

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Roadworks, Inc.

Case No. 21-0037-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected Contractor Roadworks, Inc. (Roadworks) requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE), dated December 30, 2020, with respect to work performed on the On-Call Asphalt Crack Seal Services Project (Project) for the City of Menifee (City) in Riverside County. The Assessment indicated that Roadworks owed \$24,218.57 in unpaid prevailing wages and training fund contributions and \$17,100.00 in statutory penalties. On March 30, 2022, the Assessment was amended downwards to \$14,678.58 in unpaid prevailing wages and training fund contributions and \$17,850.00 in statutory penalties, for a total amount due of \$32,528.58. ¹

A Hearing on the Merits occurred on June 1, 2022, and June 15, 2022, before Hearing Officer Ann Wu. William Arthur Snyder appeared as counsel for DLSE. James Thompson appeared for Roadworks. Deputy Labor Commissioner Adria Galbreath-Baker testified in support of the Assessment. Roadworks employees Richard Godinez and Tanner Blocker testified in opposition to the Assessment. ² The Hearing Officer submitted the matter for decision on August 5, 2022. ³

¹ The Hearing Officer granted DLSE's motion to amend the assessment under Rule 26. (Cal. Code Regs., tit. 8, § 17226, subds. (a)(1), (b).) Roadworks had no objection to DLSE's motion.

² The Hearing Officer admitted into evidence DLSE Exhibit Numbers 1 through 27, and Roadworks Exhibits G, I, and K through Q.

³ The parties filed closing briefs on July 22, 2022. DLSE filed its reply brief on July 26, 2022, and Roadworks filed its reply brief on August 5, 2022.

Prior to the hearing, the parties stipulated to the following:

- The work subject to the Civil Wage and Penalty Assessment required the payment of prevailing wages and employment of apprentices.
- Roadworks requested review timely.
- DLSE disclosed its evidence timely.
- Roadworks deposited \$41,318.57, the full amount of the initial Civil Wage and Penalty Assessment, with the Department of Industrial Relations.

The issues for decision are as follows:

- Whether DLSE issued the Civil Wage and Penalty Assessment timely.
- Whether Roadworks paid the required prevailing wages to workers on the project.
- Whether Roadworks paid the required overtime premium rates to workers on the project.
- Whether Roadworks paid the required training fund contributions for all hours worked on the project.
- Whether the Labor Commissioner abused her discretion in assessing penalties pursuant to Labor Code section 1775.
- Whether Roadworks employed apprentices in the required minimum ratio of apprentices to journeypersons on the project.
- Whether Roadworks submitted contract award information to all applicable apprenticeship committees in a timely and factually sufficient manner.
- Whether the Labor Commissioner abused her discretion in assessing penalties pursuant to Labor Code section 1777.7.

For the reasons set forth below, the Director of Industrial Relations finds that DLSE generally carried its initial burden of presenting evidence that provided prima facie support for the Assessment. (See Cal. Code Regs., tit. 8, § 17250, subd. (a).) Roadworks did not carry its burden of proving that the basis for the Assessment was

incorrect. (See Cal. Code Regs., tit. 8, § 17250, subd. (b).) Accordingly, the Director issues this decision affirming the Assessment, as modified.

FACTS

The Project.

The Project was for on-call asphalt crack sealing services within the City. (DLSE Exhibit No. 10, p. 127.) The City advertised the Project for bid on May 13, 2014, and it received three bids by the May 27, 2014 bidding deadline. (DLSE Exhibit No. 10, p. 72; DLSE Exhibit No. 13, p. 143.) The successful bidder was Roadworks, which was awarded the contract on July 16, 2014. (DLSE Exhibit No. 13, pp. 142-143.) The bidding and contract documents for the Project indicated that the contractor must comply with prevailing wage and apprenticeship requirements. (DLSE Exhibit No. 10, pp. 72, 80-81, 88.) The initial term of the maintenance contract was July 1, 2014 to June 30, 2015, and the contract was subject to one-year renewal options by the City through June 30, 2019 under the terms and conditions of the original contract. (DLSE Exhibit No. 10, pp. 89-90.) The City exercised each of the option renewal periods. (DLSE Exhibit No. 13, p. 141.) The total number of days that Roadworks had workers on the Project is unclear. The audit underlying the Assessment looked at the work performed from December 10, 2018 through May 2, 2019. (DLSE Exhibit No. 2.)

The Prevailing Wage Determinations.

Roadworks employed journey-level Laborers on the Project. (DLSE Exhibit No. 15.) The parties disputed the appropriate prevailing wage determination for the Laborer classification. For its initial audit, DLSE used SC-23-102-2-2015-1, issued April 13, 2015. (2015-1 Laborer PWD). (DLSE Exhibit No. 19.) For its revised audit dated September 2, 2021, DLSE used SC-23-102-2-2017-2, issued August 22, 2017. (2017-2 Laborer PWD). (DLSE Exhibit No. 21.) Roadworks contended that SC-23-102-2-2013-1, issued August 22, 2013 (2013-1 Laborer PWD), was the prevailing wage determination applicable to the Project. (DLSE Exhibit No. 20; Roadworks Exhibit O.) The Laborer classification is apprenticeable. (DLSE Exhibit Nos. 19, 20, 21.)

The Complaint.

On November 21, 2019, DLSE received a complaint from Brian Shearer from the Center for Contract Compliance asserting Roadworks violated apprenticeship and training fund contribution requirements. (Roadworks Exhibit G, pp. G23-G35.) Deputy Labor Commissioner Adria Galbreath-Baker (DLSE Investigator) investigated Roadworks' compliance with the law. (DLSE Exhibit No. 8, pp. 66-67.)

The Investigation.

The DLSE Investigator received information and documents related to the Project from the City on January 7, 2020, including bid and contract documents, minutes of the City Council, Roadworks payroll records, and the City's purchase order for the fifth option-year contract renewal. (DLSE Exhibit Nos. 8, 10, 11, 12, 13, 14, 15.) Although DLSE requested certified payroll records and other documents from Roadworks to show the payment of wages, fringe benefits and training funds for the Project, as well as proof that Roadworks served contract award information and requested the dispatch of apprentices, Roadworks provided no response.⁴ (DLSE Exhibit No. 3, pp. 23-24.)

On September 29, 2020, the DLSE Investigator obtained the project registration form submitted by the City to the Department.⁵ (DLSE Exhibit No. 9; Roadworks Exhibit Q.) She did not send questionnaires to any of the workers listed on the payroll records provided by the City, nor did she attempt to interview any of the workers listed. (DLSE Exhibit No. 3, p. 24.) Accordingly, the DLSE Investigator prepared the audit based on

⁴ The DLSE Investigator did not consider the weekly payroll records received from the City to be certified payroll records, because the records were not certified under penalty of perjury. (Compare DLSE Exhibit No. 15 with DLSE Exhibit No. 27.) In any case, DLSE did not assess any penalties against Roadworks for failure to produce certified payroll records under Labor Code section 1776, subdivision (h).

⁵ The City incorrectly reported the first advertised date of the Project as July 16, 2014 rather than May 13, 2014. (DLSE Exhibit No. 9, p. 68; compare with DLSE Exhibit No. 10, p. 72, and DLSE Exhibit No. 13, pp. 142-143.) This document appears to be a project registration form for the last contract renewal period of the Project for fiscal year 2018 to 2019, with a reported contract award date of July 1, 2018, but a reported contract date of July 16, 2014. (DLSE Exhibit No. 9, p. 68.)

the payroll records provided by the City of Menifee and the 2015-1 Laborer PWD. (DLSE Exhibit No. 3, p. 27; DLSE Exhibit No. 19, p. 172.)

The Audit.

The DLSE Investigator prepared an audit summary of her investigation of this Project. The audit summary listed the worker names, worker classifications, the required prevailing wages, the amounts paid, the penalties assessed, and the training funds required to be paid. (DLSE Exhibit No. 2.) She prepared the audit summary and the individual audit worksheets for each of the eight workers on the Project using the information in the weekly payroll records provided by Roadworks to the City. Those weekly payroll records for the Project listed worker name, the classification for each worker, the dates and hours each worker performed work, the hourly rate of pay for each worker, and the gross amount earned for work on the Project. (DLSE Exhibit No. 15.) The weekly payroll records indicated that Roadworks classified all workers on the Project as journey-level Group 2 Laborers, and that all workers were paid straight time at \$38.21 per hour and overtime at \$57.32 per hour. (*Ibid.*)

The DLSE Investigator calculated the underpayment of required prevailing wages by applying the straight-time total hourly rate of \$49.53 for Group 2 Laborer found in the 2015-1 Laborer PWD to the hours reportedly worked from the weekly payroll records.⁶ (DLSE Exhibit No. 2, pp. 12-19; DLSE Exhibit No. 15; DLSE Exhibit No. 19, p. 172.) The \$49.53 total hourly rate consisted of the basic hourly rate of \$30.74 and employer payments of \$6.81 per hour for health and welfare, \$6.25 per hour for pension, \$4.47 per hour for vacation and holiday, \$0.64 per hour for training, and \$0.62 for other payments. (DLSE Exhibit No. 19, p. 172.) In other words, the total hourly rate was comprised of the basic hourly rate of \$30.74, the training fund rate of \$0.64, and the total fringe benefits rate of \$18.15. In determining the total wages required to be

⁶ The DLSE Investigator applied the 2015-1 Laborer PWD based on the July 16, 2014 date on the project registration form reported by the City. (DLSE Exhibit No. 9, p. 68.)

paid, the audit included both the fringe benefits and the required training fund contributions twice.⁷

The DLSE Investigator testified that while she had no supporting payroll documentation from Roadworks (such as cancelled checks, bank statements or pay stubs) to substantiate the payment amounts listed on the payroll records, she nevertheless credited Roadworks with the basic hourly straight-time rate from the 2015-1 Laborer PWD for both straight-time and overtime hours worked.⁸ She did not credit Roadworks with the actual hourly rates listed on the weekly payroll records.⁹ Based on

⁷ The amounts listed in the Total Wages Required column on the individual audit worksheets are the sum of the Total Hours Worked multiplied by the Required Wage Rates, plus Other Compensation which is the sum of the Total Hours Worked multiplied by the required fringe benefit rate of \$18.15. The amounts listed in the Total Training Fund column is the Total Hours Worked multiplied by the training fund contribution rate of \$0.64. Since the Required Wage Rates already included both the required fringe benefits and training fund rates, the audit improperly inflated the amounts due and owing. Using the example of Richard Godinez for the week ending December 15, 2018, Godinez worked 24 hours of straight time and 4.11 hours of overtime. (DLSE Exhibit No. 2, p. 12.) The audit indicated the Required Wage Rates as \$49.53 for straight time and \$64.90 for over time. (*Ibid.*) The audit also indicated the required Other Compensation as \$510.20, which is the total hours worked, 28.11 hours, multiplied by the fringe benefits rate of \$18.15. (*Ibid.*) The audit indicated the Total Wages Required as \$1,965.66, which is the total straight time hours worked, 24 hours, multiplied by \$49.53, equaling \$1,188.72, plus the total overtime hours worked, 4.11 hours, multiplied by \$64.90, equaling \$266.74, plus Other Compensation of \$510.20. (*Ibid.*) The audit also indicated the Total Training Fund due as \$17.99, which is the total hours worked, 28.11, multiplied by the training fund contribution rate of \$0.64. (*Ibid.*)

⁸ However, the basic hourly rate for straight-time work was \$30.74 for Group 2 Laborer in the 2015-1 Laborer PWD, and the rate credited in the audit was \$34.79 for both straight-time and overtime hours worked. (DLSE Exhibit No. 2, pp. 13-19; DLSE Exhibit No. 19, p. 172.) The rationale for crediting the \$34.79 rate was not explained. Using the example of Godinez for the week ending December 15, 2018, the audit credited Roadworks with \$977.95, which is the total hours worked, 28.11 hours, multiplied by the credited rate of \$34.79. (DLSE Exhibit No. 2, p. 12.)

⁹ The hourly rate of pay listed on the payroll records was higher than the basic hourly rate on the 2015-1 Laborer PWD but lower than the total hourly rate on the 2015-1 Laborer PWD.

the calculated underpayments, the audit included penalties for underpaid wages at \$100 per violation for 100 violations under Labor Code section 1775, as well as penalties for underpaid overtime premiums at \$25 per violation for 30 violations under Labor Code section 1813.¹⁰

The Penalty Review.

The DLSE Investigator summarized her investigation in the Penalty Review. (DLSE Exhibit No. 3.) In addition to the underpaid wages and training fund contributions, and associated penalties reflected in the Audit Summary, the DLSE Investigator determined that Roadworks failed to submit contract award information to the applicable apprenticeship committees, failed to request dispatch of apprentices, and failed to employ apprentices on the Project.¹¹ (DLSE Exhibit No. 3, pp. 23-24.) The DLSE Investigator based these determinations on the payroll records received from the City and on Roadworks' failure to provide records to DLSE. She assessed apprenticeship penalties for failure to submit contract award information to the applicable apprenticeship committees at \$50 per violation. (DLSE Exhibit No. 3, p. 21.) She calculated 142 violations for the number of calendar days between December 11, 2018, the second day workers performed work, and May 2, 2019, the last day Roadworks had workers on the Project, as indicated on the payroll records. (DLSE Exhibit No. 3, p. 28.)

The Assessment.

The Assessment was issued on December 30, 2020. (DLSE Exhibit No. 1, p. 9.) The Assessment was based on DLSE's determination that Roadworks failed to pay the correct prevailing wage rate to workers and failed to pay the required training fund

¹⁰ Using the example of Godinez for the week ending December 15, 2018, the audit calculated \$300 in penalties for violation of Labor Code section 1775 and \$75 in penalties for violation of Labor Code section 1813. (DLSE Exhibit No. 2, p. 12.) The Total Amount Due and Owing is the Total Wages Required less credit given, plus Penalties under Labor Code sections 1775 and 1813, plus Total Training Fund. (*Ibid.*)

¹¹ The Penalty Review indicated that the DLSE Investigator searched the Division of Apprenticeship Standards website but found no evidence of any payment by Roadworks of required training funds for the Project. (DLSE Exhibit No. 3, p. 27.)

contributions for the hours worked. (DLSE Exhibit No. 1.) The Assessment also found that Roadworks failed to submit contract award information to all the applicable apprenticeship committees in the geographic area of the Project, failed to request the dispatch of apprentices, and failed to employ apprentices in the required minimum ratio of apprentices to journeypersons on the Project. (DLSE Exhibit No. 1.) In addition to the unpaid wages and penalties reflected in the audit, the Assessment imposed section 1777.7 penalties of \$7,100, based on 142 violations of apprenticeship requirements assessed at \$50 per violation.¹² (DLSE Exhibit Nos. 1, 2.)

The Amended Penalty Review.

The Penalty Review was not signed at the time the Assessment was issued. DLSE submitted two versions of the Penalty Review at hearing, one titled "Penalty Review – submitted" and the other titled "Penalty Review – signed." (DLSE Exhibit List; DLSE Exhibit Nos. 3, 4.) The two versions differ in Section 2, which lists the penalty rates and total penalties imposed by the Senior Deputy Labor Commissioner. (DLSE Exhibit No. 3, p. 21; DLSE Exhibit No. 4, p. 31.) The DLSE Investigator recommended the penalty rates in the Penalty Review, but she explained it was the responsibility of the Senior Deputy Labor Commissioner to decide the appropriate penalty rates. In this matter, the DLSE Investigator recommended mitigation of the applicable penalties, as she noted in the Penalty Review that Roadworks had no prior history of prevailing wage violations. (DLSE Exhibit No. 3, p. 29; DLSE Exhibit No. 4, p. 39.)

The submitted version listed a Labor Code section 1777.7 penalty rate of \$50, and a total section 1777.7 penalty amount of \$7,100 for 142 violations, whereas the version signed by Senior Deputy Labor Commissioner Tony Eguavoen on March 12, 2021, subsequent to the issuance of the Assessment, did not impose any section 1777.7 penalty. (Compare DLSE Exhibit No. 3, p. 21, with DLSE Exhibit No. 4, p. 31.) It appears that when Eguavoen approved the Penalty Review on March 21, 2021, he mitigated the 1777.7 penalty from the recommended amount of \$7,100 to zero.

¹² The Assessment is consistent with the Penalty Review that is DLSE Exhibit Number 3.

The Amended Audit and Further Investigation.

On September 21, 2021, the DLSE Investigator prepared an amended audit.¹³ (DLSE Exhibit No. 26.) She recalculated the underpaid wages following a discussion she had with Snyder regarding the applicability of the 2017-2 Laborer PWD based on the July 1, 2018 contract renewal date for the last option year of the Project. In the amended audit, the DLSE Investigator reduced the basic hourly rate she credited Roadworks for each straight-time hour worked from \$34.79 in the original audit to \$33.74, the basic hourly rate listed in the 2017-2 Laborer PWD for Group 2.¹⁴ (DLSE Exhibit No. 21, p. 194; DLSE Exhibit No. 26, pp. 214-221; compare with DLSE Exhibit No. 2, pp. 12-19.) The amended audit increased the Required Wage Rates from \$49.53 for straight-time hours and \$64.90 for overtime hours to \$54.28 and \$71.15, respectively, based on the 2017-2 Laborer PWD. (*Ibid.*) The amended audit removed the double-counted fringe benefits from the Total Wages Required in the original audit.¹⁵ (DLSE Exhibit No. 26, pp. 214-221; compare with DLSE Exhibit No. 2, pp. 12-19.) The amended audit made no changes to the number of penalty violations or penalty rates. (*Ibid.*) However, like the original audit, the amended audit also counted unpaid training fund contributions twice. (*Ibid.*) The amended audit increased the training fund contribution rate from \$0.64 to \$0.69 in accordance with the 2017-2

¹³ Also on September 21, 2021, the DLSE Investigator printed a list of the applicable apprenticeship programs for the Laborer classification, presumably for the geographic area of the Project. (DLSE Exhibit No. 23.)

¹⁴ The amended audit did not change the basic hourly rate credited for overtime hours worked. The DLSE Investigator did not explain the rationale for crediting the overtime rate at \$34.79. The amended audit also credited \$19.85 to every worker for each week of work. The DLSE Investigator did not explain the basis for this credit.

¹⁵ The DLSE Investigator testified that she received documents from Roadworks after the Assessment was issued. (DLSE Exhibit No. 25.) However, she explained that she was unable to provide Roadworks with credit for fringe benefits because the documents did not specifically show the payment of any fringe payments for this Project. The DLSE Investigator also testified that she could not provide credit for fringe benefits based on the documents Roadworks submitted at hearing for the same reason. (See Roadworks Exhibits L, M, N.)

Laborer PWD. (DLSE Exhibit No. 21, p. 194; DLSE Exhibit No. 26, pp. 214-221; compare with DLSE Exhibit No. 2, pp. 12-19.) Because the amended audit did not double-count the required fringe benefits, the amended audit resulted in an overall downwards adjustment of the total amount found due and owing as compared to the original audit. The revised audit determined that the total amount of unpaid wages was \$14,679.08, comprised of \$14,189.97 in underpaid wages and \$489.11 in unpaid training fund contributions.¹⁶ (DLSE Exhibit No. 26, p. 212.)

Roadworks' Defense.

Roadworks presented the testimony of two workers, Richard Godinez and Tanner Blocker. Godinez had worked for Roadworks for 12 years. He acted as a foreperson on the Project. According to Godinez, Roadworks paid its workers weekly, either directly or through BBSI, a third-party payroll company. (Roadworks Exhibit K.) Godinez recalled that the work Roadworks performed for the City was a prevailing wage job. Godinez denied that Roadworks ever failed to pay him the required prevailing wage rate or fringe benefits on his behalf. Godinez testified that Roadworks asked him to look for his bank statements and pay stubs for the period of the Project, but Godinez did not have those records.

Godinez explained that for prevailing wage jobs, Roadworks deposited funds on behalf of its workers to a PWCA Supplemental Unemployment Benefit Plan administered by Service Contract Administrators, Inc. (Roadworks Exhibit I.) Godinez referred to this employee benefit plan as the "rainy day fund." Godinez testified that a certain amount of money from the prevailing wage hourly rate was deposited into the rainy day fund, but he admitted that he did not know exactly how much per hour Roadworks contributed on his behalf to the rainy day fund for this Project. Godinez further explained that he could obtain money from the rainy day fund upon request to the payroll person at Roadworks.

¹⁶ The Assessment was amended to reflect the numbers of the amended audit. However, the Assessment revised the unpaid wages downwards to \$14,678.58, which is 50 cents less than the unpaid wages listed in the amended audit.

Godinez testified that Roadworks paid for part of his health benefits during the time he worked on the Project, and that \$81.68 was deducted from his pay each week. (Roadworks Exhibit L.) Godinez did not know whether the \$81.68 payment by Roadworks was for all the projects he worked on each week or only for the Project at issue. (DLSE Exhibit 15, p. 151.) On redirect examination, Godinez agreed that Roadworks paid for half of his healthcare premium for Kaiser Permanente. (Roadworks Exhibit M.)

Tanner Blocker began working for Roadworks in 2018, in between semesters of school. He recalled working on the Project in 2018 and 2019, and he understood that the Project was a prevailing wage job. Blocker was paid weekly by Roadworks. According to Blocker, he was paid around \$38 per hour on the Project, and Roadworks contributed over \$12 per hour on his behalf to the rainy day fund. Blocker denied that Roadworks ever failed to pay him the required prevailing wage rate or fringe benefits on his behalf. Blocker testified that he no longer has any bank statements or check stubs to show how much Roadworks paid him. However, Blocker testified that the payments he received from Roadworks were consistent with the contemporaneous personal budgeting spreadsheet he kept of his hours worked and rate of pay.¹⁷ It was Blocker's understanding that Roadworks paid the required fringe benefits into the rainy day fund. In 2021, Blocker withdrew all the money from his rainy day fund account in one lump sum.

DISCUSSION

The California Prevailing Wage Law (CPWL), set forth at Labor Code section 1720 et seq., requires the payment of prevailing wages to workers employed on public works construction projects.¹⁸ The purpose of the CPWL was summarized by the California

¹⁷ Blocker's spreadsheet was not admitted into evidence as it was not listed on Roadworks' Exhibit List.

¹⁸ All further references are to the Labor Code.

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.) 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); see also *Lusardi*, 1 Cal.4th at p. 985.)

Contractors and subcontractors who fail to pay the correct prevailing wage to workers on public works projects, are required to pay the difference between the correct prevailing wage and the amount they paid to the workers. (§ 1775, subd. (a)(2)(E).) In addition, section 1775, subdivision (a) prescribes penalties for failing to pay the correct prevailing wage rate. The prevailing rate of per diem wage includes fringe benefits and training fund contributions pursuant to section 1773.1 and section 1777.5, subdivision (m). Section 1813 provides additional penalties for failure to pay the correct overtime rate.

When DLSE determines that a violation of the prevailing wage laws has occurred, it may issue a written civil wage and penalty assessment pursuant to section 1741. An affected contractor or subcontractor may appeal the assessment by filing a request for review under section 1742. The request for review is transmitted to the Director of Industrial Relations, who assigns an impartial hearing officer to conduct a hearing in the matter as necessary. (§ 1742, subd. (b).)

DLSE has the initial burden of presenting evidence that “provides prima facie support for the Assessment . . .”¹⁹ (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).)

DLSE Issued the Assessment Timely.

Pursuant to section 1741, subdivision (a), the Assessment had to be served on Roadworks “not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last.” Here, there was no notice of completion recorded for this Project. DLSE relied on the June 30, 2019 expiration date of the last option-year contract as evidence of the City’s acceptance of the public work. (DLSE Exhibit No. 10, p. 89-90.) Accordingly, the Assessment issued on December 30, 2020 was timely, as it was served 18 months from the June 30, 2019 expiration date of the contract.²⁰

¹⁹ “Evidence’ means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.” (Evid. Code, § 140.) “Prima facie” is defined as: “Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue <a prima facie showing>.” (Black’s Law Dict. (12th ed. 2024).) “Prima facie evidence is that which will support a ruling in favor of its proponent if no controverting evidence is presented. [Citations.] It may be slight evidence which creates a reasonable inference of fact sought to be established but need not eliminate all contrary inferences. [Citation.]” (*Evans v. Paye* (1995) 32 Cal.App.4th 265, 280.) Further, “[a]ll burdens of proof and burdens of producing evidence shall be construed in a manner consistent with relevant sections of the Evidence Code . . .” (Cal. Code Regs, tit. 8, § 17250, subd. (d).)

²⁰ Alternatively, the time to serve the Assessment was tolled due to Roadworks’ failure to provide certified payroll records under section 1741.1, subdivision (a). It appears that DLSE first requested certified payroll records from both Roadworks and

Roadworks Underpaid the Required Prevailing Wages on the Project.

Here, DLSE established a prima facie showing of Roadworks' failure to pay prevailing wages and fringe benefits. DLSE investigated Roadworks based on information provided by the Center for Contract Compliance that Roadworks failed to pay training fund contributions and failed to comply with apprenticeship requirements. During its investigation, DLSE received payroll records from the City that, on their face, showed that Roadworks did not pay the required prevailing wages for straight-time or overtime hours, fringe benefits, or training fund contributions. Roadworks did not respond to DLSE's requests for certified payroll records, documents that would show payment of wages, fringe benefits and training fund contributions. Accordingly, DLSE prepared the audit using the information provided by the Center for Contract Compliance and the City. This was sufficient for DLSE to establish a prima facie case of underpaid prevailing wages, fringe benefits and training funds.²¹

Roadworks disputed DLSE's audit calculations which applied the prevailing wage rates contained in the 2017-2 Laborer PWD based on the July 1, 2018 contract renewal date for the last option renewal period for the Project. (DLSE Exhibit No. 9, p. 68.). According to Roadworks, the prevailing wage rates applicable to this Project was the 2013-1 Laborer PWD based on the May 13, 2014 bid advertisement date for the Project. (DLSE Exhibit No. 10, p. 72.)

"Public works" is defined as "[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. . ." (§ 1720, subd. (a).) The payment of prevailing wages is required for any public works projects over \$1,000, including contracts let for maintenance work. (§ 1771.) In this regard, "maintenance" includes:

the City of Menifee on December 19, 2019, and that DLSE sent another request to Roadworks on September 28, 2020. (DLSE Exhibit No. 8, p. 66.)

²¹ However, DLSE's audit calculations improperly double-counted the required training fund contributions in the amended audit in the amount of \$489.11. (DLSE Exhibit No. 26.)

Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

(Cal. Code Regs., tit. 8, § 16000.) Typically, maintenance contracts cover a specific period of time with a contract commencement date and expiration date; the critical component of such a contract is its stated duration.²² When there is a change to the original maintenance contract which alters the conditions (including the length of contract period), this change results in new terms of the contract. Thus, extensions or renewals of maintenance contracts require the use of the prevailing wage determination in effect on the date the contract is extended or renewed. Accordingly, DLSE appropriately applied the 2017-2 Laborer PWD in determining the required total prevailing wages for audited time period of the Project. For this reason, Roadworks failed to show that the basis for the Assessment was incorrect. Thus, Roadworks is liable for unpaid prevailing wages in the amount of \$13,700.36 and unpaid training fund contributions in the amount of \$489.11.

The Labor Commissioner Did Not Abuse Her Discretion in Assessing Penalties Under Section 1775.

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 two hundred dollars (\$200) 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:

²² In contrast, a construction contract is generally not fulfilled until the completion of the construction project.

- (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 forty dollars (\$40) . . . unless the failure of the contractor . . . 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 . . .
- (ii) The penalty may not be less than eighty dollars (\$80) . . . if the contractor . . . 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 one hundred twenty dollars (\$120) . . . if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.²³

. . .

- (D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

Abuse of discretion by DLSE is established if the "agency's nonadjudicatory action . . . is inconsistent with the statute, arbitrary, capricious, unlawful or contrary to public policy." (*Pipe Trades v. Aubry* (1996) 41 Cal.App.4th 1457, 1466.) In reviewing for abuse of discretion, however, the Director is not free to substitute his or her own judgment "because in [his or 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

²³ Section 1777.1 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."

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.” (Cal. Code Regs., tit. 8, § 17250, subd. (c).)

DLSE assessed section 1775 penalties at the rate of \$100, which is less than the statutory maximum, for 100 prevailing wage violations on the Project. (DLSE Exhibit No. 4, pp. 30-31; DLSE Exhibit No. 26, p. 212.) The burden was on Roadworks to prove that DLSE abused its discretion in setting the penalty amount under section 1775. For the reasons discussed above, Roadworks did not overcome DLSE’s prima facie showing that it underpaid the total hourly rate required by the applicable prevailing wage determination. Even if Roadworks made a good faith mistake in relying on the wrong prevailing wage determination, there is no evidence that Roadworks promptly and voluntarily corrected its failure to pay the correct prevailing wages when these issues were brought to its attention.

Section 1775, subdivision (a)(2), grants the Labor Commissioner the discretion to mitigate the statutory maximum penalty per day considering prescribed factors, but it does not mandate mitigation in all cases. Further, the Director is not free to substitute her own judgment. The Labor Commissioner imposed a penalty rate of \$100 per violation, which is less than the statutory maximum of \$200. Roadworks has not shown an abuse of discretion in the rate selected by the Labor Commissioner. Accordingly, the assessment of section 1775 penalties at the rate of \$100 for 100 violations in the amount of \$10,000 is affirmed.

The Labor Commissioner Properly Assessed Penalties Under Section 1813 for Roadworks’ Failure to Pay Overtime.

Section 1815 states:

[w]ork 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 at not less than 1½ times the basic rate of pay.

Section 1813 states:

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) 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 1813 prescribes a penalty of \$25 per calendar day for each worker found to have worked overtime without having been paid at the applicable hourly overtime wage rate. As discussed above, the evidence established 30 such violations by Roadworks. Roadworks did not meet its burden to show that the Assessment was incorrect as to finding underpaid overtime owed to workers due under the 2017-2 Laborer PWD. Accordingly, Roadworks is liable for \$750 in penalties assessed under section 1813.

DLSE Presented Prima Facie Evidence of Apprenticeship Violations.

DLSE likewise has the initial burden of presenting evidence that provides prima facie support for the Assessment of apprenticeship penalties. (§ 1777.7, subd. (c)(1); Cal. Code Regs., tit. 8, § 17250, subd. (a).) Sections 1777.5 through 1777.7 set forth the statutory requirements governing the employment of apprentices on public works projects. The apprenticeship requirements apply to public works contracts of \$30,000 or more. (§ 1777.5, subd. (o).) These requirements are further addressed in regulations promulgated by the California Apprenticeship Council. (Cal. Code Regs., tit. 8, §§ 227 to 230.2.)

In general, and unless an exemption applies, 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 journeypersons in the applicable craft or trade. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).) Prior to commencing work on a contract for public works, every contractor must submit contract award information to applicable apprenticeship programs that can supply apprentices to the project. (§ 1777.5, subd. (e).) "The information shall be provided to the applicable committees "within ten (10) days of the date of the execution of the prime contract or subcontract, but in no event later than the first day in which the contractor has workers employed . . ." (Cal. Code

Regs., tit. 8, § 230, subd. (a).) The Division of Apprenticeship Standards (DAS) has prepared a form, the DAS 140, that a contractor may use for that purpose.

A contractor does not violate the requirement to employ apprentices in the 1:5 ratio if it has properly requested dispatch of apprentices and no apprenticeship committee in the geographic area of the public works project dispatched apprentices during the pendency of the project, provided the contractor made the request in enough time to meet the required ratio. The request for dispatch must be made by "written notice of at least 72 hours (excluding Saturdays, Sundays, and holidays) before the date on which one or more apprentices are required." (Cal. Code Regs., tit. 8, § 230.1, subd. (a).) DAS has prepared another form, the DAS 142, that a contractor may use to request dispatch of apprentices from apprenticeship committees.

The Laborer classification is an apprenticeable craft. Here, DLSE investigated on an allegation made by the Center for Contract Compliance that Roadworks did not comply with apprenticeship requirements on the Project. DLSE then relied on the payroll records provided by the City to show that Roadworks did not employ any apprentices on the Project. DLSE requested proof from Roadworks that it submitted contract award information to the applicable apprenticeship programs and requested the dispatch of apprentices to the Project, but received no response from Roadworks. Accordingly, DLSE established a prima facie showing that Roadworks failed to submit contract award information to any apprenticeship programs, failed to request the dispatch of apprentices to the Project, and failed to employ the minimum required ratio of apprentices to journeypersons on the Project. Roadworks provided no evidence to rebut DLSE's prima facie showing.

The Penalty for Noncompliance with Apprenticeship Requirements.

Section 1777.7 provides, in relevant part:

If the Labor Commissioner or his or her designee determines after an investigation that a contractor or subcontractor knowingly violated Section 1777.5, the contractor and any subcontractor responsible for the violation shall forfeit, as a civil penalty to the state or political subdivision on whose behalf the contract is made or awarded, not more than one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of

this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation within a three-year period, if the noncompliance results in apprentice training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance.

(§ 1777.7, subd. (a)(1).) The phrase quoted above -- "knowingly violated Section 1777.5" -- is defined by the regulation, section 231, subdivision (h) which was in effect at both the time of the Project and the Assessment, as follows:

For purposes of Labor Code Section 1777.7, a contractor knowingly violates Labor Code Section 1777.5 if the contractor knew or should have known of the requirements of that Section and fails to comply, unless the failure to comply was due to circumstances beyond the contractor's control. There is an irrebuttable presumption that a contractor knew or should have known of the requirement of Section 1777.5 if the contractor had previously been found to have violated that Section, or the contract and/or bid documents notified the contractor of the obligation to comply with Labor Code provisions applicable to public works projects, or the contractor had previously employed apprentices on a public works project.

Failure to provide a contract award notice is a continuing violation for the duration of the work, starting no later than the first day on which the contractor has workers employed upon the public work, and ending when a notice of completion is filed by the awarding body. (§ 230, subd. (a).) Penalties for that failure, as well as failure to meet the required 1:5 ratio, can be assessed "for each full calendar day of noncompliance . . ." (§ 1777.7, subd. (a)(1).) The determination of the Labor Commissioner as to the penalty is reviewable only for abuse of discretion. (§ 1777.7, subd. (d).) A contractor or subcontractor has the same burden of proof with respect to the penalty determination as to the wage assessment, namely, the affected contractor has the burden of proving that the basis for assessment is incorrect. (Cal. Code Regs., tit. 8, § 17250, subd. (b).)

As discussed above, Roadworks did not employ registered apprentices in the required 1:5 ratio of apprentice to journeyman hours, nor did it submit contract award information to all applicable apprenticeship committees or request the dispatch of apprentices from all applicable apprenticeship committees. Roadworks "knowingly

violated” the ratio requirement because it employed no registered apprentices. Moreover, there is an irrebuttable presumption that Roadworks knew or should have known of the apprenticeship requirements of section 1777.5 applied because the contract documents for the Project notified the contractor and its subcontractors of their obligations to comply with prevailing wage and apprenticeship requirements. Since Roadworks was aware of its obligations under the law yet failed to submit contract award information or request the dispatch of apprentices to all applicable apprenticeship committees, it failed to meet its burden of proof by providing evidence that it complied with section 1777.5. As Roadworks knowingly violated the law, a penalty could be imposed under section 1777.7.

DLSE acknowledged that Roadworks had no prior history of prevailing wage violations. Also, the Senior Deputy Labor Commissioner mitigated the recommended apprenticeship penalties to zero. Thus, no penalties are owed by Roadworks.

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

FINDINGS AND ORDER

1. The work subject to the Civil Wage and Penalty Assessment was performed on a public work and required the employment of apprentices and the payment of prevailing wages under the California Prevailing Wage Law, Labor Code sections 1720 through 1861.
2. The Labor Commissioner served the Civil Wage and Penalty Assessment timely.
3. Roadworks, Inc. filed the Request for Review timely.
4. The Labor Commissioner disclosed its evidence timely.
5. Roadworks, Inc. deposited the amount of \$41,318.57 with the Department of Industrial Relations as a result of the Civil Wage and Penalty Assessment.
6. Roadworks, Inc. failed to pay the required prevailing wages, including underpaid straight-time and overtime as well as underpaid fringe benefits, to workers on the Project in the amount of \$13,700.36.

7. Roadworks, Inc. failed to pay the required training fund contributions for all hours worked on the Project in the amount of \$489.11.
8. The Labor Commissioner did not abuse her discretion in assessing penalties under Labor Code section 1775.
9. Roadworks, Inc. is liable for penalties assessed pursuant to Labor Code section 1775 in the amount of \$10,000.
10. Roadworks, Inc. is liable for penalties assessed pursuant to Labor Code section 1813 in the amount of \$750.
11. Roadworks, Inc. did not employ apprentices in the required minimum ratio of apprentices to journeypersons on the Project.
12. Roadworks, Inc. did not submit contract award information to any of the applicable apprenticeship programs in a timely and factually sufficient manner.
13. Roadworks, Inc. did not submit requests for dispatch of apprentices to any applicable apprenticeship programs.
14. Roadworks, Inc. is liable for penalties under Labor Code section 1777.7 for violating Labor Code section 1777.5; however, DLSE mitigated the penalties to zero.

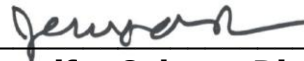
The amounts found due under the Assessment, as affirmed and modified by this Decision, are as follows:

Basis of the Notice	Amount
Wages Due:	\$ 13,700.36
Training Fund Contributions Due:	\$ 489.11
Penalties under section 1775:	\$ 10,000.00
Penalties under section 1813:	\$ 750.00
TOTAL:	\$ 24,939.47

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

The Civil Wage and Penalty Assessment is affirmed and modified 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: 6/1/26



Jennifer Osborn, Director
California Department of Industrial Relations