

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Anthony Louis Hackney, an individual,  
doing business as C & T Electrical  
and Communications**

Case No.: 21-0232-PWH

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected subcontractor Anthony Louis Hackney, an Individual, doing business as C&T Electrical and Communications (C&T) submitted a timely request for review of an Amended Civil Wage and Penalty Assessment (Assessment) issued on September 21, 2021, by the Division of Labor Standards Enforcement (DLSE) with respect to C&T's installation of portable offices (Project) for the Rancho Santiago Community College District (District or Awarding Body), in Orange County. The Assessment indicated the following amounts were due: \$13,859.37 in unpaid prevailing wages, \$455.29 in training fund contributions, \$80,575 in statutory penalties.

On June 1, 2022, Hearing Officer Mirna Solís held a Hearing on the Merits. Luong Chau appeared as counsel for DLSE. There was no appearance by C&T. DLSE Deputy Labor Commissioner, Monica Curi (Curi), testified in support of the Assessment. The issues for decision are:

1. Whether the work subject to the Assessment was performed on a public work and required the payment of prevailing wages and the employment of apprentices.
2. Whether DLSE served the Assessment timely.
3. Whether DLSE provided C&T with a reasonable opportunity to review evidence it intended to utilize at the hearing.

4. Whether C&T paid back wages or deposited the full amount of the Assessment with the Department of Industrial Relations following the issuance of the Assessment.
5. Whether C&T paid the correct prevailing wages on the Project.
6. Whether C&T paid all the required training fund contributions.
7. Whether C&T is liable for penalties assessed pursuant to sections 1775 and 1813.
8. Whether C&T is liable for liquidated damages.
9. Whether C&T is liable for section 1776, subdivision (h) penalties.
10. Whether C&T transmitted contract award information (DAS 140 or equivalent) in a timely and factually sufficient manner to all applicable apprenticeship committees for the apprenticeable classifications of Electrician and Laborer in the geographic region of the Project.
11. Whether C&T employed apprentices on the Project in the minimum ratio required by section 1777.5 for the Laborer classification.
12. Whether C&T is liable for penalties assessed pursuant to section 1777.7.

For the reasons set forth below, the Director of Industrial Relations finds that DLSE carried its initial burden of presenting evidence at the Hearing that provided prima facie support for the Assessment, and C&T failed to carry its burden of proving that the basis of the Assessment was incorrect. (See Cal. Code Regs., tit. 8, § 17250, subds. (a), (b).) Accordingly, the Director issues this Decision affirming the Assessment.

## **FACTS**

### Failure to Appear.

On November 24, 2021, C&T filed a Request for Review dated November 1, 2021. (DLSE Exhibit No. X, pp. 946-958.) The Request for Review was on C&T's letterhead, which contained C&T's business address: 28364 S. Western Ave., #491 Rancho Palos Verdes, California 90275 (hereinafter, RPV address). The letterhead also indicated that C&T used the following email address: [cnelectrical@gmail.com](mailto:cnelectrical@gmail.com). The Hearing Officer used the RPV address and the email address or service of all notices

and documents in this matter. The Hearing Officer's assistant added both addresses to the Official Address Record.

On February 7, 2022, the Hearing Officer's assistant mailed and emailed to C&T a "Notice of Assignment of Hearing Officer; Notice of Prehearing Conference; and Preliminary Orders." The Notice indicated that a Prehearing Conference was scheduled for March 4, 2022.

On March 4, 2022, C&T failed to appear at the Prehearing Conference. Counsel for DLSE stated she attempted to contact C&T by various means to no avail. The Prehearing Conference was continued to afford C&T an opportunity to participate. The Minutes of Prehearing Conference for March 4, 2022, included the following notice:

**NOTICE TO THE REQUESTING PARTY**

**C&T Electrical and Communications:**

**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.**

(Emphasis (bold) in original.). The Minutes of Prehearing also indicated that the Prehearing Conference was continued to April 11, 2022. The Hearing Officer's assistant mailed and emailed to C&T the Minutes of Prehearing Conference; and Order Continuing Prehearing Conference using the addresses on the Official Address Record.

On April 11, 2022, C&T failed to appear at the Prehearing Conference. The Hearing Officer scheduled a Hearing on the Merits for June 1, 2022. The Order Setting Hearing on the Merits included the Notice about the consequence of failure to appear included above, addressed to C&T, which notified C&T that its rights could be adversely affected by their failure to appear. Again, the Hearing Officer's assistant mailed and emailed to C&T the Order Setting Hearing on the Merits using the addresses on the Official Address Record.

On June 1, 2022, C&T failed to appear at the Hearing on Merits. The Hearing Officer proceeded to conduct the duly noticed Hearing on the Merits to formulate a

recommended decision as warranted by the evidence. (See Cal. Code Regs., tit. 8, § 17246, subd. (a) [“Upon the failure of any Party to appear at a duly noticed hearing, the Hearing Officer may proceed in that Party’s absence and may recommend whatever decision is warranted by the available evidence, including any lawful inferences that can be drawn from an absence of proof by the non-appearing Party”].) At the Hearing, DLSE moved Exhibits 1 through 18 into evidence. The exhibits were admitted into evidence. DLSE called Curi to testify about the Project, the Complaint, the investigation, and the Assessment. Following the Hearing on the Merits, the Hearing Officer prepared Minutes and had her assistant served the Minutes on all parties, including C&T using the addresses and email on the Official Address Record.

### The Project

On February 10, 2019, the Awarding Body published its bid invitation for the Project. The bid advertisement, indicated that, “[t]he Contractor and all Subcontractors performing any portion of the Work shall pay not less than the applicable prevailing wage rate for the classification of labor provide [*sic*] by their respective workers in prosecution and execution of the Work.” (DLSE Exhibit No. 3, p. 27.) Further, all Contractors and Subcontractors must be DIR registered contractors. (*Ibid.*) On April 17, 2019, R2Build, the prime contractor on the Project, and the Awarding Body executed the prime contract (Contract) for R2Build to install portable offices for the Safety and Security Department at the District’s Santiago Canyon College Campus. The Project was completed on February 29, 2020. On March 23, 2020, the District’s governing board accepted the Project as complete. On March 24, 2020, the District’s Vice Chancellor executed the Notice of Completion. (DLSE Exhibit No. 4, pp. 33-34.) However, it is unclear if and when a Notice of Completion was filed with the County’s Register Recorder.

Curi testified that C&T was a subcontractor on the Project. It is unclear from the record when R2Build contracted with C&T. Nevertheless, R2Build had C&T’s Certified Payroll Records (CPRs) and provided them to DLSE. According to the CPRs, C&T

employed 11 workers.<sup>1</sup> The first C&T employee on the Project was an employee in the Laborer Group 1 classification, who worked only on July 22, 2019, and July 23, 2019. The CPRs also identified two Laborer Group 3 workers, but the majority of the workers identified on the CPRs were in the classification of Electrician/Inside Wireman (Inside Wireman) and Inside Wireman Apprentice. According to the CPRs, the majority of work was performed in the Fall of 2019.

#### Applicable Prevailing Wage Determinations

The following were the applicable prevailing wage determinations and scopes of work in effect for work performed in Orange County on the bid advertisement date:

- The applicable prevailing wage determination for Inside Wireman was ORA-2018-2 (IW PWD). According to the IW PWD, the total prevailing hourly wage rate was \$64.09, allocated as follows: \$43.76 basic hourly rate, \$8.01 to health and welfare, \$10.39 to pension, \$0.35 to training funds, and \$0.27 to other payments. Effective February 25, 2019, a \$0.60 predetermined increase allocated to wages and/or employer payments was required.
- The applicable prevailing wage determination for Inside Wireman Apprentice was 2018-2 (IW App. PWD). For an Inside Wireman Apprentice Group 1 the total prevailing hourly wage rate is \$23.06, allocated as follows: \$15.32 basic hourly rate, \$5.41 to health and welfare, \$1.71 to pension, \$0.35 to training funds, and \$0.27 to other payments.

For Inside Wireman Apprentice Group 5 the total prevailing hourly wage rate was \$40.07, allocated as follows: \$30.63 basic hourly rate, \$5.41 to health and welfare, \$3.41 to pension, \$0.35 to training funds, and \$0.27 to other payments.

For Inside Wireman Apprentice Group 7 the total prevailing hourly wage rate is \$47.38, allocated as follows: \$37.20 basic hourly rate, \$5.41 to health and welfare, \$4.15 to pension, \$0.35 to training funds, and \$0.27 to other payments.

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<sup>1</sup> The total number of workers on the job was 12. One worker was unreported.

The IW App. PWD indicated that, “[t]here may be corresponding predetermined increase(s) to the apprentices associated with the journey[person] craft/classification.” (DLSE Exhibit No. 11, p. 914.)

- The applicable prevailing wage determination for the Laborer classification was SC-23-102-2-2018-1 (Laborer PWD). For the Labor Group 1, the total prevailing hourly wage rate was \$55.73, allocated as follows: \$34.24 basic hourly rate, \$7.32 to health and welfare, \$4.84 to vacation/holiday, \$8.03 to pension, \$0.69 to training funds, and \$0.61 to other payments.

For the Laborer Group 3, the total prevailing hourly wage rate was \$56.83, allocated as follows: \$35.34 basic hourly rate, \$7.32 to health and welfare, \$4.84 to vacation/holiday, \$8.03 to pension, \$0.69 to training funds, and \$0.61 to other payments.

Effective July 1, 2019, a \$2.05 predetermined increase was required, allocated as follows: \$1.00 basic hourly rate, \$0.15 to health and welfare, \$0.87 to pension, and \$0.03 to vacation.

### The Assessment

Curi testified she relied on C&T’s CPRs provided by R2Build to determine C&T did not pay prevailing wages. For the Laborers and Inside Wiremen, C&T failed to include predetermined increases in workers’ wages.

In addition, Curi testified C&T failed to report Vel Smith as a worker. Based on the employee questionnaire, Smith’s calendar, and checks from C&T, Curi found that C&T owed Smith wages.<sup>2</sup> Some C&T checks to Smith bounced, but Curi provided a credit for one check that cleared. For the week ending January 20, 2019, Curi credited C&T with \$2,708.00 based on a check Smith received from R2Build.

C&T also misclassified Donald Ebarb. For the weeks ending August 25, 2019, September 1, 2019, and September 8, 2019, C&T classified Ebarb as an Inside Wireman Apprentice. According to the CPRs, Ebarb was working alone as an Inside Wireman

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<sup>2</sup> Smith was the only worker to submit an employee questionnaire.

without a journeyman present. Consequently, Curi upgraded Ebarb to the journeyman level for those weeks.

In addition, Ebarb was owed wages for the week ending August 18, 2019. The CPR for that work week showed Ebarb was paid at the incorrect rate of \$48.21 an hour. According to Curi, the correct prevailing wage rate for an Inside Wireman Apprentice Group 7 was \$48.76.<sup>3</sup>

With respect to training funds, C&T did not provide any proof of payment of training funds. Curi confirmed with the California Apprenticeship Council (CAC) that C&T made no payments for any project in Orange County in 2019.

#### Section 1775 and 1813 Penalties

DLSE determined there were 135 instances where C&T failed to pay prevailing wages. According to the Penalty Review, C&T did not have previous violations. Relying on the CPRs, Curi found a violation for each day of work for which a worker was not paid prevailing wages. Curi testified she initially recommended \$200 per violation, but the amount was reduced by a Senior Deputy Labor Commissioner to \$120 per violation. The penalties assessed under section 1775 total \$16,200.

The Assessment imposed section 1813 statutory penalties at the mandatory rate of \$25 per violation. According to the Penalty Review and the Assessment, there were 13 instances where C&T failed to pay overtime wages. At \$25 per violation, C&T were assessed a total of \$325 in section 1813 penalties.

#### DLSE's Request for Documents and Section 1776 Penalties

On July 16, 2020, DLSE served C&T with a "Request for Documents," in which DLSE requested CPRs and other documents (Initial Request). A certified return receipt from the United States Postal Service (USPS) confirmed the Initial Request was received by C&T on July 18, 2020. C&T was required to respond 10 days after receipt of the Initial Request, but failed to respond.

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<sup>3</sup> A certification letter from the Division of Apprenticeship Standards identified Ebarb as a registered Electrician Apprentice, beginning on July 2, 2015. On October 19, 2020, Ebarb's registration as an Electrician Apprentice ended.

On July 21, 2021, DLSE served C&T with another Request for Documents (Second Request). Again, USPS's certified returned receipt confirmed the Second Request was delivered to C&T on July 23, 2021. August 2, 2021, was the due date to respond to the Second Request, but C&T failed to respond.

DLSE assessed penalties for C&T's failure to provide requested documents, including CPRs. Curi testified the 1776 penalties were calculated from the date C&T was required to respond to the Second Request until the day the initial Assessment was issued. Curi counted 49 days from August 2, 2021, the response due date to the Second Request until September 20, 2021, when the initial Assessment was issued. Section 1776 penalties were calculated at a rate of \$100 per day per worker. A rate of \$100 a day, for 12 workers, for a total of 49 days, equaled \$58,800 in section 1776 penalties.

#### Apprenticeship Requirements

There were three applicable apprenticeship committees for the Inside Wireman classification in the geographic area of the Project. The three committees were: the Orange County Electrical J.A.C., the Southern California Chapter of The Associated Builders & Contractors, Inc. Electrical U.A.C., and the Western Electrical Contractors Assoc. Inc. (W.E.C.A.) Apprenticeship and Training Committee.

For the Laborer Classification there were two applicable apprenticeship committees in the geographic area of the Project. The two committees were: the Associated General Contractors of America, San Diego Chapter, and the Laborers Southern California Joint Apprenticeship Committee.

On April 23, 2019, well before the July 2019, start date, C&T sent a "Public Works Contract Award Information" form, known as a Division of Apprenticeship Standards (DAS) form 140 or "DAS 140" to the Orange County Electrical J.A.C. C&T did not send a DAS 140 to the other two apprenticeship committees for Inside Wireman classification.

Regarding "Requests for Dispatch" form, known as the "DAS 142," C&T failed to send a DAS 142 to all of the applicable apprenticeship committees. According to the Penalty Review, on April 22, 2019, C&T sent a DAS 142 only to the Orange County

Electrical J.A.C. C&T did not send a DAS 142 to the other two apprenticeship committees for the Inside Wireman classification.

C&T did not send a DAS 140 or DAS 142 to either of the two of the applicable apprenticeship committees for the Laborer classification.

With respect to employment of apprentices, C&T employed Inside Wireman apprentices on the Project in sufficient numbers. However, for the Laborer classification, the total journeyman hours worked were 371, requiring the use of 74.2 apprentice hours, but no Laborer apprentices were employed on the job.

According to the Penalty Review, penalties under section 1777.7 were assessed at the rate of \$30 per violation for 175 days, for a total of \$5,250. DLSE chose the \$30.00 rate based on C&T's lack of prior violations, the nature of the violations, and the harm caused to the apprenticeship programs. The penalty was imposed due to C&T's failure to send the DAS 140 form to all the apprenticeship committees for the Inside Wireman Classification. Curi testified the violation started on July 23, 2019, the second day an Inside Wireman Journeyman was on the Project, until January 13, 2020, the last day an Inside Wireman Journeyman was on the Project.

## **DISCUSSION**

The California Prevailing Wage Law (CPWL), set forth at Labor Code sections 1720 et seq., requires the payment of prevailing wages to workers employed on public works construction 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, supra*, at p. 985.) Section 1775, subdivision (a), requires that contractors and subcontractors pay the difference to workers who were paid less than the prevailing wage rate, and prescribes penalties for failing to pay the prevailing wage rate. Section 1742.1, subdivision (a), provides for the imposition of liquidated damages (essentially a doubling of the unpaid wages) if the unpaid wages are not paid within 60 days following 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 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 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 presenting evidence that “provides prima facie support for the Assessment . . .” (Cal. Code Regs., tit. 8, § 17250, subd. (a).) When that burden is met, “the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment . . . is incorrect.” (Cal. Code Regs., tit. 8, § 17250, subd. (b); accord, § 1742, subd. (b).) At the conclusion of the hearing process, the Director issues a written decision affirming, modifying or dismissing the assessment. (§ 1742, subd. (b).)

The 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,…” 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.”

Here the District, a political subdivision, solicited bids for a contract from contractors registered with DIR to pay for Safety Portable Offices. C&T in turn employed workers in the classification of Inside Wireman and Laborer in prosecution and execution of the work required by the contract. Thus, DLSE provided prima facie support for a finding that the Project was a public work, and C&T did not meet its burden of proving that the Project was not a public work.

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.”

Here, while there was evidence that the Notice of Completion was prepared, there was no evidence that it was filed. 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 the Notice of Completion included a declaration under penalty of perjury by the Vice Chancellor—Business Fiscal Services of the Awarding Body attesting that (1) the work was completed on February 29, 2020, and (2) “accepted by formal action by the governing Board of said District on the 23rd day of March 2020.” (DLSE Exhibit No. 4, at p. 33.) 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 September 21, 2021, within 18 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." C&T's Request for Review was dated November 1, 2021, post marked November 24, 2021, and stamped "Received" by DLSE's Long Beach office on November 29, 2021. (DLSE pp. 946-958.) 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 C&T on December 8, 2021. (DLSE Exhibit No. 18, pp. 939-945.) DLSE, having served the required notice within ten days, timely made its file available to C&T.

C&T Underpaid Prevailing Wages.

DLSE carried its burden of providing prima facie evidence that C&T failed to pay prevailing wages. While DLSE encountered challenges in conducting its investigation as a result of C&T's failure to respond to repeated Requests for Documents, DLSE obtained some of C&T's payroll records from R2Build. Based on the partial payroll records available to DLSE, C&T did not utilize the correct prevailing wage rate for Laborers, Inside Wiremen, and Inside Wiremen Apprentices. Specifically, C&T failed to pay an unreported worker (Vel Smith), failed to include predetermined increases in rates of pay, and employed an Inside Wireman Apprentice on the job without the presence of an Inside Wireman Journeyman resulting in the re-classification and a higher rate of prevailing wages owed. Accordingly, DLSE provide prima facie support for the Assessment.

C&T failed to carry its burden of showing the Assessment was incorrect. (Cal. Code Regs. tit. 8, § 17250, subd. (b).) In C&T's November 1, 2021, Request for Review, it briefly identified alleged discrepancies in the audit which was the basis for the Assessment. However, C&T's allegations are insufficient to meet C&T's burden of

proving the Assessment is incorrect. C&T did not appear at the duly noticed Hearing on Merits to present witness testimony under oath nor was any other type of evidence or argument presented. Accordingly, this Decision affirms the Assessment's finding that C&T is liable for unpaid wages in the amount of \$13,859.37.

C&T is liable for Unpaid Training Fund Contributions.

DLSE's evidence showed C&T failed to pay the required training fund contributions. Section 1771 requires that all workers on a public work receive at least the general prevailing wage, which includes a training fund contribution to the California Apprenticeship Council (CAC) or an approved apprenticeship program that can supply apprentices to the site of the public works project.

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

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

Under section 1777.5, subdivision (m)(1), a contractor has a choice: it may make training fund contributions to the CAC, to the local apprenticeship committees, or to both, with credit for payments made to committees. The amount due for those training fund contributions, as an element of the required prevailing wage, is calculated according to the Director's prevailing wage determinations for each craft for which journeypersons are employed on a project. (Cal. Code Regs., tit. 8, § 230.2, subd. (a).) Training fund contributions paid to the CAC are distributed first for expenses of the Division of Apprenticeship Standards (DAS), and then to applicable apprenticeship programs. Where there is only one applicable program in the same occupation for which contributions were made, the contributions will be distributed to that program.

Where there are two or more applicable programs, the contributions will be distributed to each such program in proportion to the total number of registered apprentices. (Cal. Code Regs., tit. 8, § 230.2, subd. (d).)

DLSE confirmed with the CAC that C&T failed to pay training funds contributions for work on the Project. According to a letter from the CAC, C&T paid no training funds on any project in Orange County in 2019. The summary audit worksheets show the amount of training funds owed per worker. The amounts due are based on the hours worked and the required training fund contribution per the applicable prevailing wage determination. In total, DLSE determined that C&T owed \$455.29 in training fund contributions.

C&T failed to present evidence contesting the owed training fund contribution. Consequently, C&T did not carry its burden of proving the Assessment is incorrect. This Decision affirms the Assessment's determination that C&T is liable for \$455.29 in training fund contributions.

DLSE Did Not Abuse Its Discretion by Assessing Penalties Under Section 1775 at \$120 Per Violation

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

- (a)(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) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless 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) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.
  - (iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1. [4]
- (C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the

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<sup>4</sup> The reference in section 1775, subdivision (a)(2)(B)(iii) to section 1777.1, subdivision (c), is mistaken. The correct reference is to section 1777.1, subdivision (e). According to that subdivision, a willful violation is defined 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."

penalty imposed on that contractor or subcontractor pursuant to this section.

Section 1775, subdivision (a)(2) grants the Labor Commissioner the discretion to mitigate the statutory maximum penalty per day in light of prescribed factors. 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); § 1775, subd. (a)(2)(D).)

The Labor Commissioner's determination as to the amount of penalty is reviewable only for abuse of discretion. (§ 1775, subd. (a)(2)(D).) Abuse of discretion 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 her or his own judgment "because in [her or his] own evaluation of the circumstances the punishment appears to be too harsh." (*Pegues v. Civil Service Commission* (1998) 67 Cal.App.4th 95, 107.)

The Labor Commissioner did not abuse her discretion in setting the penalty rate at \$120 per violation. Curi counted 135 separate violations—one violation per day worked for each worker. C&T did not appear to present evidence or argument that the assessed section 1775 penalties were an abuse of discretion. Accordingly, this Decision affirms the Assessment's section 1775 penalties amounting to \$16,200.

#### C&T is Liable for Section 1813 Penalties.

Section 1813 penalties were assessed against C&T for failure to pay workers at the correct overtime rate.

Labor Code section 1813 states:

The contractor or 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 respective contractor or subcontractor for each calendar day during which the worker is required or permitted

to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article.

Section 1815 states as follows:

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1<sup>1/2</sup> times the basic rate of pay.

From partial payroll records, DLSE counted 13 violations where C&T failed to pay overtime to workers. At the statutory rate of \$25 per violation, the total amount of section 1813 penalties equals \$325. C&T did not carry its burden of proving the Assessment with respect to section 1813 penalties was incorrect. Accordingly, C&T is liable for \$325 in section 1813 penalties.

C&T is Liable for Penalties under Section 1776.

Every employer in the on-site construction industry, whether the project is a public work or not, must keep accurate information with respect to each employee. Industrial Welfare Commission (IWC) Wage Order Number 16-2001, which applies to on-site occupations in the construction industry, provides as follows:

Every employer who has control over wages, hours, or working conditions, must keep accurate information with respect to each employee including...name, home address, occupation, and social security number...[t]ime records showing when the employee begins and ends each work period...[t]otal wages paid each payroll period...[and] [t]otal hours worked during the payroll period and applicable rates of pay....

(Cal. Code Regs., tit. 8, § 11160, subd. (6)(A).) Also, the employer must furnish each employee with an itemized statement in writing showing all deductions from wages at the time of each payment of wages. (Cal. Code Regs., tit. 8, § 11160, subd. (6)(B); see also Lab. Code, § 226.) Employers on public works have the additional requirement to keep accurate certified payroll records. (§ 1776; Cal. Code Regs., tit. 8, § 11160, subd. (6)(D).) Those records must reflect, among other information, "the name, address, social security number, work classification, straight time and overtime hours worked

each day and week, and the actual per diem wages paid to each journey[person], apprentice, [or] worker. . . ." (§ 1776, subd. (a).) Each payroll record must be signed under penalty of perjury, stating that the information in the payroll record is true and correct and the employer has complied with the requirements of sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project. (*Ibid.*)

Contractors who fail to provide payroll records within ten days of DLSE's request for such records are subject to penalties. (§ 1776, subd. (h).) Penalties are calculated by multiplying the number of workers on the project, by the number of days of noncompliance, by the penalty rate of \$100. (*Ibid.*)

DLSE presented prima facie evidence of C&T's violation of section 1776. The evidence shows that C&T was served with the Initial Request and Second Request, yet failed to respond. Curi testified that in computing the penalty amount, DLSE only counted 49 days of violations from August 2, 2021, when C&T was required to respond to the Second Request, until September 20, 2021, the date the initial Assessment was issued. 49 days of violations at a penalty rate of \$100 per violation for twelve workers equals \$58,800.

C&T failed to carry its burden of proving the statutory penalty for its violation of section 1776 was incorrect. Accordingly, C&T is liable for \$58,800 in section 1776 penalties.

The Labor Commissioner Did Not Abuse Her Discretion in Assessing Penalties under Section 1777.7

If a contractor knowingly violates section 1777.5, a civil penalty is imposed under section 1777.7 in an amount not exceeding \$100 for each full calendar day of noncompliance. (§ 1777.7, subd. (a)(1).) The phrase "knowingly violated Section 1777.5" was defined by former California Code of Regulations, title 8, section 231, subdivision (h), in effect at that time of the Project, 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 requirements 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, . . . .

In setting the penalty, the Labor Commissioner is to consider all of the following circumstances:

- (1) Whether the violation was intentional.
- (2) Whether the party has committed other violations of Section 1777.5.
- (3) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.
- (4) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.
- (5) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

(§ 1777.7, subd. (b).) The Labor Commissioner's determination of the amount of the penalty, however, is reviewable only for an 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).)

In this case, DLSE set the section 1777.7 penalty at the mitigated rate of \$30 per violation. DLSE provided prima facie evidence that C&T violated the apprenticeship requirement to provide notice of the contract award (DAS 140) and to submit request for dispatch (DAS 142) to all of the applicable apprenticeship committees in the geographic area of the Project. The irrebuttable presumption of former regulation section 231, subdivision (h) applied because the bid documents notified contractors of the obligation to comply with Labor Code provisions applicable to public works projects. (DLSE Exhibit No. 3.) In addition, under the facts of this case, there was indication that C&T knew of its obligation to submit the DAS 140 and DAS 142 because they provided

both to one of the Inside Wireman apprenticeship committees in the geographic area of the Project and actually employed apprentices in that craft. Further C&T did not provide any evidence that its failure to comply with the apprenticeship law in other respects was due to circumstances beyond its control. (Former Cal. Code Regs., tit.8, § 231, subd. (h).)DLSE weighed the extent of lost training opportunities, which was 74.2 apprentice hours for the Laborer Classification in setting the penalty.

While C&T violated several apprenticeship laws, DLSE based the section 1777.7 penalties only on C&T's failure to submit contract award information to all of the applicable apprenticeship committees for the Inside Wireman Classification. Section 1777.5, subdivision (e), and section 230, subdivision (a) of the applicable regulation states:

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 penalties under Labor Code Section 1777.7.

(Cal. Code. Regs., tit. 8, § 230, subd. (a).) Thus, per the regulation, a failure to provide contract award information is a violation that runs throughout the duration of a contract. However, in this case, DLSE did not assess penalties for the entire duration of the contract. Rather, DLSE counted only 175 days of violations for failure to submit a DAS 140 to all three apprenticeship committees for the Inside Wireman Classification. The violation starts on the second day an Inside Wiremen Journeyperson was on the Project until the last day. The second day on the Project was July 23, 2019, until the last day, January 13, 2020, for a total of 175 days.

C&T did not establish that the Labor Commissioner abused her discretion in assessing section 1777.7 penalties at the mitigated rate of \$30 per violation. Accordingly, as determined by DLSE and as specified in the Assessment, C&T is liable for section 1777.7 penalties at \$30 per violation for 175 days, totaling \$5,250.

C&T is Liable for Liquidated Damages.

Section 1742.1, subdivision (a) provides in part:

After 60 days following the service of a [notice of withholding] 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, as applicable to this case, provides contractors two alternative means to avert liability for liquidated damages (in addition to prevailing on the case, or settling the case with the Enforcing Agency and the Enforcing Agency agreeing to waive liquidated damages). Under section 1742.1, subdivision (a) the contractor has 60 days to decide whether to pay to the workers all or a portion of the wages assessed in the notice of withholding, and thereby avoid liability for liquidated damages on the amount of wages so paid. Under section 1742.1, subdivision (b), a contractor may entirely avert liability for liquidated damages if, within 60 days from issuance of the notice of withholding, the contractor deposited with DIR the full amount of the assessment of unpaid wages, including all statutory penalties.

C&T did not present evidence that back wages had been paid nor is there any evidence that a deposit was made with the Department of Industrial Relations as a result of the Assessment. Accordingly, C&T is liable for liquidated damages in the amount of the unpaid prevailing wages.

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 served timely by DLSE in accordance with section 1741.
3. The affected subcontractor Anthony Louis Hackney, an individual, doing business as C & T Electrical and Communications, filed a timely Request for Review of the Civil Wage and Penalty Assessment issued by DLSE with respect to the Project.

4. DLSE made available to Anthony Louis Hackney its enforcement file timely.
5. No back wages were or deposit made by Anthony Louis Hackney with the Department of Industrial Relations following issuance of the Civil Wage and Penalty Assessment.
6. Anthony Louis Hackney underpaid his workers \$13,859.37 in prevailing wages.
7. Anthony Louis Hackney is liable for liquated damages in the amount equal to unpaid wages of \$13,859.37.
8. Anthony Louis Hackney is liable for Training Fund Contributions in the amount of \$455.29.
9. The Labor Commissioner did not abuse her discretion in assessing penalties under Labor Code Section 1775 at \$120 per violation for 135 violations, and such penalties are due from Anthony Louis Hackney in the sum of \$16,200.
10. Anthony Louis Hackney is liable for penalties assessed under Labor Code section 1813 in the amount of \$325.
11. There were three applicable apprenticeship committees in the geographic area of the Project in the craft of Electrician/Inside Wireman: the Orange County Electrical J.A.C., the Southern California Chapter of The Associated Builders & Contractors, Inc. Electrical U.A.C., and the Western Electrical Contractors Assoc. Inc. (W.E.C.A.) Apprenticeship and Training Committee.
12. There were two applicable apprenticeship committees in the geographic area of the Project in the craft of Laborer: the Associated General Contractors of America, San Diego Chapter, and the Laborers Southern California Joint Apprenticeship Committee.
13. Anthony Louis Hackney failed to issue a Notice of Contract Award Information to two of the applicable apprenticeship committees in the craft of Electrician/Inside Wireman and the two applicable apprenticeship committees in the craft of Laborer.
14. Anthony Louis Hackney failed to properly request dispatch of Laborer apprentices from the two applicable apprenticeship committee in the

geographic area of the Project and he was not excused from the requirement to employ apprentices under Labor Code section 1777.5.

15. The Labor Commissioner did not abuse her discretion in assessing penalties under Labor Code Section 1777.7 at \$30 per violation for 175 violations, and such penalties are due from Anthony Louis Hackney in the sum of \$5,250.
16. Anthony Louis Hackney is liable for penalties assessed under Labor Code section 1776 in the amount of \$58,800.

The amount found due under the Assessment is as follows:

<b>Basis of the Assessment</b>	<b>Amount</b>
Wages Due:	\$ 13,859.37
Training Fund Contributions:	\$ 455.29
Penalties under section 1775:	\$ 16,200.00
Penalties under section 1813:	\$ 325.00
Penalties under section 1777.7:	\$ 5,250.00
Penalties under section 1776:	\$ 58,800.00
Liquidated damages:	\$ 13,859.37
<b>TOTAL:</b>	<b>\$108,749.03</b>

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 in full as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: 2/10/26



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