

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Elecnor Belco Electric, Inc.

Case No. **23-0063-PWH**
[Request For Review of
OCC File No.: P15-029]

From a Notice of the Withholding of Contract Payments issued by:

Office of Contract Compliance for the City of Los Angeles

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor Elecnor Belco Electric, Inc. (Belco) requested review of a Notice of the Withholding of Contract Payments (Notice) issued by the City of Los Angeles (City), Office of Contract Compliance (OCC), dated January 9, 2023, with respect to work performed on the Intersection Improvement Unit 15 CIP/STP Street Lighting Project (Project) in Los Angeles County. The Notice indicated that \$91,881.23 in unpaid prevailing wages, \$777.02 in unpaid training fund contributions and \$129,100 in statutory penalties were due for 17 workers, for a total of \$221,758.25. On June 15, 2023, the Notice was amended to remove four workers, which reduced the unpaid prevailing wages to \$47,056.54, unpaid training contributions to \$451.46, and statutory penalties to \$73,950, for a total amount due of \$121,458.¹

A Hearing on the Merits occurred on June 15 and 16, 2023, before Hearing Officer Ann Wu. Felix LeBron and Joseph Persoff appeared as counsel for OCC. Jeffrey D. Hook appeared as counsel for Belco. Labor Compliance Officer Chris Jenson, as well as former Belco employees Steve Ortiz, Oscar Gurrola and Edgar Pulido testified in

¹ The four workers removed from the Audit were Michael Balloue, Horacio Julio, Jose Leon and Raul Mancillas. (Stipulation and Proposed Order re Amended Summary of Assessment dated June 7, 2023.)

support of the Notice. Current Belco employee Michael Balloue testified in opposition to the Notice.² The matter was submitted for decision on August 4, 2023.

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

- The work subject to the Notice of the Withholding of Contract Payments required the payment of prevailing wages and employment of apprentices.
- Belco requested review timely.
- The City disclosed its evidence timely.
- Belco did not pay back wages and did not make a deposit of the full amount of the Notice of the Withholding of Contract Payments with the Department of Industrial Relations.

The issues for decision are as follows:

- Whether the OCC issued the Notice of the Withholding of Contract Payments timely.
- Whether Belco paid the correct prevailing wages for all hours worked on the project.
- Whether any Belco workers on the project worked overtime hours, and if so, which worker and what amount of overtime is due and owing.
- Whether the Labor Commissioner abused discretion in approving penalties under Labor Code section 1775.
- Whether Belco is liable for liquidated damages for wages found due and owing.

For the reasons set forth below, the Director of Industrial Relations finds that OCC did not carry its initial burden of presenting evidence that provided prima facie support for the majority of the Notice. (See Cal. Code Regs., tit. 8, § 17250, subd. (a).)

Accordingly, the Director issues this decision modifying the Notice.

² The Hearing Officer admitted into evidence OCC Exhibit Numbers 1 through 9, 12 through 15, 126 through 128 and 133, and Belco Exhibits B, C, D and F. The copy of OCC Exhibit Number 127 provided to the Hearing Officer was missing pages 1083-1088. For Belco Exhibit F, only pages A545-556 were admitted into evidence. The parties filed closing briefs on July 21, 2023, and reply briefs on August 4, 2023.

FACTS

The Project.

The Project involved the replacement of existing street lighting fixtures at various intersections throughout the City.³ The Project work sites stretched from San Pedro to North Hollywood. The City advertised the Project for bid on June 18, 2014. Belco was the prime contractor on the Project. Belco had workers on the Project from December 8, 2015, through October 31, 2017. On June 21, 2020, the Field Operations Division of the City's Bureau of Street Lighting indicated to the City's Contract Administration Inspection Unit that the Project had passed the street lighting construction acceptance test.⁴ The City's Inspector of Public Works signed a Statement of Completion indicating a final field acceptance date of July 1, 2020.⁵

The Investigation.

In November or December of 2021, OCC initiated an investigation of Belco in response to worker complaints that Belco, along with other traffic signal and street lighting contractors, paid workers for eight hours per day regardless of whether the workers performed overtime work.⁶ Jenson, the Labor Compliance Officer (LCO), and his staff conducted the investigation of Belco.

³ Request for Approval of Forfeiture dated 12/1/22 (Forfeiture Request), p. 1, attached as Exhibit 1 to Declaration of Ralph Antuna in support of Application for Order to Show Cause Why Notice of Withholding of Contract Payments Should Not be Dismissed as Untimely (Antuna Decl.).

⁴ Bureau of Street Lighting document, attached as Exhibit 3 to Antuna Decl.

⁵ Statement of Completion, attached as Exhibit 4 to Antuna Decl.

⁶ According to the hearing testimony of the LCO, after OCC learned of the worker complaints, OCC held a meeting on January 19, 2022, with all 35 of the City's traffic signal and street lighting contractors, including Belco, and advised that it would not assess any penalties if the contractors self-reported violations and paid restitution to workers. None of the contractors responded. (See Forfeiture Request, pp. 2-3.)

According to the LCO's testimony, OCC contacted and interviewed approximately 76 current and former Belco workers regarding 11 different projects.⁷ The LCO interviewed 14 Belco workers on this Project. He completed Employee Interview Forms for the workers he interviewed.⁸ Based on the information he received from the workers, the LCO concluded that most of the Belco workers on the Project were working off-the-clock before and after their regular shift of 7:00 a.m. to 3:30 p.m. Also, the LCO concluded that some Belco workers were afraid of being "blacklisted" or "blackballed," as some interviewed workers did not want to be identified.

As part of the investigation, OCC staff reviewed Belco's Certified Payroll Records (CPRs) for the Project. (OCC Exhibit No. 133.) According to the LCO, none of the Project CPRs showed any worker working more than 8 hours a day or 40 hours a week, and the CPRs did not reflect any payment of overtime. The LCO found that Belco's CPRs were not consistent with the information provided in the worker interviews. OCC requested documents from Belco, such as time sheets, and vehicle logs or truck logs.⁹ Belco provided time sheets for some of the workers on the Project but produced no

⁷ OCC conducted 108 interviews in total of the 76 workers. The LCO conducted 82 of the interviews, and the remaining interviews were conducted by other City employees.

⁸ OCC Exhibit No. 7 (Andres Pulido), OCC Exhibit No. 8 (Edgar Pulido), OCC Exhibit No. 9 (Ernest Garcia), OCC Exhibit No. 12 (Oscar Gurrola), OCC Exhibit No. 13 (Sergio Pena), OCC Exhibit No. 14 (Sergio Pena, Jr.), OCC Exhibit No. 15 (Steve Ortiz). At the hearing, OCC's witnesses Ortiz, Gurrola, and Pulido confirmed that they spoke with the LCO regarding their experiences on the Project. The LCO testified that he conducted additional interviews of Belco workers after the parties participated in a settlement meeting on February 16, 2023. One of these interviews was with Ortiz. (OCC Exhibit No. 15.)

⁹ Some of the interviewed workers told the LCO that they maintained vehicle logs for their trucks, which showed the times the vehicle was turned on and off, as well as odometer readings showing the number of miles driven per day. Such records would have allowed OCC to compare the vehicle usage with the CPR for the driver.

vehicle logs.¹⁰ The LCO reviewed the time sheets provided by Belco and found that they matched the CPRs in that the timesheets did not reflect any overtime worked. Based on the workers' statements that they worked off-the-clock, as well as information obtained from two different City inspectors regarding Belco's practices, and statements made by two officials with the International Brotherhood of Electrical Workers (IBEW), the LCO concluded that Belco's CPRs and timesheets were incorrect and did not accurately report all hours worked on the Project.

The Audit.

According to the LCO, in the absence of accurate payroll records maintained by Belco, it was appropriate for OCC staff to recreate the correct amount of wages owed to workers on the Project. He testified that based on the worker statements, OCC assessed three hours of unpaid overtime per day per worker for every eight-hour day recorded on the CPRs—one hour in the morning, one hour in the middle of the day for missed meal and rest breaks, and one hour at the end of the day.¹¹ The LCO acknowledged that the formula was not accurate but explained that OCC tried to be fair in arriving at this formula.¹² For each hour assessed on the Audit, OCC also calculated

¹⁰ OCC Exhibit Nos. 1 (Jose Leon), 2-3 (Horacio Julio), 4 (Jeffery Echeverri), 5 (Nicholas Cunico), 6 (Michael Balloue), 126 (Steve Ortiz), 127 (Andres Pulido), 128 (Edgar Pulido).

¹¹ It appears that workers recorded on the CPRs as having worked less than eight hours in a day were assessed unpaid straight time rather than overtime. (See OCC Exhibit Number 133, p. 1364 (Sergio Pena, Jr), and compare to Public Works Investigation Worksheet for Sergio Pena, Jr.) Contrary to the LCO's testimony that OCC assessed three hours of unpaid work for each day a worker worked on the Project, the Public Works Investigation Worksheets show that OC assessed two hours of unpaid work for each worker for each day on the Project.

¹² As explained in the Request for Forfeiture, OCC calculated a "blanket" three hours per day for each worker based on worker statements that they were required to start and end the workday at a Belco yard in Chino. (Request for Forfeiture, p. 4.) The LCO conceded on cross-examination that the Request for Forfeiture only referenced the Belco yard in Chino, not the yard in Cudahy.

unpaid training fund contributions based on the applicable prevailing wage determinations.¹³

OCC recommended that penalties be assessed for underpaid prevailing wages under Labor Code section 1775 at the statutory maximum rate of \$200 per violation. The LCO considered the \$200 penalty rate reasonable, because he felt that the violations were willful and intentional based on statements from unidentified IBEW officials that, "this has been going on for decades," and that, "it has been going on since 1965." OCC also recommended that penalties be assessed for unpaid overtime premiums under Labor Code section 1813 at the statutory rate of \$25 per violation. On April 21, 2022, OCC provided its Summary of Assessment Wage Restitution and Penalty Log dated April 20, 2022, and supporting Public Works Investigation Worksheets (Audit), to Belco.¹⁴

¹³ Neither party submitted the applicable prevailing wage determinations. Based on the worker classifications listed on the Public Works Investigation Worksheets, and the bid advertisement date of June 18, 2014, the applicable prevailing wage determinations at issue are LOS-2014-1 for the Electrician classifications, SC-23-102-2-2013-1 for the Laborer classification, SC-23-203-2-2013-1 for the Cement Mason classification, and the 2014-1 General Prevailing Wage Apprentice Rates for the classifications of Transportation Systems Electrician and Cement Mason. The Director takes official notice of these prevailing wage determinations. (Cal. Code Regs., tit. 8, § 17245, subd. (a).) OCC did not use the basic hourly rates in the applicable prevailing wage determinations to calculate the alleged unpaid required straight-time and overtime wages in the Audit. (See Public Works Investigation Worksheets; compare with LOS-2014-1, SC-23-102-2-2013-1, SC-23-203-2-2013-1, and 2014-1 General Prevailing Wage Apprentice Rates.) Instead, it appears that OCC relied on the higher straight-time rates listed on the CPRs. (See Public Works Investigation Worksheets; compare with OCC Exhibit No. 133.)

¹⁴ Letter dated April 21, 2022, attaching Audit, attached as Exhibit 2 to Antuna Decl.

The Notice.

On January 9, 2023, OCC issued the Notice to Belco.¹⁵ Belco requested review of the Notice on February 24, 2023.

The Order to Show Cause.

On April 20, 2023, Belco filed an Application for an Order to Show Cause why the Notice should not be dismissed as untimely. As reflected in the Minutes of the Prehearing Conference held on April 21, 2023, the Hearing Officer issued the Order to Show Cause under California Code of Regulations, title 8, section 17227 (Rule 27). At Belco's request, the Hearing Officer also set the matter for a Hearing on the Merits.

The parties briefed the issue of timeliness of the Notice prior to the Hearing on the Merits. OCC filed a response to the OSC on May 5, 2023, and Belco filed a reply on May 12, 2023. The parties' briefing was part of the hearing record, and the timeliness issue was reserved for decision in connection with the Hearing on the Merits. The parties did not elicit testimony regarding the timeliness of the Notice at the Hearing on the Merits.

OCC Witness Testimony.

Steven Ortiz last worked for Belco around 2018. Ortiz was the foreperson on several Belco jobs. During the five years that he worked for Belco, Ortiz was paid hourly. Ortiz worked on this Project, but not as the foreperson. On other jobs, Ortiz's scheduled hours were 7:00 a.m. to 3:30 p.m., but he normally worked from 6:30 a.m. to 4:00 p.m. with a lunch period and no rest periods.

On this Project, Ortiz recalled that he "actually started at 7:00 a.m. most of the time." Ortiz testified that if he worked past 3:30 p.m., he would not get paid overtime.

¹⁵ It appears that OCC submitted this matter to the Labor Commissioner's Office (LCO) for approval of forfeiture of the unpaid wages, unpaid training fund contributions and penalties in accordance with California Code of Regulations, title 8, section 16432, on or about December 1, 2022, and that the Labor Commissioner's Office approved the forfeiture on December 12, 2022. (Request for Approval of Forfeiture; Disposition of the Case by the Labor Commissioner, attached as Exhibit 5 to OCC's transmittal letter dated March 15, 2023.) The Request for Approval of Forfeiture indicated that the project was "[n]ot yet accepted."

Ortiz explained that whether he worked overtime depended on the specific tasks performed that day. Ortiz believed he was not paid overtime on this Project because he was not provided two 10-minute rest breaks. Ortiz never received any rest breaks while working for Belco.

On this Project, Ortiz completed time sheets for himself and his helper, Oscar Gurrola. According to the Public Works Investigation Worksheet, Ortiz worked on the Project on one day, August 26, 2016, as a journey-level Transportation Systems Electrician, and the Audit assessed two hours of unpaid overtime on his behalf.

Oscar Gurrola worked for Belco from July of 2016 through April of 2019 as an apprentice Electrician. Gurrola worked on a lot of projects for Belco, including this Project. Gurrola's scheduled hours were 7:00 a.m. to 3:30 p.m., but on days that he picked up material from the yard in Cudahy, he would have to go early to ensure that he would arrive at the job site by 7:00 a.m. Gurrola did not specifically recall working on this Project, but he testified that he generally would always leave the job site "late." Gurrola explained that he was required to work past 3:30 p.m. "almost every day." Gurrola never took any rest periods while working for Belco and rarely received a lunch period.

Gurrola did not recall getting paid overtime on this Project.¹⁶ Gurrola never complained about not receiving overtime pay because he wanted to complete his electrician's certification and because he was afraid of retaliation. According to the Public Works Investigation Worksheet, Gurrola worked on the Project on two days, August 26, 2016, and February 24, 2017, as an apprentice Transportation Systems Electrician, and the Audit assessed four hours of unpaid overtime on his behalf. For this Project, Gurrola did not recall whether he drove to the job site by himself or whether he rode with Ortiz.

¹⁶ Gurrola recalled that he was paid overtime on one occasion during his time working for Belco; it was on a different project, and he worked 12 hours that day.

Edgar Pulido worked for Belco from 2015 to 2018, as a Cement Mason. Pulido worked on multiple projects for Belco, including this Project.¹⁷ While working for Belco, including on this Project, Pulido regularly worked off-the-clock before 7:00 a.m. and after 3:30 p.m. Pulido testified that he worked unpaid overtime at least three times a week between 2015 and 2018 while working on this Project. Pulido signed his timesheets even though they did not accurately reflect his time on this Project because he did not want to “get a day off” or be known as a complainer.¹⁸

Pulido never received 10-minute rest periods while working on this Project. Pulido seldom received 30-minute lunch periods. He explained that they were usually required to work through lunch to get things done, and that they would be questioned why they weren’t working if the general foreman were to show up at the job site and see them on a break. Pulido testified that Andres Pulido is his cousin, and that Andres Pulido worked as his helper from 2015 to 2017. They both carpoled together, and they worked overtime together on this Project.

On this Project, on days that Pulido picked up the batch truck from the yard in Cudahy in the morning, he picked up materials such as rocks, sand, cement and lumber from Building Resource Materials in Downey before going to the Project site—this process would take 60 to 90 minutes.¹⁹ Whether Pulido drove the batch truck home at the end of the workday depended on where he was working the next day. If he was working consecutive days on this Project, Pulido took the batch truck home because it was easier for him to go get material in the morning from Arroyo Building Materials before heading to the Project site.²⁰ If he had to go to a different job the next morning

¹⁷ Pulido was the sole journey-level Cement Mason listed on the Audit.

¹⁸ Pulido did not complain to the union because he believed that workers who complained to the union were “blackballed.”

¹⁹ Pulido later clarified that they used a two-cubic yard batch truck on this Project, not a 10-cubic yard batch truck.

²⁰ If Pulido worked on this Project for three consecutive days, he took the batch truck home for two days.

or had to pick up materials from Building Resource Materials because the Belco account at Arroyo Building Materials was locked, then he would leave the batch truck in Cudahy at the end of the workday because he did not want the batch truck in front of his yard overnight. Pulido did not drop off or pick up the batch truck from the yard in Cudahy every day.

Pulido recalled he picked up materials in the morning every day that he worked on this Project because the materials were mixed by hand. Pulido arrived at the materials supply store when it opened at 6:30 a.m., and it would take him about an hour to get the materials. Because he needed to get materials in the morning, Pulido arrived at the Project site around 7:30 a.m. Pulido gave the time-stamped receipts and invoices he received for the materials to Michael Balloue, who was the foreperson on this Project.

Pulido did not take the batch truck home on weekends. On those occasions, Pulido drove a Belco pickup truck home. On mornings when he took the pickup truck home, Pulido drove to the yard to drop off the pickup truck and pick up the batch truck. Pulido did not recall the percentage of time he drove the batch truck home on this Project. However, Pulido always drove a batch truck to the job site on this Project. According to the Public Works Investigation Worksheet, Pulido worked on the Project as a Cement Mason on 46 days between February 19, 2016, and October 3, 2017; the Audit assessed four hours of unpaid straight-time and 88 hours of unpaid overtime on his behalf.

Belco Witness Testimony.

At the time of the hearing, Michael Balloue worked for Belco as a foreperson Electrician. He had worked for Belco for 10 years. Balloue was the foreperson on this Project, and he was on site every day.²¹ According to Balloue, a typical workday on this Project started at the yard in Cudahy at 7:00 a.m., since that yard was the midway

²¹ Balloue was responsible for preparing timesheets on this Project, which he showed to workers and required workers to sign.

point to the various locations of this Project and contained stockpiled materials.²² In the mornings, workers spent about 30 minutes loading the trucks with materials such as conduit, temporary asphalt, boxes and fittings, before going to one of the eight job sites for the Project. However, Cement Masons on the Project reported directly to the job site in a batch truck.

Balloue worked on this Project with Jeffery Echeverri, the apprentice Electrician he was assigned to supervise. On this Project, Balloue and Echeverri worked the same schedule, from 7:00 a.m. to 3:30 p.m., and worked on the same days. When the job site was in North Hollywood close to where Echeverri lived, Balloue allowed Echeverri to report directly to the job site.

According to Balloue, workers on the Project took a lunch break at noon for 30 to 60 minutes. Balloue testified that at the end of the workday, workers on the Project either left directly for home at 3:30 p.m., or he would let workers leave at 2:30 p.m. if they needed to return to the yard in Cudahy so they could end their day from Cudahy by 3:30 p.m.²³ Balloue denied that workers performed work at the job site after 3:30 p.m. According to Balloue, workers on the Project took 15-minute rest breaks and 30 to 45-minute lunch breaks according to their union rules. Balloue denied that workers on the Project worked two hours of unpaid overtime each day. Balloue also denied that any workers on this Project told him that they worked off-the-clock or were denied rest or lunch periods.

²² Balloue admitted on cross-examination that he would not have seen any workers at the yard in Cudahy prior to his arrival at 7 a.m. Balloue denied that any workers on this Project reported to the yard in Chino.

²³ On days that Balloue did not return to the yard at Cudahy at the end of the workday, he would not know what time any workers arrived at the yard.

DISCUSSION

The California Prevailing Wage Law (CPWL), set forth at Labor Code section 1720 et seq., requires the payment of prevailing wages to workers employed on public works construction projects.²⁴ 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.) The enforcement of prevailing wage requirements inures not only for the benefit of workers but also “protect[s] employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.” (§ 90.5, subd. (a); see also *Lusardi*, 1 Cal.4th at p. 985.)

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

²⁴ All further references are to the Labor Code.

When a labor compliance program such as OCC determines under section 1771.5 that a violation of the prevailing wage laws has occurred, it may issue a notice of the withholding of contract payments pursuant to section 1771.6. An affected contractor or subcontractor may appeal the notice by filing a request for review under section 1742. The request for review is transmitted to the Director of Industrial Relations, who assigns an impartial hearing officer to conduct a hearing in the matter as necessary. (§ 1742, subd. (b).) OCC has the initial burden of presenting evidence that provides prima facie support for the notice. (Cal. Code Regs., tit. 8, § 17250, subd. (a).) When that burden is met, Belco has the burden of proving that the basis for the notice 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 notice. (§ 1742, subd. (b).)

There is Insufficient Evidence to Show that the Notice was Untimely.

The City advertised the Project for bid on June 18, 2014. Belco was awarded the contract and had workers on the Project between December 8, 2015, and October 31, 2017. On June 21, 2020, the Field Operations Division of the City's Bureau of Street Lighting indicated to the City's Contract Administration Inspection Unit, that the Project had passed the street lighting construction acceptance test. The City's Inspector of Public Works signed a Statement of Completion indicating a final field acceptance date of July 1, 2020. The Statement of Completion stated: "This project was acceptably completed in accordance with the plans, specifications and authorized changes. Acceptance of the Project by the City will follow completion of all necessary administrative processing." The parties provided no evidence of what happened next.

Under section 1741, subdivision (a), if the enforcing agency determines after investigation that there has been a violation of the California Prevailing Wage Law, section 1720 et seq., it "shall with reasonable promptness issue [an assessment] to the contractor or subcontractor or both." The statute provides the time for issuing the assessment or notice as follows:

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.

(§ 1741, subd. (a).) A notice of completion is valid if recorded within 15 days after the date of completion. (Civ. Code, § 9204, subd. (a).)

The assertion that the Notice was served untimely constitutes a statute of limitations defense. “[T]he statute of limitations is an affirmative defense and its elements must be proved by the party asserting it.” (*Ladd v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1310 (citation omitted).) Thus, Belco had the burden of proving that the Notice was untimely.

Belco produced no evidence that the City filed a valid notice of completion with the county recorder. OCC acknowledged as much. Where there is no valid notice of completion, the timeliness inquiry turns on the date of acceptance. (*Department of Industrial Relations, Division of Labor Standards Enforcement v. Fidelity Roof Co.* (1997) 60 Cal.App.4th 411, 418.) In the public works context, “acceptance has been defined as that date at which someone with authority to accept does accept unconditionally and completely.” (*Madonna v. State of California* (1957) 151 Cal.App.2d 836, 840 [citation omitted] (hereafter *Madonna*)). Belco pointed to the City’s Inspector of Public Works signed Statement of Completion as evidence of acceptance. However, OCC pointed to the language of the Statement of Completion itself and argued that the City’s Inspector of Public Works had no authority to accept completion of a public works project, and that the City’s Board of Public Works has that authority under the Los Angeles City Charter and the Los Angeles Administrative Code. Here, unlike in *Madonna*, there was a dispute about what constituted acceptance and who had authority to accept a project.

Thus, Belco did not meet its burden to establish that someone with the requisite authority accepted the Project as complete. Accordingly, there is insufficient evidence to show that the Notice was untimely.

OCC Presented Prima Facie Evidence that Some Workers Performed Overtime for which They were not Compensated Properly.

The single prevailing rate of pay for a given “craft, classification, or type of work” is determined by the Director of Industrial Relations in accordance with the standards set forth in section 1773. (*Sheet Metal Workers Intern. Ass’n, Local Union No. 104 v. Rea* (2007) 153 Cal.App.4th 1071, 1082.) The Director determines the rate for each locality in which public work is performed (as defined in section 1724) and publishes a general prevailing wage determination for a craft to inform all interested parties and the public of the applicable prevailing wage rates. (§ 1773.) Contractors and subcontractors are deemed to have constructive notice of the applicable prevailing wage rates. (*Division of Labor Standards Enforcement v. Ericsson Information Systems* (1990) 221 Cal.App.3d 114, 125.)

Ultimately, the Director’s PWDs determine the proper pay classification for a type of work. The nature of the work actually performed, not the title or classification of the worker, is determinative of the rate that must be paid. The Department publishes an advisory scope of work for each craft or worker classification for which it issues a PWD. The decision about which craft or classification is appropriate for the type of work requires comparison of the scope of work contained in the PWD with the actual work duties performed. Here, there is no dispute as to whether the workers were appropriately classified by Belco on this Project.

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 No. 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, worker, or other employee employed by him or her in connection with the public work.” (§ 1776, subd. (a).)

Where the employer fails to maintain accurate payroll records, the employee may demonstrate his hours by producing sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. (*Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 727.) Based on OCC’s interviews of Belco workers on this Project and other Belco projects, and on OCC’s review of Belco’s CPRs on this project, OCC concluded that Belco had a pattern and practice of not paying its workers for overtime hours worked. OCC prepared an Audit predicated on the assumption that every worker identified in the Audit worked an additional two hours off-the-clock for each day the CPR recorded the worker as working on the Project. Further, although OCC elicited testimony at hearing and submitted Employee Interview Forms to show that Belco workers did not always receive rest and meal periods on this Project, the record is unclear whether such missed break periods were included in the two hours of unpaid overtime calculated for the workers listed in the Audit.

Based on the evidence available to OCC at the time it completed the Notice, it was not reasonable to assess two hours of work performed off-the-clock for each worker identified in the Audit. One worker did not complain of working off-the-clock in his interview with OCC.²⁵ The Request for Forfeiture stated that workers reported

²⁵ See OCC Exhibit No. 13 [Sergio Pena stated on March 12, 2023, that he had no complaints and got his rest and lunch periods].

having to report to the yard in Chino. However, interviewed workers specifically indicated that they reported to other yards.²⁶ Accordingly, it was unreasonable for OCC to assess two hours of overtime for each worker based on the assumption that each worker was required to report to the yard in Chino before and after their workday on this Project.²⁷

The CPRs showed that Belco paid its workers higher than the required prevailing wage rates in the applicable PWDs. To calculate the alleged off-the-clock hours owed for each worker, OCC utilized the actual hourly rate Belco paid its workers rather than the applicable PWD rates. OCC's reliance on the higher wage rates that Belco paid its workers was misplaced.

To the extent that OCC included uncompensated meal and rest periods that employers are required to provide in the two hours of unpaid work assessed for each worker in the Audit under section 226.7, subdivision (c), the enforcement of such Labor Code provisions is outside the scope of OCC's authority in issuing a notice of withholding of contract payments under section 1771.6. Pursuant to section 1771.6, subdivision (a), OCC may enforce the provisions of "this chapter," referring to the CPWL at sections 1720 through 1861 found in Part 7 of Division 2 of the Labor Code.²⁸ Section

²⁶ See OCC Exhibit No. 12, p. 360 [Andres Pulido stated on August 16, 2022, that he usually reported to the yard in Cudahy]; OCC Exhibit No. 14, p. 395 [Sergio Pena, Jr. stated on November 27, 2022, that he reported to the Doty yard and others every day for various Belco projects].

²⁷ The record does not show that OCC attempted to investigate any correlation between whether and where Belco workers may have been required to report before and after the eight-hour workday based on their classifications, assigned work tasks, assigned work locations, or their residence location. The evidence presented at hearing, as summarized in this decision, showed that between the three workers that testified in support of the Notice, there were significant differences as to each worker's experience regarding when and where they reported for and left work, and as to the work they performed, if any, off-the-clock, based on their classification.

²⁸ See California Code of Regulations, title 8, section 16434 ["A Labor Compliance Program shall have a duty to the Director to enforce the requirements of Chapter 1 of

226.7 is found in Part 1 Division 2 of the Labor Code. Therefore, a violation of section 226.7 is outside the purview of a notice issued under section 1771.6.²⁹

These flaws in OCC's methodology render the Audit deficient. OCC did not draw a reasonable inference about the amount of unpaid overtime hours allegedly worked by the workers on the Project. In addition, OCC did not utilize the required prevailing wage rates set forth in the applicable PWDs to calculate the amount of unpaid wages on this Project. For these reasons, OCC generally failed to carry its burden of proving that the evidence provided prima facie support for the extent of the underpayment of overtime assessed, while still proffering evidence that some workers performed work for which they were not compensated properly by Belco. (Cal. Code Regs., tit. 8, § 17250, subd. (a).)

Based on Ortiz's testimony regarding this Project, it is reasonable to find that he did not work off-the-clock prior to 7:00 a.m. but that he worked 30 minutes of overtime from 3:30 to 4:00 p.m. on the single day listed in the Audit. Utilizing the appropriate prevailing wage rate in LOS-2014-1 prevailing wage determination for the Transportation Systems Electrician classification, Ortiz is owed \$42.14 in unpaid prevailing wages.³⁰

Likewise, based on his testimony regarding the Project along with the testimony of Ortiz, it is reasonable to find that Gurrola worked the same schedule as Ortiz on the two days listed on the Audit. Utilizing the appropriate prevailing wage rate in 2014-1

Part 7 of Division 2 of the Labor Code and these regulations in a manner consistent with the practice of the Labor Commissioner."].

²⁹ Missed meal periods would be considered unpaid overtime under section 1813, in an appropriate case. Here, however, OCC failed to establish a prima facie case as to the number of overtime hours each worker on the Project worked as a result of missed meal periods. For example, Ortiz testified that he received a lunch period, but no rest periods. Also, it was unclear whether the two hours OCC assessed for each worker also included the one-hour premium required by section 226.7.

³⁰ The total hourly overtime rate less the required training fund contribution was \$84.27. (LOS-2014-1 PWD.)

General Prevailing Wage Apprentice Rates for the Transportation Systems Electrician classification, Gurrola is owed \$41.98.³¹

For Pulido, the analysis of whether and how many hours he worked off-the-clock requires a discussion of compensable travel time. Although the time an employee commutes to work is not generally compensable, the Supreme Court recognized in *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575 (hereafter *Morillion*), that travel time may be compensable depending on the level of control exerted by the employer over its employees.³² “[B]y requiring employees to take certain transportation to a work site, employers thereby subject those employees to its control by determining when, where, and how they are to travel.” (*Id.* at p. 588.) However, the fact that Pulido traveled in Belco vehicles is not dispositive. “Time employees spend traveling on transportation that an employer provides but does not require its employees to use may not be compensable as ‘hours worked.’” (*Ibid.* (citation omitted).)

Here, Pulido testified that he was required to pick up materials in the morning at 6:30 a.m. at the materials supply store before going to the Project. But Pulido’s testimony did not establish whether he was required to pick up the batch truck from the

³¹ The total hourly overtime rate for Step 1 less the required training fund contribution was \$40.16, and the total hourly overtime rate for Step 2 less the required training fund contribution was \$43.79. (2014-1 General Prevailing Wage Apprentice Rates.)

³² In *Morillion*, agricultural workers were required to meet at specified assembly areas to be transported by buses provided and paid for by the employer, to and from the fields where the workers worked. (*Morillion*, 22 Cal.4th at p. 579.) In this regard, the Supreme Court used the term “compulsory travel time” to refer to “travel to and from a work site that an employer controls and requires,” to distinguish it from “an ordinary commute from home to work and back that employees take on their own.” (*Id.* at p. 579, fn. 2.) The holding in *Morillion* was based on Wage Order 14-80 covering agricultural workers, which defines “hours worked” to mean “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” (Cal. Code Regs., tit. 8, § 11140, subd. 2(G).) Because all wage orders contain the same definition of “hours worked,” including Wage Order 16-2001 for on-site construction workers, *Morillion* is the controlling authority as to compulsory travel time. (See *Morillion*, 22 Cal.4th at p. 581; Cal Code Regs., tit. 8, § 11160, subd. 2(J).)

yard in the morning or whether he was required to drop off the batch truck at the yard at the end of the workday. Rather, Pulido's testimony suggests that he decided whether he wanted to take the batch truck home at the end of the workday or return it to the yard. Without more, OCC did not show that Belco determined "when, where, and how" Pulido had to travel to the Project. Unlike *Morillion*, where the agricultural workers were required to take the employer-provided transportation or risk discipline, there is no evidence in the record that the workers on the Project were required to "take certain transportation to a work site." (*Morillion*, 22 Cal.4th at p. 588.) The Supreme Court emphasized in *Morillion* that "employers do not risk paying employees for their travel time merely by providing them transportation." (*Ibid.*)

The question of control does not end the inquiry of compensable travel time. "*Morillion* did not assess whether the employees' time was compensable as 'employer-mandated travel,' a term unique to Industrial Wage Order No. 16." (*Huerta v. CSI Electrical Contractors* (2024) 15 Cal.5th 908, 924.) The Industrial Welfare Commission "did not tether the term 'employer-mandated travel' to the employer's control over that employee during the travel time, as it did for the term 'hours worked.'" (*Ibid.*, citing Cal. Code Regs., tit. 8, § 11160, subd. 2(J).) Instead, the Commission "elected to make compensation for 'employer-mandated travel' turn on whether the employer mandates travel to a second location 'after the first location where the employee's presence is required.'" (*Ibid.*, citing Cal. Code Regs., tit. 8, § 11160, subd. 5(A).) So, instead of solely looking at control under *Morillion*, the question is whether "the travel occurred at the direction and command of the employer after the employee's arrival at the first location where the employer required the employee's presence." (*Ibid.*)

An employee's presence at a location is "required by the employer" within the meaning of the wage order when it is required for an employment-related reason other than the practical necessity of reaching the worksite. Examples include situations where the employee's presence at an initial location is required to pick up work supplies, receive work orders or other directives, or perform work before traveling to a second jobsite.

(*Id.* at pp. 924-925 (citations omitted).) Here, Pulido's testimony established that he was required to pick up materials from the materials supply store at 6:30 a.m. prior to

going to the Project job sites. Accordingly, it is reasonable to find that Pulido was required to work off-the-clock 30 minutes per day that he worked on the Project, such that Pulido is owed \$1,523.85 in unpaid prevailing wages.³³

Belco did not meet its burden of showing that the Notice was incorrect as to the determinations that Ortiz, Gurrola, and Pulido were not paid the correct prevailing wages for all hours worked on the Project, or that these workers were not paid for overtime hours worked on the project. Balloue's testimony that neither he nor the other workers on the Project worked off-the-clock was not credible.

Belco Is Liable for Unpaid Training Fund Contributions.

Section 1777.5, subdivision (m)(1), requires contractors on public works projects who employ journeypersons or apprentices in any apprenticeable craft to pay training fund contributions to the California Apprenticeship Council or to an apprenticeship committee approved by the Division of Apprenticeship Standards (DAS). For the same reason that Ortiz, Gurrola, and Pulido were underpaid required prevailing wages, Belco failed to meet its burden of showing that the Notice was incorrect as to finding that no training fund contributions were paid on behalf of these workers for those hours. Accordingly, Belco is liable for unpaid training fund contributions in the following amounts:

- \$0.28 on behalf of Ortiz for 30 minutes of unpaid overtime at the required training fund rate of \$0.56 per hour as a Transportation Systems Electrician.
- \$0.61 on behalf of Gurrola for one hour of unpaid overtime at the required training fund rate of \$0.76 per hour as a Transportation Systems Electrician Apprentice.

³³ The Audit found that Pulido was not paid for straight-time hours on two days and for overtime on 44 days. The total hourly straight-time rate less the required training fund contribution was \$51.50, and the totally hourly overtime rate less the required training fund contribution was \$66.925. (SC-23-203-2-2013-1 PWD.)

- \$11.50 on behalf of Pulido for one hour of unpaid straight-time and 22 hours of unpaid overtime at the required training fund rate of \$0.50 per hour as a journey-level Cement Mason.

Belco Is Liable for Penalties Under Section 1775.

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

- (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.
- (2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:
 - (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).)

OCC recommended that section 1775 penalties be assessed at the maximum rate of \$200. The LCO explained that OCC utilized the maximum penalty rate of \$200 per day per worker because he heard from IBEW that the failure to pay overtime was a longstanding practice, and because many interviewed workers indicated that they were afraid of retaliation from Belco. At hearing, OCC established that Belco did not promptly or voluntarily pay restitution to workers for unpaid overtime after OCC met with all its traffic signal and street lighting contractors and asked the contractors to self-report violations and pay restitution. (§ 1775, subd. (a)(2)(A)(i).) However, OCC did not establish that Belco had a prior record of failing to meet its prevailing wage obligations under section 1775, subdivision (a)(2)(A)(ii). Assuming that the Labor Commissioner approved OCC's request for approval of forfeiture for the reasons stated above, it appears that the Labor Commissioner did abuse her discretion in determining the amount of the penalty.

Under section 1775, subdivision (a)(2)(B), the minimum penalty rate is \$40 for each calendar day for each worker paid less than the prevailing wage rate. Accordingly,

the assessment of section 1775 penalties in the Notice is modified to \$40 per violation, and the total number of violations must be reduced to 49 violations.³⁴ Therefore, Belco is liable for section 1775 penalties in the amount of \$1,960.

Belco Is Liable for Penalties Under Section 1813.

Section 1815 states:

[w]ork performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1½ times the basic rate of pay.

Section 1813 states:

The contractor or any subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the . . . contractor . . . for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article.

Section 1813 prescribes a penalty of \$25 per calendar day for each worker found to have worked overtime without having been paid at the applicable hourly overtime wage rate. As discussed above, the evidence established 47 such violations by Belco.³⁵ Belco did not meet its burden to show that the Notice was incorrect as to finding unpaid overtime owed to Ortiz, Gurrola and Pulido. Accordingly, Belco is liable for \$1,175 in penalties assessed under section 1813.

Belco Is Liable for Liquidated Damages.

Section 1742.1, subdivision (a), provides for the imposition of liquidated damages, as follows:

After 60 days following the service of a...notice of withholding under subdivision (a) of section 1771.6, the affected contractor, subcontractor, and surety...shall be liable for liquidated damages in an amount equal to

³⁴ On this Project, Ortiz worked one day, Gurrola worked two days, and Pulido worked 46 days. (Public Works Investigation Worksheets.)

³⁵ Pulido did not work overtime on two of the 46 days listed on his Public Works Investigation Worksheet.

the wages, or portion thereof, that still remain unpaid. If the...notice is subsequently overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.

At the time the Notice issued, the statutory scheme regarding liquidated damages provided contractors two alternative means to avert liability for liquidated damages (in addition to prevailing on the case or settling the case with enforcing agency agreeing to waive liquidated damages). Under section 1742.1, subdivision (a), the contractor has 60 days to decide whether to pay the workers all or a portion of the wages assessed in the notice and thereby avoid liquidated damages on the amount of wages so paid. Under section 1742.1, subdivision (b), a contractor may entirely avert liquidated damages if, within 60 days from issuance of the notice, the contractor deposits with the Department of Industrial Relations the full amount of the assessed unpaid wages, including all statutory penalties.

In this case, Belco did not pay wages due, nor did it deposit with the Department the full amount of the assessed wages and statutory penalties. Accordingly, Belco is liable for liquidated damages under section 1742.1 for the unpaid prevailing wages found in this Decision in the amount of \$1,607.97.

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

FINDINGS AND ORDER

1. The work subject to the Notice of the Withholding of Contract Payments was performed on a public work and required the employment of apprentices and the payment of prevailing wages under the California Prevailing Wage Law, Labor Code sections 1720 through 1861.
2. The City of Los Angeles, Office of Contract Compliance served the Notice of the Withholding of Contract Payments timely.
3. Elecnor Belco Electric, Inc. filed the Request for Review timely.

4. No back wages have been paid and no deposit made with the Department of Industrial Relations as a result of the Notice of the Withholding of Contract Payments.
5. City of Los Angeles, Office of Contract Compliance did not meet its burden to provide prima facie support for the Notice of the Withholding of Contract Payments in its entirety because it did not draw a reasonable inference with regard to its calculation of the alleged hours of unpaid overtime and because it failed to utilize the proper prevailing wage rates for each applicable classification based on the bid advertisement date for the Project.
6. Elecnor Belco Electric, Inc., underpaid the following workers in the following amounts:
 - Steven Ortiz in the amount of \$42.14.
 - Oscar Gurrola in the amount of \$41.98.
 - Edgar Pulido in the amount of \$1,523.85.
7. Elecnor Belco Electric, Inc., is liable for unpaid training fund contributions for the following workers in the following amounts:
 - Steven Ortiz in the amount of \$0.28.
 - Oscar Gurrola in the amount of \$0.61.
 - Edgar Pulido in the amount of \$11.50.
8. Elecnor Belco Electric, Inc. is liable for penalties assessed pursuant to section 1775 in the amount of \$1,960.
9. Elecnor Belco Electric, Inc. is liable for penalties assessed pursuant to section 1813 in the amount of \$1,175.
10. Elecnor Belco Electric, Inc. is liable for liquidated damages on wages found due and owing in the amount of \$1,607.97.

The amounts found due under the Notice, as modified by this Decision, are as follows:

Basis of the Notice	Amount
Wages Due:	\$ 1,607.97
Training Fund Contributions Due:	\$ 12.39
Penalties under section 1775:	\$ 1,960.00
Penalties under section 1813:	\$ 1,175.00
Liquidated damages:	\$ 1,607.97
TOTAL:	\$ 6,363.33

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

The Notice of the Withholding of Contract Payments is modified as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings that shall be served with this Decision on the parties.

Dated: 5/6/26



Jennifer Osborn, Director
California Department of Industrial Relations