid as credit and the Notice does not assess overtime for those days. For the other days that Caltrans determined that overtime was due, it applied credit for the amount Southland had paid in excess of the prevailing straight-time rate, if any, against the workers' overtime wage assessments.

Timeliness of the Assessment or Notice:

Southland contends that Caltrans September 15, 2010, Notice was untimely. Caltrans provided evidence that the Project was accepted June 14, 2010, which is 86 days prior to the date of the Notice. In that Caltrans' Notice was served within less than 180 days of the date of acceptance, as required by section 1741, subdivision (a), it was timely.

Southland's Evidence at Hearing:

At hearing Mohamedi produced many duplicative signed written statements from his workers apparently collected in an attempt to mitigate Southland's exposure in this and other types of proceedings. One set was a series of signed statements in which the

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<sup>15</sup> As for H. Banos, Mohamedi produced check number 4806 for \$200.00 dated August 9, 2009, where he describes his work on August 7, 2009. Caltrans assessed \$271.80 in unpaid prevailing wages for H. Banos' work as a Teamster, Group III that day but no penalties. G. Banos, H. Banos' brother testified that H. Banos only worked one day and he was paid. H. Banos does not appear on the CPRs.

workers attested that they agreed they were prohibited from filing "fraudulent" claims against Southland. Another set were signed and fingerprinted statements from each worker that stated that they were accurately and fully paid their wages on the Project and that Southland did not owe them anything. Each statement repeated that the signer received \$41 per hour and that while Mohamedi recorded their time, they believed the time he recorded was correct. Delgado, who required a Spanish interpreter at hearing, testified he thought the forms had been translated into Spanish but could not remember and no Spanish language document was produced by Southland.

The workers who testified generally agreed that they signed the "fraudulent lawsuit" statements in the belief that Southland had been subject to unfounded workers' compensation claims but otherwise did not know if the agreements cut off their rights to file a valid workers' compensation claim. As to the "affirmation of correct payment" statements, each worker who appeared and testified described working sporadically on some days and not on others. The work hours were agreed to be from 7:00 a.m. to 3:30 p.m. normally, but they could not recall why the records for some days showed a starting time of 6:30 a.m. All of the workers who testified agreed that they had only worked overtime for five to seven days in December 2009.

In addition to claiming that Esquivel was paid by the two checks, and that Mohamedi did not retain either of them, Mohamedi contends that because Duncan's pre-printed daily log forms listed equipment in close proximity to the names of workers, Caltrans reviewers must have erroneously concluded that workers continually used equipment that was listed by their names. Esquivel, he claims, never operated equipment, and likely the appearance of misclassification was caused by the erroneous form. Duncan, however, had separately annotated which employees operated equipment and for how long; he specifically recalled Esquivel operating the bobcat. Mohamedi also accused Duncan of classifying workers as Operating Engineers and Teamsters. Duncan clarified during hearing that, while the standard form of his daily log that he used may have been confusing in regard to what equipment the employees used, he did not assign work classifications to employees. Duncan demonstrated that he listed all as "laborers," even though the form appeared to attribute operation of machinery to some workers; that did not affect those workers being listed as a "laborer."

At hearing G. Banos, a witness called by Southland, admitted to operating the bobcat (which he claimed was rented) and backhoe and Banos-Martel recalled that Perez operated the bobcat and backhoe as well as the Roller. Both G. Banos and Banos-Martel stated, however, that the equipment was operated for no more than 10 to 15 minutes at a time. As to the dump truck, which belonged to Southland, the workers Southland called as witnesses testified that Mohamedi had operated that dump truck exclusively, except for five hours on one day when Mohamedi hired H. Banos to drive the dump truck on a one-time basis. Mohamedi stated that H. Banos had been paid separately for that work. All of the workers who testified for Southland denied that Juan Mojica, who had no driver's license, ever drove the dump truck

The Notice: Caltrans' Notice found that Southland: failed to report all of its employees performing work on the Project on its CPRs, failed to pay the required prevailing wages, including failure to pay the required prevailing wage rate for overtime, misclassified employees and failed to make the required training fund contributions for any of the affected workers. The Notice found a total of \$12,437.34 in underpaid prevailing wages, including \$467.60 in unpaid training fund contributions. Penalties were assessed under section 1775 in the amount of \$50.00 per violation for 71 violations, totaling \$3,550.00. Caltrans determined that the maximum penalty was warranted by its findings that Southland had a record of prior violations. In addition, penalties were assessed under section 1813 for 38 overtime violations, at the statutory rate of \$25.00 per violation, totaling \$950.00. After approval of forfeiture by the Labor Commissioner, the Notice was served on Southland on September 16, 2010.

### Discussion

Sections 1720 and following set forth a scheme for determining and requiring the payment of prevailing wages to workers employed on public works construction projects. Specifically:

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).)*

A Labor Compliance Program like Caltrans 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 *Lusardi, supra.*)

Section 1775, subdivision (a) requires, among other things, that contractors and subcontractors pay the difference to workers who were paid less than the prevailing wage rate, and prescribes penalties for failing to pay the prevailing wage rate. Section 1742.1, subdivision (a) provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if those wages are not paid within sixty days following service of a Notice of Withholding under section 1776.1.

When Caltrans determines that a violation of the prevailing wage laws has occurred, a written Notice of Withholding is issued pursuant to section 1771.6. An affected contractor or subcontractor may appeal the Notice of Withholding by filing a Request for Review under section 1742. Subdivision (b) of section 1742 provides in part that “[t]he contractor or subcontractor shall have the burden of proving that the basis for the [Notice of Withholding] is incorrect.”

Southland Was Required To Pay The Prevailing Rate For Operating Engineer Group 3 and 4 and Teamsters, Group III and IV For The Work Performed Operating Equipment On The Project In Light Of The Information Publicly Available From DIR.

The prevailing rate of pay for a given craft, classification, or type of work is determined by the Director of Industrial Relations in accordance with the standards set forth in section 1773. It is the rate paid to the majority of workers; if there is no single rate payable to the majority of workers, it is the single rate paid to most workers (the

modal rate). On occasion, the modal rate may be determined with reference to collective bargaining agreements, rates determined for federal public works projects, or a survey of rates paid in the labor market area. (§§ 1773, 1773.9, and *California Slurry Seal Association v. Department of Industrial Relations* (2002) 98 Cal.App.4th 651.) The Director determines these rates and publishes general wage determinations, such as SC-23-63-2-2008-2 (Operating Engineer, Groups 3 & 4) and SC-23-261-2-2008-1 (Teamster, Groups III and IV), to inform all interested parties and the public of the applicable wage rates for the “craft, classification and type of work” that might be employed in public works. (§ 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 (*Ericsson*).)

The applicable prevailing wage rate is the one in effect on the date the public works contract is advertised for bid. (§ 1773.2 and *Ericsson, supra.*) Section 1773.2 requires the body that awards the contract to specify the prevailing wage rates in the call for bids or alternatively to inform prospective bidders that the rates are on file in the body’s principal office and to post the determinations at each job site.

Section 1773.4 and related regulations set forth procedures through which any prospective bidder, labor representative, or awarding body may petition the Director to review the applicable prevailing wage rates for a project, within 20 days after the advertisement for bids. (*See Hoffman v. Pedley School District* (1962) 210 Cal.App.2d 72 [rate challenge by union representative subject to procedure and time limit prescribed by section 1773.4].) In the absence of a timely petition under section 1773.4, Southland was bound to pay the prevailing rate of pay, as determined and published by the Director, as of the bid advertisement date. (*Sheet Metal Workers Intern. Ass’n, Local Union No. 104 v. Rea* (2007) 153 Cal.App.4th 1071, 1084-1085.)]

Southland admittedly paid only Laborer rates, not Operating Engineer or Teamster rates to its workers. Even though the amount of time workers were operating equipment was disputed by Mohamedi as being insubstantial, the testimony of resident engineer, Shalviri and inspector Duncan, and admissions by workers Esquivel, Banos, Banos-Martel and A. Banos (and, in fact by Mohamedi himself) establish that workers

were routinely operating a bobcat and backhoe to break asphalt and to move the debris. Further, a dump truck was routinely used to haul away the refuse. Mohamedi testified that the dump truck was not driven by anyone but himself and H. Banos on one day, but Duncan was certain that Mojica drove the dump truck and Mojica did not testify.

Each worker who testified confirmed that Mohamedi, not the workers, filled out all of the time cards and the various versions of the same Southland records contain conflicting information. The workers who testified had no independent recollection either of the specific days they worked or the number of hours they worked on those days. Similarly, there was no record of who operated equipment or when in Southland's records, so the inspector records are the sole source of information for that determination. The resident engineer, Shalviri, and inspector Duncan, testified, and the daily logs of Duncan and Raziani confirm, that equipment that requires a higher classification than Laborer, Group 1 was continuously used on the Project. The workers, themselves, particularly G. Banos, admitted operating the equipment, and acknowledged that Delgado also operated the equipment. Juan Mojica did not testify, but the inspector records record him as driver of the dump truck on three occasions; therefore, the assessment as to him of underpaid prevailing wages at the Teamsters, Group III rate is supported by the record as a whole. Moreover, regardless of whether Mojica had a valid driver's license (which was asserted but not proven), Mojica could have driven the truck illegally, and in that the evidence is that he did drive the truck, he is entitled to the appropriate pay rate for that task.

The weight of the evidence supports the Notice; Southland has not carried its burden to show that the Notice was in error. Consequently, because Southland did not pay the prevailing wages specified for the work performed with equipment as Operating Engineer 3 or 4 or Teamster Group III or IV, and the scope of work provisions for those classifications encompassed operating equipment shown to have been operated in the course of Southland's work on the Project, Southland violated its statutory obligation to pay the required prevailing wages for the classification of work its workers performed.

The Affected Workers Are Entitled To Receive Prevailing Wages For  
Their Documented Work On The Project.

Employers on public works must keep accurate payroll records, recording, among other things, the work classification, straight time and overtime hours worked and actual per diem wages paid for each employee. (§ 1776, subd. (a).) This is consistent with the requirements for construction employers in general, who are required to keep accurate records of the hours employees work and the pay they receive. (Cal. Code Regs., tit. 8, § 11160, subd. 6.) When an employer fails to maintain accurate time records, a claim for unpaid wages may be based on credible estimates from other sources sufficient to allow the decision maker to determine the amount by a just and reasonable from the evidence as a whole. In such cases, the employer has the burden to come forward with evidence of the precise amount of work performed to rebut the reasonable estimate. (*Anderson v. Mt. Clemens Pottery Co.* (1945) 328 U.S. 680, 687-688 [rule for estimate-based overtime claims under the federal Fair Labor Standards Act, 29 U.S.C. §§201 et seq.]; *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 726-727 [applying same rule to state overtime wage claims]; and *In re Gooden Construction Corp.* (USDOL Wage Appeals Board 1986) 28 WH Cases 45 [applying same rule to prevailing wage claims under the federal Davis-Bacon Act, 40 U.S.C. §§3141 et seq.]) This burden is consistent with an affected contractor's burden under section 1742 to prove that the basis for an Assessment is incorrect.

Southland's records are demonstrably unreliable because Southland kept no contemporaneous records of who worked and when. While Caltrans accepted and credited the \$41.00 per hour rate Southland reported it paid, all the checks Southland produced as the records of actual payments to the workers were in issue because the checks had neither identifying information of what pay-period, nor the number of hours or the rate of pay the check represented. According to Mohamedi, Southland issued two W-2 statements to its workers in 2009, but only one set was produced and Mohamedi gave no explanation for why workers would have their tax reporting divided into two separate reports. For the W-2's that were produced, the earnings reported were substantially less than Southland claimed the workers were paid. For instance, Delgado received a W-2 that reported his earnings as \$10,516.75, while analysis of Southland's

CPRs for the months Delgado worked in 2009 indicate that his earnings should have been in excess of \$23,000.00. Southland produced no W-2 for Esquivel at all. Except for the CPRs, there was no objective source that established what rate of pay any of the workers received, what their hours were, or what they were actually paid. Moreover, there were no records that were not prepared by Mohamedi; none were made at the time of the work, and none established that the workers were paid the rates and hours Mohamedi claimed Southland had paid them.<sup>16</sup> As noted above, the checks that were submitted reflected neither hours worked nor pay rate.

Southland's CPRs were altered and resubmitted a couple of times to Caltrans: some versions went to the local labor compliance officers and investigators, Debra Estrada and Mylena Smith, and others went to Caltrans headquarters to Labor Compliance Officer Robert Embree. Embree charted the variances first with the records he received and, once obtained, from those Mohamedi submitted to Smith. Caltrans' chart demonstrates that Southland would issue duplicate checks for overlapping work weeks; misidentify which workers were paid by what check number, and twice paid workers a month early for work purportedly performed later (G. Banos, check number 4871, Delgado check number 4823). There were also discrepancies in the amounts claimed to have been paid on the CPRs compared to the amounts reflected on the checks.

Esquivel's claims that the lunch hours were shortened were not supported by the workers who testified; each considered that their lunch hours were not less than 30 minutes. In any event, Caltrans Notice does not assess wages or penalties for shortened lunch breaks.<sup>17</sup> Caltrans does not give Southland credit for either of the two checks that Esquivel signed. But because Esquivel admitted he cashed check number 5057 for

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<sup>16</sup> In the three separate submissions of Southland's timecards, there were inexplicable variances. As examples – the Caltrans grid shows the following: the June 9 and 13, 2009, time cards for Delgado changed through the 3 submissions to reflect that Delgado was "off" June 13, 2009, but earlier timecards showed him working 9 or 4 hours, that were scribbled out; Perez' timecard for October 19 to October 24 was blank except for his name, but on the second set provided, it had been added; Cota's September 28 to October 3 time card changed the starting time from 8:30 to 8:00 AM on a subsequent production; and G. Banos had two time cards for the same week, August 31 to September 5, 2009, with different hours.

<sup>17</sup> In regard to guaranteed meal times, Labor Code section 226.7 states: "(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission." Section 512 mandates 30 minutes of lunch break for every five hours. The regulations state essentially the same at Cal. Code Regs., tit. 8, § 11160, subd.10 (A).

\$299.25, credit should have been applied for that amount. The second check for \$749.97 is more troubling because there is no evidence Esquivel got the money even though Banos-Martel testified that he cashed check number 5067 and that he gave \$749.97 to Esquivel. Banos-Martel's testimony, and Southland's adoption of it, is illogical because there is no explanation as to why Esquivel could cash check number 5057 and not check number 5067. On that basis, Banos-Martel's testimony does not meet the credibility threshold. Banos-Martel said several things at the hearing that cause questions to be raised as to his motivation because both he as the other two workers who testified as witnesses for Southland were present at the behest of Mohamedi. Banos-Martel testified that Esquivel was angry because Mohamedi told him he would be paid the following week, but that Esquivel wanted to leave town. Banos-Martel condemned Esquivel by stating that he would appear for work hung-over and he condemned Duncan as having a poor personality. Banos-Martel also attacked Perez, who he believed had filed a workers' compensation claim against Southland. Based on the record as a whole, there is not substantial evidence that Esquivel received the money Banos-Martel claims to have paid him and there is more credible evidence that Esquivel endorsed the second check and Mohamedi demanded it back. There is also no W-2 for Esquivel in evidence to establish that he was paid any wages. Because Esquivel admits he received and cashed the first check, Caltrans should have credited Southland with \$299.25 toward the assessed underpaid prevailing wages owed to Esquivel and that amount is therefore deducted from the assessed unpaid wages owed. There is not substantial evidence, however, that Esquivel received the amount of the second check for \$749.97. This decision therefore affirms the balance of the assessed unpaid wages as modified.

Southland Is Not Entitled to Credit for Training Fund Contributions Made Directly to the Workers.

Section 1771 requires that all workers on a public work receive at least the general prevailing "per diem wage." There are three components to the prevailing wage: the basic hourly rate, fringe benefit payments and a contribution to the California Apprenticeship Council (CAC) or an approved apprenticeship training fund. The first two components (also known as the total prevailing wage) must be paid to the worker or

on the worker's behalf and for his benefit. An employer cannot pay a worker less than the basic hourly rate; the balance must be paid to the worker as wages or offset by credit for "employer payments" authorized by section 1773.1.

Section 1773.1, defines "per diem wages" for purposes of both establishing prevailing wage rates and crediting employer payments toward those rates, providing in pertinent part as follows:

(a) Per diem wages . . . shall be deemed to include employer payments for the following:

(1) Health and Welfare.

(2) Pension. [¶] . . . [¶] . . . [¶] . . . [¶]

(6) Apprenticeship or other training programs authorized by Section 3093, so long as the cost of training is reasonably related to the amount of the contributions. [¶] . . . [¶] . . . [¶] . . . [¶]

(b) Employer payments include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.

(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

(c) . . . Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing.

The mandatory apprenticeship training contribution is established by section 1777.5, subdivision (m)(1), which provides that:

A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

Laborers, Operating Engineers and Teamsters are apprenticeable crafts.<sup>18</sup> The payment required by section 1777.5 is distinct from the per diem wages due to workers defined by section 1773.1, and must be distinguished from apprenticeship or training programs offered as an employee fringe benefit under section 1773.1, subdivision (a)(6). It is not a direct employee fringe benefit since it is never paid to the worker and may be paid to programs that do not necessarily have a direct connection to the workers employed on the project. The contribution is required when a contractor employs workers in an apprenticeable craft, even if the contractor chooses to pay the additional fringe benefit portion of the prevailing wage directly as additional wages to the workers. Southland's failure to pay training funds into a proper fund is admitted and the payment is due and properly assessed as set forth in the findings.

Caltrans's Penalty Assessment Under Section 1775 Is Appropriate.

Section 1775, subdivision (a) states in relevant part:

(1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2)(A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B)(i) The penalty may not be less than ten dollars (\$10) . . . unless the failure of the contractor or subcontractor to pay the correct rate of per

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<sup>18</sup> In Southern California: Laborers by the Laborers' California Joint Apprentice Committee (JAC) in Azusa, CA; Operating Engineers by the Southern California Operating Engineer's JAC in Whittier, CA; Teamsters Construction Dump Truck and Articulation Driver by the Construction Teamster's Apprenticeship Fund of Southern California JAC in Fontana, CA.

diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the . . . subcontractor.

(ii) The penalty may not be less than twenty dollars (\$20) . . . if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than thirty dollars (\$30) . . . if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.<sup>19</sup>

The Director's review of the Labor Commissioner's determination is limited to an inquiry into whether the action was "arbitrary, capricious or entirely lacking in evidentiary support . . ." (*City of Arcadia v. State Water Resources Control Bd.* (2010) 191 Cal.App.4th 156, 170.) In reviewing for abuse of discretion, however, the Director is not free to substitute her own judgment "because in [her] own evaluation of the circumstances the punishment appears to be too harsh." (*Pegues v. Civil Service Commission* (1998) 67 Cal.App.4th 95, 107.)

A contractor or subcontractor has the same burden of proof with respect to the penalty determination as to the wage assessment. Specifically, "the Affected Contractor or Subcontractor shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty." (Rule 50(c) [Cal. Code Regs., tit. 8, §17250, subd. (c)].)

Southland's time records and its incomplete and conflicting CPRs establish that Caltrans had an enormous task to attempt to determine what work on the Project was performed when and by whom. None of Southland's records contained the required entries to provide proof of payment as required by section 1776, subdivision (a), and the conflicting submissions over time give the appearance of a "shell game" by providing some records to one local Caltrans investigator and other records to Caltrans main Labor Compliance Officer, Embree. Southland also attempted to claim that it properly paid

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<sup>19</sup> Section 1777.1, subdivision (c) defines a willful violation as one in which "the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions."

training funds to its workers by submitting ACL's records, which was erroneous. Later, Southland admitted that training fund contributions appeared to be due.

Mohamedi spent much of the five day hearing attempting to discredit inspector Duncan to show that the Notice was filed as a vendetta for Mohamedi's criticism of an extensive punch list Duncan issued at the end of the Project. None of the points raised were relevant to the accuracy or veracity of the CPRs and time records which Duncan had no involvement in preparing. Mohamedi also prepared oppressive adhesion documents for workers to sign which carry no weight and do not add to Mohamedi's veracity. When the workers testified, it was apparent they could not recall specifics about when they worked or what they were paid; they could only remember to say that they were paid \$41.00 per hour and that all of the time records were right. The workers did provide compelling evidence, however, that some of the affected workers had operated equipment on the Project that required a higher rate of pay under the proper classification for that work. Mohamedi conceded that he paid cash to four workers that he did not list on the CPRs. Caltrans provided the State Contract Checklist that Mohamedi signed, listing each and every requirement for this prevailing wage Project, and established that Southland had committed similar violations in the past, showing that Mohamedi knew of the requirements but continually failed to conform to them.

Section 1775, subdivision (a)(2) grants the Labor Commissioner the discretion to mitigate the statutory maximum penalty per day in light of prescribed factors, but it neither mandates mitigation in all cases nor requires mitigation in a specific amount when the Labor Commissioner determines that mitigation is appropriate. The record shows that Caltrans considered the prescribed factors for mitigation and determined that the maximum penalty of \$50.00 per violation was warranted in this case. The Director is not free to substitute her own judgment

Overtime Penalties Are Due For The Workers Who Were Underpaid For Overtime Hours Worked On The Project.

Section 1813 states, in pertinent part, as follows:

“The contractor or any subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25.00) for each worker employed in the

execution of the contract by the ... contractor ... for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article." ...

Section 1815 states in full as follows:

"Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day and not less than 1½ times the basic rate of pay."

The record establishes that Southland violated section 1815 by paying less than the required prevailing overtime wage rate for overtime worked by the affected workers on 38 occasions. Unlike section 1775 above, section 1813 does not give Caltrans any discretion to reduce the amount of the penalty, nor does it give the Director any authority to limit or waive the penalty. Accordingly, the assessment of penalties under section 1813, as assessed, is affirmed in the amount of \$950.00 for 38 violations.

#### Southland Is Liable For Liquidated Damages.

Section 1742.1, subdivision (a) provides in pertinent part as follows:

After 60 days following the service of . . . a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety . . . shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the . . . the notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.

Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the . . . the notice] with respect to a portion of the unpaid wages covered by the . . . the notice, the director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages.

Absent waiver by the Director, Southland is liable for liquidated damages in an amount equal to any wages that remained unpaid sixty days following service of the Notice. Entitlement to a waiver of liquidated damages in this case is partially tied to

Southland's position on the merits and specifically whether, within the 60 day period after service of the Notice, it had "substantial grounds for appealing the assessment . . . with respect to a portion of the unpaid wages covered by the assessment."

The history of Southland's owner's dilatory production of records and proof that Southland was given timely and clear notice of the complaints is shown in the record. Caltrans audit was necessary and, based on the correspondence introduced at hearing, Caltrans numerous requests for documents reveals that Mohamedi let the matter remain unfulfilled. Mohamedi's extremely late and incomplete responses to Caltrans demonstrate that Southland considered Caltrans inquiries a mere nuisance. There was no substantial evidence produced that the assessments in the Notice were in error. Indeed, Mohamedi argued at hearing that when he learned and admitted that one worker should have been paid but was not, the reason the worker was not immediately paid was justified because "Caltrans was holding retained funds" owed to Southland. Mohamedi cannot justify failing to pay unpaid wages because contract money was withheld.

Because the assessed back wages remained due more than sixty days after service of the Notice, and Southland has not demonstrated grounds for waiver, Southland is also liable for liquidated damages in an amount equal to the unpaid wages.

### Findings

1. Affected contractor Southland filed a timely Request for Review of the Notice of Withholding issued by Caltrans with respect to the Project.
2. Southland failed to pay its workers at least the prevailing wage for the disputed work, as it paid certain affected workers the Laborer, Group 1 prevailing wage rate rather than the applicable Operating Engineer Groups 3 and 4 or Teamster Groups III or IV prevailing wage rate. The portions of the Notice reclassifying workers from Laborer, Group 1 to Operating Engineer Groups 3 or 4, and Teamster Groups III or IV for that work, and the associated penalties assessed under sections 1775 and 1813, are therefore affirmed. Southland underpaid its workers for their work on the Project in the aggregate amount of \$13,620.45 comprising 70 violations of section 1775 and 38 violations of section 1813. Modifications are described as follows:

- Southland's check number 5057 to Esquivel is evidence of payment to him at a rate below the required prevailing wage rate for Laborer, Group 1 and Operating Engineer Group 3, but the amount of \$299.25 is credited to reduce the wage underpayment to Esquivel to \$765.95; no training fund or penalty assessments are affected by this modification. The Notice's assessment of unpaid prevailing wages due Esquivel at \$1,055.20 is therefore reduced to \$765.95.
- Southland properly paid A. Banos for eight hours of work on September 8, 2009; the Notice's assessed unpaid wages and penalties as to A. Banos are therefore reduced in the amount of \$51.74 in unpaid prevailing wages, training funds in the amount of \$5.12, and by \$50.00 for one penalty under 1775. Total wages (\$517.02) and training funds (\$35.20) remaining due as to A. Banos are \$552.22.
- Southland's payment of \$220.00 by check number 4806 for work performed by H. Banos on August 7, 2009, results in a \$51.86 balance due against \$271.80 assessed. No training funds or penalties are affected by this credit.
- Southland misclassified Joan Mojica as Laborer 1 instead of Teamster Group III, when he drove the dump truck November 4 and November 5, 2008, for which he was underpaid by \$34.00 each day, however, by credit of overpayments, only \$29.76 is due. No training funds are affected by the credit but \$100.00 in penalties apply for the misclassification.

4. Southland failed to make all required training fund contributions, for the apprenticeable crafts of Laborer, Operating Engineers on the Project as required by the applicable PWDs.

5. In light of Findings 3 and 4, above, Southland underpaid its employees on the Project in the aggregate amount of \$9,170.45, including unpaid training fund contributions.

6. Caltrans did not abuse its discretion in setting section 1775, subdivision (a) penalties at the rate of \$50.00 per violation, and the resulting total penalty of \$3,500.00, as assessed, for 70 violations is affirmed.

7. Penalties under section 1813 at the rate of \$25.00 per violation are due for

38 violations on the Project, for a total of \$950.00 in penalties.

8. The unpaid wages found due in Finding 5 remained due and owing more than sixty days following issuance of the Notice and Southland is therefore liable for an additional award of liquidated damages under section 1742.1 in the amount of \$9,170.45, and there are insufficient grounds to waive payment of these damages.

9. The amounts found remaining due in the Notice is affirmed by this Decision are as follows:

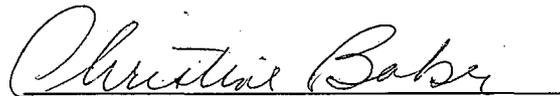
Wages Due:	\$8,707.97
Training Fund Contributions Due:	\$462.48
Penalties under section 1775, subdivision (a):	\$3,500.00
Penalties under section 1813:	\$950.00
Liquidated Damages:	\$9,170.45
<b>TOTAL:</b>	<b>\$22,790.90</b>

In addition, interest is due and shall continue to accrue on all unpaid wages as provided in section 1741, subdivision (b).

#### ORDER

The Notice of Withholding is affirmed and modified as set forth in the above Findings. The Hearing Officer shall issue a notice of Findings which shall be served with this Decision on the parties.

Dated: 2/16/2012



Christine Baker  
Director of Industrial Relations