STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Worthington Construction, Inc. Case No. **19-0044-PWH**

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected subcontractor Worthington Construction, Inc. (Worthington Construction) submitted a timely Request for Review of a Civil Wage and Penalty Assessment (Assessment) issued on January 17, 2019, by the Division of Labor Standards Enforcement (DLSE) with respect to work performed by Worthington Construction on the Los Altos High School Track and Field Project (Project) for the Hacienda La Puente Unified School District (School District) in Los Angeles County. The prime contractor on the Project was Ohno Construction Company, Inc. (Ohno Construction).[1] The Assessment asserted that the following amounts were due: $612.36 in unpaid prevailing wages, $240.00 in penalties under Labor Code section 1775,[2] and $2,040.00 in penalties under section 1777.7.

On June 11, 2019, a Hearing on the Merits was held in Los Angeles, California, before Hearing Officer Mirna Solis. Sotivear Sim appeared as counsel for the DLSE and Dale Worthington, owner, appeared on behalf of Worthington Construction. Testimony in support of the Assessment was provided by DLSE Deputy Labor Commissioner Kari Anderson. Testimony on behalf of Worthington

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[1] Ohno Construction did not file a request for review.

[2] All further section references are to the California Labor Code, unless otherwise specified.

Construction was provided by Dale Worthington. The parties submitted the matter for decision on June 11, 2019.

At the Hearing, the parties stipulated that the issues for decision are:

- Did the Labor Commissioner abuse her discretion in assessing penalties under section 1775?
- Did Worthington Construction, Inc. submit a request for dispatch to all applicable apprenticeship committees in a timely and factually sufficient manner?
- Did Worthington Construction, Inc. employ apprentices in the required minimum ratio of apprentices to journeypersons on the Project?
- Did the Labor Commissioner abuse her discretion in assessing penalties under section 1777.7 for apprenticeship violations?
- Does evidence provided by DLSE provide prima facie support for the Assessment?

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 penalties under section 1775, and Worthington Construction failed to carry its burden to prove that the Labor Commissioner abused her discretion in setting a penalty rate under section 1775 at $80.00 per violation. Also, DLSE carried its initial burden of presenting evidence that provided prima facie support for finding a violation of apprenticeship requirements, but Worthington Construction met its burden of establishing that it was excused from those requirements. (See Cal. Code Regs., tit. 8, § 17250, subds. (a).) Accordingly, the Director issues this Decision affirming but modifying the Assessment.

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FACTS

The Parties stipulated to the following facts:

1. The work subject to the Assessment was performed on a public work and required the employment of apprentices and the payment of prevailing wages under the California Prevailing Wage Law.
2. The Request for Review was filed timely.
3. The DLSE enforcement file was requested and produced in a timely fashion.
4. Back wages have been paid by Worthington Construction as a result of the Assessment.[3]
5. The Assessment correctly found that Worthington Construction failed to pay the required holiday rate for Landscape Irrigation Laborer/Tender classification for work performed on November 11, 2016.
6. The Assessment was timely served.
7. The Landscape Irrigation Laborer/Tender Classification is the correct classification.
8. The applicable Prevailing Wage Determination for the Project was SC-102-X-14-2015-2 for the Landscape Irrigation Laborer/Tender Classification.
9. The sole applicable apprenticeship committee for the geographic area of the public work site is the Landscape and Irrigation Fitter Joint Apprenticeship Committee.

On March 30, 2016, and on April 6, 2016, the School District published its notice of invitation for bids for the Project. On May 12, 2016, Ohno Construction and the School District executed the prime contract (Contract). Work under the

[3] Worthington Construction made payment for the prevailing wages found due in the Assessment within 60 days after it was issued. For that reason, this case involves no issue of liability for liquidated damages pursuant to section 1742.1.

Contract consisted of constructing a track and field, creating concrete pads for storage containers, installing rotating football goal posts, and paving the main entry. In turn, Ohno Construction subcontracted with Worthington Construction for landscape and irrigation installation aspects of the Project. Worthington Construction worked on the Project from June 29, 2016, to February 1, 2017.

The Assessment and the Relevant Prevailing Wage Determination.

As stipulated by the parties, the relevant prevailing wage determination for the craft of Landscape Irrigation Laborer/Tender Classification in Los Angeles County is SC-102-X-14-2015-2 (Landscape Laborer PWD).[4] The Landscape Laborer PWD required holiday hourly rate of pay for Landscape Laborers in the amount of $77.42.

Deputy Labor Commissioner Anderson testified that the Assessment found underpaid prevailing wages for holiday work in the amount of $612.36 and imposed section 1775 penalties for that underpayment at the rate of $80.00 per violation, for a total amount of $240.00. Anderson counted three separate violations, one for each of three workers working on one day. DLSE set the section 1775 penalty rate based on Worthington Construction's history of prior wage violations.

Anderson also testified that, as shown by Worthington Construction's certified payroll records (CPRs), it did not employ any apprentices on the Project, violating the requirement to employ apprentice at the 1:5 ratio of apprentices to journeypersons. Based on the CPRs, Landscape Laborer journeypersons worked a total of 671 hours on the Project. Applying the 1:5 ratio, Anderson calculated that Worthington Construction was required to hire apprentices to perform 134.2 hours of work on the Project.

Anderson further testified as to other violations of apprentice requirements. While Worthington Construction properly submitted the required

[4] The Tender portion of the Landscape Laborer PWD is not at issue under the Assessment.

notice of its public work contract to the applicable apprentice committee (sending a DAS 140 form to the Landscape and Irrigation Fitter Joint Apprenticeship Committee (Landscape JAC)), Worthington Construction did not thereafter properly submit to that committee the required request for dispatch of apprentices. Anderson testified that a request for dispatch dated June 21, 2016, was timely submitted to the Landscape JAC, but the form was invalid in that the date for an apprentice to report to the job was stated on the form as June 28, 2016, a date on which Worthington was not on the job. Worthington's actual start date was June 29, 2016. To Anderson, that mistake rendered the dispatch request non-compliant with the statutory requirement and justified penalties under section 1777.7. Anderson testified that the 1777.7 penalties were assessed at the rate of $40.00 per violation for 51 violations, based on the failure to employ apprentices. Anderson determined the 51 violations by reviewing the number of the days that journeyperson Laborers were on duty during the Project period.[5]

On the DLSE penalty review, Anderson listed 21 prior cases of prevailing wage and apprentice violations by Worthington Construction by case number, assessment date, and case resolution. Anderson explained that she derived the information about the prior cases from her review of DLSE's electronic database.

Anderson also testified that she had personal knowledge of two of the prior assessments against Worthington Construction listed in the penalty review, DLSE Case Numbers 40-43018-133 and 40-46958-133, because she was the assigned Deputy Labor Commissioner in those two cases. The assessment in DLSE Case Number 40-43018-133 was issued on December 12, 2016, the assessment in DLSE Case Number 40-46958-133 was issued on January 25, 2017, and both involved imposition of penalties under section 1775. Anderson

[5] According to the CPRs, the first day of work for Landscape Laborers was June 29, 2016, and last day of work was February 1, 2017.

testified that decisions from the Director on Worthington Construction's requests to review for those assessments were pending as of the Hearing date.

According to the penalty review, in the three years preceding the instant Assessment, the only assessments issued against Worthington Construction were DLSE Case Number 40-43018-133 on December 12, 2016, DLSE Case Number 40-46958-133 on January 25, 2017, and an assessment in DLSE Case Number 40-56802-692 on October 31, 2017. With respect to the last case, the penalty review states: "CWPA issued 10/31/2019 for $360, Paid 11/15/2017. There is no indication in the database about what the penalty was for, the penalty rate, or when the project was."

In his testimony, Dale Worthington conceded that Worthington Construction did not work on the Project on the June 28, 2016, date shown on the DAS 142 form as the date apprentices were to report. He had no explanation why the correct report date, June 29, 2016, was not given. Worthington Construction's position, however, is that it should be excused from having to request the dispatch of apprentices because the Landscape JAC would not cooperate and send apprentices. Worthington testified that on two separate occasions, Landscape JAC personnel told him on unspecified dates in the past that it would not send him an apprentice. That refusal was first communicated to Worthington by telephone after he submitted the DAS 140 form for this Project to the Landscape JAC. An unidentified person at the Landscape JAC reportedly asked Worthington if he would sign a union agreement. Worthington refused and the Landscape JAC then stated they would not send an apprentice to the job site. The second refusal was communicated by telephone when Worthington submitted the DAS 142 form to the Landscape JAC for this Project.

Worthington testified that, having been told the Landscape JAC would not dispatch an apprentice, he believed he was not required to send a DAS 142 dispatch form. Nonetheless, he still sent the DAS 142 form to the Landscape JAC.

At the Hearing, Worthington Construction did not produce any written confirmation of the Landscape JAC's refusal to dispatch apprentice. Worthington testified that in past projects, Worthington Construction has asked that Landscape JAC provide written confirmation that apprentices would not be dispatched, but the Landscape JAC has refused to provide that confirmation.

Worthington also testified that the majority of the prior cases listed in the DLSE penalty review were based on unspecified clerical errors. Some cases were dismissed once "proof of payment" was provided to the Labor Commissioner. Worthington contended that the most serious assessments were based on allegedly falsified affidavits from workers solicited by DLSE. At the advice of its attorney, Worthington Construction agreed to debarment from bidding on public work projects for a period of time and it is currently in the middle of the debarment period.

As for the section 1775 penalty rate, Worthington Construction contended the $80.00 rate was too high. Worthington testified that his experience in prior cases showed that the Labor Commissioner assessed section 1775 penalties at $40.00 per violation.

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 projects. The purpose of the CPWL was summarized by the California Supreme Court in one case as follows:

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

enjoyed by public employees.

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

Section 1775, subdivision (a), requires, among other provisions, that contractors and subcontractors pay the difference to workers paid less than the prevailing rate and also prescribes penalties for failing to pay the prevailing rate. The prevailing rate of per diem wage includes travel pay, subsistence pay, and training fund contributions pursuant to section 1773.1. Section 1775, subdivision (a)(2), grants the Labor Commissioner the discretion to mitigate the statutory maximum penalty per day in light of prescribed factors.

When DLSE determines that a violation of the prevailing wage laws has occurred, including with respect to any violation of the apprenticeship requirements, 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 burden of presenting evidence that "provides prima facie support for the Assessment ...." (Cal. Code Regs. tit. 8, § 17250, subd. (a).) When that initial burden is met, the contractor or subcontractor "shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect." (Cal. Code Regs. tit. 8, § 17250, subd. (a); 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).)

In the instant case, Worthington Construction did not pay three workers at the required holiday rate of pay. The parties stipulated that the Assessment correctly stated that owed wages were due in the amount of $612.36. Accordingly, the first issue to decide is what penalties should be assessed for Worthington Construction's failure to pay the required holiday rate.

DLSE Provided Prima Facie Support for Assessing $240.00 in Penalties Under Section 1775.

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. [6]
> (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 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, but it does not mandate mitigation in all cases. 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

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[6] 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."

the circumstances the punishment appears to be too harsh." (*Pegues v. Civil Service Commission* (1998) 67 Cal.App.4th 95, 107.)

In this case, it is undisputed that Worthington Construction failed to pay the required holiday pay to three workers on one day. For each of those violations the Assessment imposed a rate of $80.00, a rate selected based on a prior record of failing to meet prevailing wage obligations. Accordingly, DLSE produced evidence supporting a prima facie showing for the assessment of $240.00 in total penalties under section 1775.

Worthington Construction argues the rate of $80.00 was too high because its experience in prior cases showed that the Labor Commissioner has assessed penalties at the rate of $40.00 per violation. Nothing in the statute, however, compels the Labor Commissioner's discretion to select the $40.00 penalty rate for successive cases merely because the $40.00 rate was imposed in an earlier case. With no other argument supported by evidence as to the $80.00 penalty rate, Worthington Construction failed to carry its burden to prove an abuse of discretion in the setting of the $80.00 penalty rate. (Cal. Code Regs., tit. 8, § 17250, subd. (c).)[7]

Accordingly, the Assessment is affirmed as to the total penalties of $240.00 under section 1775.

[7] Worthington Construction objects to Anderson's testimony and the penalty review because they refer to 21 civil wage and penalty assessments issued to Worthington Construction, 18 of which occurred more than three years before the Assessment. Worthington Construction contends that under section 1775, the Labor Commissioner may consider only the past three years of violations. The objection is overruled. Section 1775, subdivision (a)(1) calls for a maximum penalty rate of $200.00, and subdivision (a)(2) allows the Labor Commissioner to mitigate the penalty based on factors including a "prior record of failing to meet … prevailing wage obligations." (§ 1775, subd. (a)(2)(A)(ii).) Consideration is not limited to the prior record over the last three years. The only reference in section 1775 to the record in the last three years is the portion that requires a penalty rate of at least $80.00 if the contractor had penalties within the past three years. (§ 1775, subd. (a)(2)(B)(ii).) That provision cannot be read in the converse to restrict the imposition of the $80.00 rate only to instances where prior penalties had been imposed within the past three years.

Worthington Construction Did Not Violate Apprenticeship Requirements.

Sections 1777.5 through 1777.7 set forth the statutory requirements governing the employment of apprentices on public works projects. These requirements are further addressed in regulations promulgated by the California Apprenticeship Council. (Cal. Code Regs., tit. 8, §§ 227 to 232.70.) In review of an assessment asserting violation of apprentice requirements, "… the affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5." (§ 1777.7, subd. (c)(2)(B); accord, Cal. Code Regs., tit. 8, § 232.50, subd. (b).)

Section 1777.5, subdivision (d), establishes that every contractor awarded a public works contract by the state or any political subdivision who employs workers in any apprenticeable craft or trade "shall employ apprentices in at least the ratio set forth in this section . . . ." Section 1777.5, subdivision (g), specifies the ratio as not less than one hour of apprentice work for every five hours of journeyperson work:

> The ratio of work performed by apprentices to journey[persons] employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journey[person] work.

(§ 1777.5, subd. (g).) The governing regulation as to this 1:5 ratio of apprentice hours to journeyperson hours is California Code of Regulations, title 8, section 230.1, subdivision (a), which states in part:

> Contractors, as defined in Section 228 to include general, prime, specialty or subcontractor, shall employ registered apprentice(s), as defined by Labor Code Section 3077, during the performance of a public work project in accordance with the required 1 hour of work performed by an apprentice for every five hours of labor performed by a journey[person], unless covered by one of the exemptions

> enumerated in Labor Code Section 1777.5 or this subchapter.[8] Unless an exemption has been granted, the contractor shall employ apprentices for the number of hours computed above before the end of the contract.

The regulatory scheme establishes a two-step process by which the contractor obtains apprentices to satisfy the 1:5 ratio: (1) prior to commencing work the contractor is required to submit public work contract award information to the applicable apprenticeship committees to notify them of upcoming apprentice work opportunities; and (2) the contractor is required to request that the applicable apprenticeship committees dispatch apprentices to work on the project. (§ 1777.5, subd. (e); Cal. Code Regs., tit. 8, §§ 230, subd. (a) and 230.1, subd. (a).)

As to notification to apprenticeship committees of upcoming work opportunities, California Code of Regulations, title 8, section 230, subdivision (a), states in part:

> Contractors shall provide contract award information to the apprenticeship committee for each applicable apprenticeable craft or trade in the area of the site of the public works project that has approved the contractor to train apprentices. Contractors who are not already approved to train by an apprenticeship program sponsor shall provide contract award information to all of the applicable apprenticeship committees whose geographic area of operation includes the area of the public works project. This contract award information shall be in writing and may be a DAS Form 140, Public Works Contract Award Information.

As to the request to the applicable apprenticeship committees to dispatch apprentices to the project job site, California Code of Regulations, title 8, section 230.1, subdivision (a), states in relevant part:

> Contractors who are not already employing sufficient registered apprentices (as defined by Labor Code Section 3077) to comply with the one-to-five ratio must request the dispatch of required apprentices from the apprenticeship committees providing training

[8] Here, the record established no exemption for Worthington Construction.

> in the applicable craft or trade and whose geographic area of operation includes the site of the public work by giving the committee written notice of at least 72 hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices are required. If the apprenticeship committee from which apprentice dispatch(es) are requested does not dispatch apprentices as requested, the contractor must request apprentice dispatch(es) from another committee providing training in the applicable craft or trade in the geographic area of the site of the public work, and must request apprentice dispatch(es) from each such committee either consecutively or simultaneously, until the contractor has requested apprentice dispatch(es) from each such committee in the geographic area. All requests for dispatch of apprentices shall be in writing, sent by first class mail, facsimile or email.

(Cal. Code Regs, tit. 8, § 230.1, subd. (a).) The Division of Apprenticeship Standards (DAS) provides a form, DAS 142, that contractors may use to request dispatch of apprentices from apprenticeship committees.

Further, California Code of Regulations, title 8, section 230.1, subdivision (a), provides in relevant part:

> . . . [I]f in response to a written request no apprenticeship committee dispatches or agrees to dispatch during the period of the public works project any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the apprenticeship committee's standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of this section as a result of failure to employ apprentices for the remainder of the project, provided that the contractor made the request in enough time to meet the above-stated ratio. If an apprenticeship committee dispatches fewer apprentices than the contractor requested, the contractor shall be considered in compliance if the contractor employs those apprentices who are dispatched, provided that, where there is more than one apprenticeship committee able and willing to unconditionally dispatch apprentices, the contractor has requested dispatch from all committees providing training in the applicable craft or trade whose geographic area of operation includes the site of the public work.

(Cal. Code Regs., tit. 8, § 230.1, subd. (a).)

In this case, the penalties that DLSE imposed under section 1777.7 were based solely on an asserted violation of the requirement to meet the 1:5 apprentice to journeyperson ratio. (§ 1777.5, subd. (g).) Worthington Construction admitted to not meeting the required ratio. Based on the evidence, however, Worthington Construction is excused from that failure.

The parties stipulated that the sole applicable apprenticeship committee in the geographic area of the public work site was the Landscape JAC. It is undisputed that Worthington Construction sent the DAS 142 form to the Landscape JAC on June 21, 2016, well in advance of 72 hours before the date on which apprentices would be needed, which was June 29, 2016. The record reflects that Worthington Construction requested dispatch for a start date of June 28, 2016, a date on which Worthington was not working. Based on the mistaken June 28 date on the form, DLSE concluded the dispatch request was invalid.

The language of California Code of Regulations, title 8, section 230.1, subdivision (a), however, does not require that the exact start date be provided on a request for dispatch. Rather, the regulation states that to comply with the 1:5 apprentice to journeyperson ratio, (1) the contractor must request the required apprentices from the applicable apprenticeship committee for the applicable craft or trade in the geographic area of operation that includes the public work site; (2) the request must be in writing; and (3) the request must be sent to the committee at least 72 hours before the date on which the apprentice is needed. Worthington Construction complied with these requirements. Worthington Construction sent the request for dispatch 96 hours or four business days in advance of the June 28, 2016, start date. As a consequence, the request for dispatch was timely and, in relevant respects, valid under the regulation. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).)

In response to the request, the Landscape JAC dispatched no apprentice.[9] At that point, nothing else was required of Worthington Construction in order to be relieved of the requirement to hire apprentices in the 1:5 ratio, as provided by regulation. (Cal. Code Regs., tit. 8, § 230.1 subd. (a).)

Accordingly, the Director finds that while DLSE met its initial burden to present prima facie support for the assessment of $2,040.00 in penalties under section 1777.7, Worthington Construction carried its burden to prove that the basis for the Assessment was incorrect as to those penalties.

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

FINDINGS

1. Worthington Construction, Inc. failed to pay the required holiday hourly rate of pay for the Landscape Irrigation Laborer/Tender Classification as determined in the SC-102-X-14-2015-2 prevailing wage determination in the amount of $612.36.[10]
2. The Labor Commissioner did not abuse her discretion in assessing Labor Code section 1775 penalties calculated at the penalty rate of $ 80.00 per violation for a total of $240.00.
3. Worthington Construction, Inc. complied with the requirements of Labor Code section 1777.5, subdivision (g), and California Code of Regulations, title 8, section 230.1, subdivision (a), by submitting a request for dispatch to the applicable apprenticeship committee and

[9] Worthington testified that the Landscape JAC had previously advised him that it would not dispatch apprentices unless Worthington Construction executed either a union contract or a union project agreement, and Worthington Construction was unwilling to do so. After submitting the DAS 142 form for this Project, Worthington was told again by an unidentified individual at the Landscape JAC that it would not dispatch apprentices. DLSE did not rebut this evidence.

[10] As noted, *ante,* Worthington Construction, Inc. and DLSE stipulated that after the Assessment, Worthington Construction, Inc. made an unspecified payment on the amount of unpaid prevailing wages. Accordingly, it is entitled to a credit for that payment.

was excused from the requirement to employ apprentices under Labor Code section 1777.5 because the apprenticeship committee did not dispatch apprentices.

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

Wages	$612.35
Penalties under section 1775:	$240.00
Penalty under section 1777.7	$ 0.00
TOTAL:	**$852.36**

ORDER

The Civil Wage and Penalty Assessment is affirmed as modified, as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the Parties.

In addition, interest is due from Worthington Construction, Inc. and shall accrue on unpaid wages in accordance with section 1741, subdivision (b).

Dated: 7/16/20

/s/ Katrina S. Hagen
Katrina S. Hagen
Director
Department of Industrial Relations