

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**NR Development, Inc.**

Case No. 21-0139-PWH

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected contractor NR Development, Inc. (NR) submitted a timely Request for Review of a Civil Wage and Penalty Assessment (Assessment) issued on June 16, 2021, by the Division of Labor Standards Enforcement (DLSE) with respect to work NR performed for the Bellflower Unified School District (District or Awarding Body) in connection with the Stephen Foster Elementary School Kitchen Upgrade (Project) located in Los Angeles County. The Assessment determined that NR owed \$16,608.76 in unpaid prevailing wages, training fund contributions, and statutory penalties. A Hearing on the Merits was held on March 1, 2023, before Hearing Officer Steven A. McGinty. Joseph Hart appeared as counsel for DLSE; there was no appearance for NR.

DLSE stipulated that the Request for Review was timely.

The issues for decision are:

- Whether the Project was a public work subject to the payment of prevailing wages and the employment of apprentices under the California Prevailing Wage Law, Labor Code sections 1720 – 1861;<sup>1</sup>
- Whether the Assessment was issued timely.
- Whether the Enforcing Agency timely made its file available to the Requesting Party.
- Whether NR paid the correct prevailing wage rate to its employees in

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<sup>1</sup> All subsequent section references are to the California Labor Code, unless otherwise specified.

the Sheet Metal Worker classification.

- Whether NR paid all training fund contributions due to an applicable apprentice committee or the California Apprenticeship Council.
- Whether DLSE correctly determined the amount of penalties assessed under section 1775.
- Whether NR failed to provide contract award information form DAS 140 to all committees for the Plumber and Sheet Metal Worker classifications within ten days of the date of execution of the prime contract and no later than the first day NR had workers on the Project.
- Whether NR failed to hire at least the minimum ratio of one apprentice for every five journeypersons for the Plumber and Sheet Metal Worker classifications.
- Whether DLSE correctly determined the amount of penalties assessed under section 1777.7.
- Whether NR is liable for liquidated damages under section 1742.1.

For the reasons set forth below, the Director finds that DLSE carried its initial burden of presenting evidence that provided *prima facie* support for the Assessment, in part, and NR thereafter failed to carry its burden of proving that the basis of the Assessment was incorrect, except as otherwise stated herein. (See Cal. Code Regs., tit. 8, § 17250, subds. (a), (b).) Accordingly, the Director issues this Decision affirming but modifying in part the Assessment.

## **FACTS**

### The Project.

The Awarding Body advertised the Project for bid on March 2, 2018.<sup>2</sup> The Project involved renovation of the kitchen and adjacent facilities at Stephen Foster Elementary

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<sup>2</sup> DLSE's Penalty Review states that the Project was advertised for bid on February 23, 2018. (DLSE Exhibit. No. 7, at p. 33.) The record does not disclose where DLSE obtained this date, but both the Contract and the PWC 100 (DLSE Exhibit No. 11)

School. NR was awarded the Project and, on April 13, 2018, entered into a contract to perform the work (Contract). The Contract required payment of prevailing wages by operation of section 11 thereof, which incorporated, *inter alia*, "Prevailing Wage Tables" as "component parts of the Contract as if herein set out in full or attached hereto ...." (DLSE Exhibit No. 10, at pp. 62-63.) The Awarding Body notified the Department of the Contract pursuant to section 1773.3, and provided the information required therein. (DLSE Exhibit No. 11, at pp. 69-70.)

NR employees worked on the Project from May 7, 2018, to October 28, 2018, in the City of Lakewood. On January 21, 2020, a Notice of Completion was recorded with the Los Angeles County Recorder's Office. The president of the Awarding Body's Board of Education therein certified under penalty of perjury that work on the Project was completed on November 6, 2019, and was accepted at a regular meeting of the Board of Education on January 16, 2020.

#### The Assessment.

The Assessment found that NR failed to pay at least the prevailing wage rate for the Sheet Metal Worker classification and failed to pay all training funds due to the California Apprenticeship Council or to an applicable apprenticeship committee. Additionally, the Assessment found that NR failed to submit Contract Award Information (Form DAS 140) to all applicable apprenticeship committees for the Plumber and Sheet Metal Worker classifications; and, failed to employ apprentices in the appropriate trades of Plumber and Sheet Metal Worker in at least the required ratio of one apprentice hour for every five journeyperson hours.

The Assessment found that NR underpaid the required prevailing wages and training fund contributions in the amount of \$1,408.76. Penalties were assessed under section 1775 in the mitigated amount of \$40.00 per violation for 155 violations, in a total amount of \$6,200.00. Penalties were assessed under section 1777.7 in the mitigated amount of \$60.00 per day for 150 days, totaling \$9,000.00.

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state that the bid advertisement date was March 2, 2018. This discrepancy is immaterial since the same Prevailing Wage Determinations would be applicable in either case.

Applicable Prevailing Wage Determinations (PWDs).

Set forth below are the three relevant PWDs that were in effect on the bid advertisement date.

1. Laborer for Southern California (SC-23-102-2-2017-2) (Laborer PWD).

The basic hourly rate for Laborer Group 1 for work performed on or after September 1, 2017, was \$33.19, the combined fringe benefits were \$19.85 per hour, and the training fund contribution rate was \$0.69 per hour, for a total of \$53.73 for each straight-time hour.

2. Plumber for Los Angeles County (LOS-2017-2) (Plumber PWD).

The basic hourly rate for Plumber for work performed from September 1, 2017 through August 31, 2018, was \$44.28, the combined fringe benefits were \$24.16, and the training fund contribution rate was \$1.95 per hour, for a total of \$70.39 for each straight-time hour. A predetermined increase of \$2.15 brought the basic hourly rate to \$46.43, effective September 1, 2018, but did not affect the fringe benefit or training fund rates.

3. Sheet Metal Worker for Los Angeles County (LOS-2017-2) (Sheet Metal Worker PWD).

The basic hourly rate for Sheet Metal Worker for work performed from August 22, 2017 through June 30, 2018, was \$42.78, the combined fringe benefits were \$27.81, and the training fund contribution rate was \$0.82 per hour, for a total of \$71.41 for each straight time hour. A predetermined increase of \$2.00 per hour brought the total hourly rate to \$73.41 for work performed on or after July 1, 2018. A note explained: "The predetermined increase shown is to be allocated to wages and/or employer payments.

Please contact the Office of the Director - Research Unit at (415) 703-4774 when the predetermined increase becomes due to confirm the distribution."

DLSE's audit attributed \$1.50 of the increase to wages, bringing the basic hourly rate to \$44.28, and the remaining \$0.50 to fringe benefits, bringing the total to \$28.31. (DLSE Exhibit No. 1, at page 9.)

The Hearing on The Merits.

At a Prehearing Conference on December 12, 2022, the matter was set for Hearing on the Merits on March 1, 2023. NR did not appear at the Prehearing Conference. The Minutes of Prehearing Conference and Order Setting Hearing on the Merits, dated December 14, 2022, stated (bold text in original):

**NOTICE TO THE REQUESTING PARTY [NR Development, Inc., a California Corporation]**

**Your rights may be adversely affected by your failure to appear and contest the Civil Wage and Penalty Assessment issued against you. The Hearing Officer is authorized under Rule 46 to proceed with the hearing in the absence of. A Party and may recommend whatever decision is warranted by the available evidence, including any lawful inferences that can be drawn by an absence of proof by the non-appearing Party.**

When NR failed to appear for the HOM within 30 minutes after the scheduled hearing time, the Hearing Officer proceeded under the authority of Rule 46, subpart (a) (Cal. Code Regs., tit. 8, § 17246), the language of which is substantially the same as that of the above Notice to Requesting Party. Without objection, DLSE Exhibit numbers 1, 2, 3, 5, 7, 8 and 9 were admitted into evidence.

The only witness to testify was Deputy Labor Commissioner Eric Raktiprakorn. Raktiprakorn testified that his duties include investigation of complaints of prevailing wage violations, but he did not investigate this case. Rather, the case was originally assigned to former Deputy Labor Commissioner Derrick Nguyen, who conducted the investigation and audit, and issued the Assessment on June 16, 2021. In the fall of 2022, Nguyen transferred to another department, and the case was reassigned to Raktiprakorn. Thus, Raktiprakorn's testimony was essentially limited to identifying and explaining exhibits.

At the conclusion of Raktiprakorn's testimony, the Hearing Officer requested that DLSE file and serve the following additional exhibits:

- The contract between the Awarding Body and the Prime Contractor;
- The PWC-100 that was returned by the Awarding Body and the information that came with it;

- The Notice of Completion;
- The CPRs submitted and relied upon by the Deputy; and,
- The DAS 140 that was submitted and alleged to be incomplete.

DLSE filed and served the requested exhibits on or about April 13 and 27, 2023.<sup>3</sup>

Without objection, DLSE Exhibit Numbers 10 through 14 are admitted into evidence.

Underpayment of Wages.

The Assessment found NR liable for unpaid wages due in the amount of \$651.04.

It found that Sheet Metal Worker Amin Abnossian was underpaid by this amount for hours worked between July 2, 2018, and September 2, 2018. It found that no wages were due any other worker. (DLSE Exhibit No. 1, at p. 8.)

DLSE's evidence includes a file note dated December 6, 2021, by Deputy Nguyen stating: "DEF submitted additional proof via email. DLSE atty, Joe Hart, asked to review the proof and revise the audit if necessary." (DLSE Exhibit No. 8, at p. 42.) On the same day, Nguyen wrote to DLSE attorney Hart, stating in part:

Based on the check payment to worker, Armin Abnoosian, I can give them credit for that but the penalty under LC 1775 should remain in place.

...

Please see below for the new amount after my revised audit:

- Wages = \$0

(*Id.* at p. 38.)

While DLSE did not offer the revised audit as an exhibit, Raktiprakorn acknowledged the above statements by Nguyen in his hearing testimony.

Underpayment of Training Fund Contributions.

The Assessment found that NR had underpaid the required training fund contributions by \$757.72. (DLSE Exhibit No. 1, at p. 7.) According to the Penalty Review, NR failed to provide proof of payment of training fund contributions. The California Apprenticeship Council's (CAC) online payment database showed that NR had

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<sup>3</sup> In addition, DLSE filed and served the requested exhibits on February 7, 2024.

submitted two payments, one in the amount of \$64.86 and the other in the amount of \$62.40, for a total of \$127.26. (DLSE Exhibit No. 7, at p. 34.)

DLSE submitted a letter from CAC stating in part: "The California Apprenticeship Council hereby certifies that, according to transactions recorded as of June 8, 2021, the training fund contributions shown below have been received from the contractor above during the last four years. The contributions are sorted by County, Check date, Project and Occupation." (DLSE Exhibit No. 5, at p. 28.) The unsigned single page lists contributions only from August 9, 2019 through January 10, 2020, and none is identified as being for the Project at issue. Moreover, no payments in the amounts stated in the Penalty Review are listed.

Applicable Apprenticeship Committees in the Geographic Area.

DLSE's Penalty Review identified five apprenticeship committees in the geographic area of the Project for the trade of Plumber: Glendale, Burbank, San Fernando Valley & Antelope Valley Plumbers & Steamfitters J.A.T.C., Los Angeles & Vicinity Steamfitters and Industrial Pipefitters J.A.T.C., Los Angeles Metropolitan Plumbers J.A.T.C., Pomona and San Gabriel Valleys Plumbers & Steamfitters J.A.C., and Southern California Chapter of the Associated Builders and Contractors, Inc. Plumbers U.A.C. It identified three apprenticeship committees for the trade of Sheet Metal Worker: Kern & Northern Los Angeles Counties Air Conditioning & Sheet Metal Workers J.A.T.C., Southern California Chapter of the Associated Builders and Contractors, Inc. U.A.C., and the Southern California Sheet Metal J.A.&T.C. Finally, it identified one apprenticeship committee for the trade of Laborer: Laborers Southern California Joint Apprenticeship Committee. (DLSE Exhibit No. 7, at p. 35.)

Notice of Contract Award Information.

NR began work on the Project on May 7, 2018, according to DLSE's Audit Summary. (DLSE Exhibit No. 1, at p. 8.) NR provided DLSE with a copy of a notice of contract award information form (DAS 140) dated May 2, 2018, and faxed that date to the Laborers Southern California J.A.C. (DLSE Exhibit No. 14, at pp. 159-161.) NR

submitted no evidence that it sent such notices to the applicable apprenticeship committees for the Plumber and Sheet Metal crafts. (DLSE Exhibit No. 7, at p. 35.)

Request for Dispatch of Apprentices.

On May 10, 2018, NR sent a request for the dispatch of apprentices (utilizing form DAS 142) to the Laborers Southern California J.A.C. NR submitted no evidence that it sent such requests to the applicable apprenticeship committees for the Plumber and Sheet Metal crafts. (*Ibid.*)

Employment of Apprentices.

DLSE's investigation found that NR employed no apprentices on the Project. Although the minimum number of Laborer apprentice hours on the Project was 123.2, DLSE did not find a ratio violation for the Laborer classification, apparently because NR provided proof that it had submitted a DAS 142 form to the Laborers J.A.C. (DLSE Exhibit No. 7, at p. 36.) DLSE found that the minimum number of apprentice hours was 214 for the Plumber classification and 52 for the Sheet Metal classification. DLSE found ratio violations for both of these classifications. (*Ibid.*)

Assessment of Statutory Penalties.

DLSE's Penalty Review cited two prior assessments against NR. In Case No. 40-67472-757, section 1777.7 penalties were assessed at \$60.00 per violation on April 4, 2020. In Case No. 40-66727-757, section 1775 penalties were assessed at \$40.00 per violation on November 5, 2020.

The investigator made the following recommendation:

The affected contractor, NR Development, Inc., made numerous violations on the Stephen Foster Elementary School Kitchen Upgrade Project. The contractor failed to pay at least the prevailing wage rate to Sheet Metal classification. The contractor underpaid training funds due the California Apprenticeship Council based on the online payment database. In addition, the contractor failed to comply with the obligation to transmit the Contract Award Information (DAS 140) to all applicable apprenticeship committees for Plumber and Sheet Metal classification[s]. The contractor also failed to meet the minimum ratio of five-to-one journey[person] to apprentice ratio for both classifications. Based on the foregoing, I recommend penalties be assessed per violation pursuant to ... Labor Code section[s] 1775 and 1777.7.

(DLSE Exhibit No. 7, at p. 36.)

Penalties were assessed under section 1775 for 155 violations at the mitigated rate of \$40.00 per violation, for a total of \$6,200.00. Penalties were assessed under section 1777.7 for 150 violations at the mitigated rate of \$60.00 per violation, for a total of \$9,000.00, and were unchanged in the amended Assessment. In the Penalty Review, the DLSE investigator explained the basis for finding 150 violations as follows:

Contractor violated Labor Code 1777.7 for failure to submit DAS 140 to all applicable apprenticeship committees for Plumber and Sheet Metal classification[s]. The first day a Plumber journey[person] was on the project was 5/28/18 and the last day the contractor was on the job was 10/26/18 for a total of 150 days of violation. (DLSE Exhibit No. 7 at p. 35.)

## **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 projects. The purpose of the CPWL was summarized by the California Supreme Court as follows:

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

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

Section 1775, subdivision (a), requires, among other provisions, that contractors and subcontractors pay the difference to workers who were paid less than the

prevailing rate, and also prescribes penalties for failing to pay the prevailing rate. Section 1742.1, subdivision (a), provides for the imposition of liquidated damages, essentially a doubling of unpaid wages, if unpaid prevailing wages are not paid within 60 days following the service of a civil wage and penalty assessment under section 1741.

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 may appeal that assessment by filing a Request for Review. (§ 1742.) The Request for Review is transmitted to the Director of the Department of Industrial Relations, who assigns an impartial hearing officer to conduct a hearing in the matter as necessary. (§ 1742, subd. (b).) At the hearing, DLSE has the initial burden of producing evidence that "provides prima facie support for the Assessment ...." (Cal. Code Regs., tit. 8, § 17250, subd. (a).) When that burden is met, "the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment ... is incorrect." (Cal. Code Regs., tit. 8, § 17250, subd. (b); accord, § 1742, subd. (b).) At the conclusion of the hearing process, the Director issues a written decision affirming, modifying or dismissing the assessment. (§ 1742, subd. (b).)

Additionally, employers on public works must keep accurate payroll records, recording, among other information, 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.)

In this case, for the reasons detailed below, the Director determines that, based on the totality of the evidence presented, and except as otherwise noted, DLSE met its initial burden of presenting prima facie support for the Assessment, and that NR failed to meet its burden to prove the basis of the Assessment was incorrect.

The Project Was a Public Work Subject to the Payment of Prevailing Wages and the Employment of Apprentices.

Section 1720, subdivision (a)(1) defines “public works” to mean, among other things: “Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by a public utility company pursuant to order of the Public Utilities Commission or other public authority.” Subdivision (b)(1) provides that “paid in whole or in part out of public funds” means, among other things: “The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.”

Section 1722 in turn provides: “Political subdivision’ includes any county, city, district, public housing authority, or public agency of the state, and assessment or improvement district.” Finally, California Education Code section 17424 provides in part: “The governing board of the school district shall obtain the general prevailing rate of per diem wages from the Director of the Department of Industrial Relations for each craft, classification or type of workman needed for the construction of the building ....” In light of section 1721 and the other statutory provisions quoted above, the Awarding Body is a political subdivision of the state for purposes of section 1720, subdivision (b)(1). Section 2 of the Contract for the Project provides:

The District shall pay to the Contractor as full consideration for the faithful performance of the Contract, subject to any additions or deductions ordered or approved by the District or any Change Order, the lump sum price of Four Hundred Ninety-Nine Thousand Five Hundred (\$499,500) (the “Contract Price”), which shall be payable to the Contractor in progress payments from time to time.

(DLSE Exhibit No. 10, at p. 56.)

Thus, the Contract provides for a political subdivision of the state to directly pay “NR money or the equivalent of money” within the meaning of section 1720, subdivision (b)(1). DLSE has provided *prima facie* support for a finding that the Project is a public work, and NR has not met its burden of proving that proposition incorrect.

The Assessment was Issued Timely.

Section 1741, subdivision (a) requires: "The assessment shall be served 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."

Under Civil Code section 9204, "[a] public entity may record a notice of completion on or within 15 days after the date of completion of a work of improvement," and the notice of completion "shall... include the date of completion." There are two ways this statute makes clear that a notice of completion recorded more than 15 days after the date of completion is invalid. First, as quoted above, the statute expressly does not permit recordation of a notice of completion more than 15 days after the date of completion. Second, the statute states that if the notice of completion states an erroneous date of completion, the notice is still effective only if "the true date of completion is 15 days or less before the date of recordation of the notice." (*Id.*)

Here the Notice of Completion was filed on January 21, 2020, and stated that the work had been completed on November 6, 2019. (DLSE Exhibit No. 12, at p. 73.) There is no evidence disputing this completion date; however, the Notice was filed more than 15 days thereafter, and is therefore invalid under Civil Code section 9204.

Since there was no filing of a valid Notice of Completion, a determination must be made under section 1741, subdivision (a) as to the date of the acceptance of the Project. "Formal acceptance has been defined as that date at which someone with authority to accept does accept unconditionally and completely. [citation.] It is not necessary that the acceptance be embodied in a formal resolution." (*Madonna v. State of California* (1957) 151 Cal.App.2nd 836, 840.) Here Notice of Completion included a declaration under penalty of perjury by the president of the Awarding Body's Board of Education attesting that (1) the work was completed on November 6, 2019, and (2) "[t]he notice of completion was accepted at a regular meeting of the Board of Education on January 16, 2020." (DLSE Exhibit No. 12, at p. 73.) This appears to be an unconditional and complete acceptance by the Awarding Body's governing board, and

there is no evidence of acceptance at an earlier date. The Assessment was issued and served on June 16, 2021, 17 months after the acceptance date, and thus was timely under section 1741, subdivision (a).

The Enforcing Agency Timely Made Its File Available to the Requesting Party.

Rule 24, subpart (a) provides: "Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall . . . notify the Affected Contractor or Subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing on the Request for Review." NR's Request for Review was dated July 15, 2021, and stamped "Received" by DLSE's Long Beach office on July 20, 2021. The Hearing Officer's file includes a Notice of Transmittal and Notice of Opportunity to Review Evidence, along with a Proof of Service with a declaration under penalty of perjury that both documents were served by first class mail on NR on July 29, 2021. DLSE, having served the required notice within ten days, timely made its file available to NR.

NR Failed to Pay the Proper Prevailing Wage Rate for Sheet Metal Worker, But Subsequently Paid the Worker the Amount Due.

The Assessment found that NR employed one Sheet Metal Worker, Armin Abnoosian, from July 2, 2018 through September 2, 2018, and underpaid him in the amount of \$651.04. DLSE's audit showed that NR paid Abnoosian a total hourly rate of \$60.07 for all 52 hours worked, and made no additional fringe benefit payments. (DLSE Exhibit No. 1, at p. 8.) NR's CPRs confirm these findings. (DLSE Exhibit No. 13.) DLSE's investigating deputy, Nguyen, acknowledged in his email to Hart, however, that NR sent a check to Abnoosian for the unpaid wages owed, on or about July 15, 2021. He further stated that "after my revised audit" \$0 wages were due. (DLSE Exhibit No. 7, at p. 38.)

Rule 26, subpart (a)(1) provides: "An Assessment . . . may be dismissed or amended to eliminate or reduce all or part of any claim for wages, damages, or penalties that has been satisfied or that is not warranted under the facts and circumstances of the case or to conform to an order of the Hearing Officer or the Director." It would have been appropriate for DLSE to move to amend the Assessment, but it did not. It is undisputed that NR paid Abnoosian the wages owed him, the

preponderance of the evidence supports a finding that no unpaid wages are owing, and the Assessment must be modified accordingly.

NR Failed to Pay All Training Fund Contributions Due to an Applicable Apprentice Committee or the California Apprenticeship Council.

The Assessment found that NR had underpaid the required training fund contributions by \$757.72. (DLSE Exhibit No. 1, at p. 7.) The Audit Summary shows that total contributions of \$884.98 were required, but only \$127.26 was paid. (*Id.* at p. 8.)

DLSE's Penalty Review states: "The CONTRACTOR did not provide proof of payment for the training fund contributions." (DLSE Exhibit No. 7, at p.24.) It states that NR made one payment of \$64.86 and another payment of \$62.40, for a total of \$127.28, and that the "amounts were taken directly from the California Apprenticeship Council online payment database," but does not disclose the dates of the payments. (*Ibid.*) A letter generated by the CAC database lists only payments dated August 9, 2019 through January 10, 2020, and lists no payments attributed to this Project. (DLSE Exhibit No. 5, at p. 28.)

In light of the above, the preponderance of the evidence supports a finding that NR underpaid training fund contributions by \$757.72, and the Assessment must be affirmed in this regard.

DLSE's Penalty Assessment Under Section 1775.

Former section 1775, subdivision (a), as it read at the time the District advertised for bids on the Project, 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:
  - (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.

. . .

- (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 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 on the basis of NR's underpayment of

prevailing wages to one employee and its underpayment of training fund contributions. NR remained liable for penalties on the latter ground irrespective of its subsequent payment of wages due the employee. Penalties were assessed at the rate of \$40 per violation, the lowest amount permitted by section 1775. DLSE lacked discretion to set a lower penalty rate, and accordingly there was no abuse of discretion. Accordingly, the Assessment must be affirmed as to section 1775 penalties.

NR Is Not Liable for Liquidated Damages.

Section 1742.1, subdivision (a), provides for the imposition of liquidated damages upon the contractor, essentially a doubling of the unpaid wages. It provides in part:

After 60 days following the service of a Civil Wage and Penalty Assessment under Section 1741 . . . , 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 Assessment . . . 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.

The statutory scheme regarding liquidated damages provide contractors three alternative means to avert liability for liquidated damages (in addition to prevailing on the case or settling the case with DLSE and DLSE agreeing to waive liquidated damages). These require the contractor to make key decisions within 60 days of the service of the CWPA on the contractor.

First, the above-quoted portion of section 1742.1, subdivision (a), states that the contractor shall be liable for liquidated damages equal to the portion of the wages "that still remain unpaid" 60 days following service of the CWPA. Accordingly, the contractor has 60 days to decide whether to pay to the workers all or a portion of the wages assessed in the CWPA, and thereby avoid liability for liquidated damages on the amount of wages so paid.

Second, under section 1742.1, subdivision (b), a contractor can entirely avert liability for liquidated damages if, within 60 days from issuance of the CWPA, the contractor deposits into escrow with DIR the full amount of the assessment of unpaid

wages, plus the statutory penalties under sections 1775. Section 1742.1, subdivision (b), states in this regard:

Notwithstanding subdivision (a) there shall be no liability for liquidated damages if the full amount of the assessment..., including penalties, has been deposited with the Department of Industrial Relations, within 60 days of the service of the assessment..., for the department to hold in escrow pending administrative and judicial review.

In this case, the Assessment was served on June 21, 2021, and found that worker Armin Abnoosian was underpaid by \$651.04. On or about July 15, 2021, NR paid Abnoosian the full \$651.04. (DLSE Exhibit No. 8, at p. 38.) Since payment was made within 60 days after service of the Assessment, NR is not liable for liquidated damages on unpaid wages owed to Abnoosian.

The Assessment also found that NR underpaid Training Fund contributions in the amount of \$757.72. While this amount remains owing, Training Fund contributions are not subject to liquidated damages, which apply only to unpaid wages.

For the foregoing reasons, NR is not liable for liquidated damages.

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

Sections 1777.5 through 1777.7 set forth the statutory requirements governing the employment of apprentices on public works projects. These requirements are further addressed in regulations promulgated by the California Apprenticeship Council at California Code of Regulations, title 8, sections 227 to 230.2.<sup>4</sup>

Section 1777.5 subdivision (e) states in part:

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

Further, 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 (unless the contractor is exempt, which is inapplicable to

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<sup>4</sup> All further references to the apprenticeship regulations are to the California Code of Regulations, title 8.

the facts of this case). (§ 1777.5, subd. (g); § 230.1, subd. (a).) In addition, regulation 230.1(a) provides:

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

Thus, the contractor is required to both notify apprenticeship programs of upcoming opportunities for training and work, and to request dispatch of apprentices. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).) When DLSE determines that a violation of the apprenticeship laws has occurred, it issues an assessment pursuant to section 1777.7.

There Were Nine Applicable Committees in the Geographic Area.

DLSE established that there were five applicable apprenticeship committees for Plumber, three applicable committees for Sheet Metal Worker, and one applicable committee for Laborer in the geographic area of the Project.

NR Failed to Properly Notify All of the Applicable Committees of Contract Award Information.

DLSE established that NR failed to notify any of the applicable committees for the Plumber and Sheet Metal Worker trades of contract award information. NR offered no evidence to the contrary. Accordingly, NR has not met its burden of proving that the Assessment was incorrect in finding that it failed to notify all applicable apprentice committees of its public works contract and thereby violated section 1777.5, subdivision (e) and the applicable regulation, section 230, subdivision (a).

NR Failed to Request of All Applicable Committees the Dispatch of Plumber and Sheet Metal Apprentices.

All requests for dispatch of apprentices must be in writing and provide at least 72 hours' notice of the date on which one or more apprentices are required. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).) DLSE established that NR made no such request of any of the applicable committees for the Plumber and Sheet Metal Worker trades. NR produced no evidence that it complied with the above regulation in this respect, and accordingly failed to meet its burden of proving the Assessment incorrect.

NR Failed to Employ Plumber and Sheet Metal Worker Apprentices in the Required Ratio.

Plumber was one of the apprenticeable crafts at issue in this matter. DLSE introduced evidence showing that Plumber journeypersons began work on the Project on May 28, 2018, and last worked on the Project on August 19, 2018. The Assessment found that NR employed Plumber journeypersons for 214 hours on the Project. Thus, according to the Assessment, to meet the one to five ratio, NR was required to employ Plumber apprentices for a total of 42.8 hours. NR employed no Plumber apprentices.

Sheet Metal Worker was also an apprenticeable craft used on this Project. DLSE introduced evidence showing that a Sheet Metal Worker journeyperson began work on the Project on July 2, 2018, and last worked on the Project on September 2, 2018. The Assessment found that NR employed a Sheet Metal Worker journeyperson for 52 hours on the Project. Thus, according to the Assessment, to meet the one to five ratio, NR was required to employ a Sheet Metal Worker apprentice for a total of 10.4 hours. NR employed no Sheet Metal Worker apprentice.

Accordingly, the record establishes that NR violated section 1777.5 and the related regulation, section 230.1, in its failure to meet the required one to five apprentice to journeyperson hour ratios. Thus, DLSE's evidence constitutes *prima facie* support for the imposition of penalties in the Assessment. NR, in turn, presented no evidence to disprove the bases for or the accuracy of the Assessment.

The Penalty for Noncompliance.

In this case, DLSE based section 1777.7 penalties on NR's failure to submit contract award information as required by section 1777.5, subdivision (e), and section 230, subdivision (a) of the applicable regulations. Section 230, subdivision (a) states as follows:

Failure to provide contract award information, which is known by the awarded contractor, shall be deemed to be a continuing violation for the duration of the contract, ending when a Notice of Completion is filed by the awarding body, for the purpose of determining the accrual of the penalties under Labor Code Section 1777.7

Thus, per the regulation, a failure to provide contract award information is a violation that runs throughout the duration of the contract. DLSE imposed a mitigated penalty rate of \$60 (down from the statutorily permitted \$100) for each of 150 days of noncompliance, based on the period from the day after the first day a Plumber journeyperson worked on the Project through the last day NR worked on the Project. (These penalties were assessed on the basis of NR's failure to notify all applicable committees; no additional penalties were assessed for the additional section 1777.5 violations found.)

NR failed to establish that the Labor Commissioner abused her discretion in assessing section 1777.7 penalties at the rate of \$60 per violation. Accordingly, as determined by DLSE and specified in the Assessment, NR is liable for 1777.7 penalties at \$60 per violation for 150 days, for a total amount of \$9,000.

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

### **FINDINGS AND ORDER**

1. The Project was a public work subject to the payment of prevailing wages and the employment of apprentices.
2. The Civil Wage and Penalty Assessment was timely served by DLSE in accordance with section 1741.
3. Affected contractor NR Development, Inc., filed a timely Request for Review of the Civil Wage and Penalty Assessment issued by DLSE with respect to the Project.
4. DLSE timely made available to NR Development, Inc., its enforcement file.
5. Wages in the amount of \$651.04 were paid as a result of the Assessment.
6. NR Development, Inc. failed to pay \$757.72 in required training fund contributions.
7. The Labor Commissioner did not abuse her discretion in assessing penalties under Labor Code section 1775 at the rate of \$40 per violation for 155 violations, resulting in the aggregate sum of \$6,200.

8. NR Development, Inc. is not liable for liquidated damages.
9. There were five applicable apprenticeship committees in the geographic area of the Project in the craft of Plumber: Glendale, Burbank, San Fernando Valley & Antelope Valley Plumbers and Steamfitters J.A.T.C.; Los Angeles & Vicinity Steamfitters and Industrial Pipefitters; Los Angeles Metropolitan Plumbers J.A.T.C.; Pomona and San Gabriel Valleys Plumbers & Steamfitters J.A.C.; and Southern California Chapter of the Associated Builders & Contractors, Inc. Plumbers U.A.C.
10. There were three applicable apprenticeship committees in the geographic area of the Project in the craft of Sheet Metal Worker: Southern California Chapter of Associated Builders and Contractors, Inc. (ABC) Sheet Metal U.A.C.; Kern & Northern Los Angeles Counties Air Conditioning and Sheet Metal Workers J.A.T.C.; and Southern California Sheet Metal J.A.&T.C.
11. NR Development, Inc. failed to issue a Notice of Contract Award Information to any of the applicable apprenticeship committees for the crafts of Plumber and Sheet Metal Worker.
12. NR Development, Inc. failed to properly request dispatch of Plumber or Sheet Metal Worker apprentices from any applicable apprenticeship committees in the geographic area of the Project, and it was not excused from the requirement to employ apprentices under Labor Code section 1777.5.
13. NR Development, Inc. violated section 1777.5 by failing to employ apprentices in the crafts of Plumber and Sheet Metal Worker on the Project in the minimum ratio required by the law.
14. The Labor Commissioner did not abuse her discretion in setting section 1777.7 penalties at the rate of \$60.00 per violation for 150 violations, and such penalties are due from NR Development, Inc. in the amount of \$9000.00.

15. The amount found due in the Assessment is affirmed as modified by this Decision as follows:

<b>Basis of the Assessment</b>	<b>Amount</b>
Training Fund Contributions:	\$ 757.72
Penalties under section 1775:	\$ 6,200.00
Penalties under section 1777.7:	\$ 9,000.00
<b>TOTAL:</b>	<b>\$15,957.72</b>

The Civil Wage and Penalty Assessment is affirmed in part and modified in part 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: 1/16/26

  
**Jennifer Osborn, Director**  
California Department of Industrial Relations