

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Monet Construction Inc.**

Case No. 14-0462-PWH

From a Determination of Civil Penalty issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected contractor Monet Construction Inc. (Monet) submitted a timely request for review of a Determination of Civil Penalty (Determination) issued by the Division of Labor Standards Enforcement (DLSE) on July 16, 2014, with respect to the work of improvement known as the restroom replacement at Memorial Park and Allendale Park (Project) performed for the City of Pasadena in the County of Los Angeles. The Determination found that Monet knowingly violated Labor Code section 1777.5, and California Code of Regulations, title 8, sections 230, subdivision (a), and 230.1, subdivision (a).<sup>1</sup> The Determination assessed an aggregate penalty of \$37,800.00 under Labor Code section 1777.7.

Hearing on the Merits was held on March 19, 2015, in Los Angeles, California, before Hearing Officer Howard Wien. William A. Snyder appeared for DLSE. Richard Bactor appeared for Monet as its President. Testimony was taken from DLSE's Industrial Relations Representative, Mr. Fabian Cazares. Testimony was taken from Monet's President Mr. Bactor. Each party gave a closing statement, and the case was then taken under submission.

The issues for decision are:

1. Whether Monet knowingly violated Labor Code section 1777.5, and section 230, subdivision (a), by not timely issuing public works contract award information in a DAS Form 140 or equivalent (DAS 140) to all apprenticeship committees for the crafts of laborer, plumber and cement mason in the geographic area of the Project site.

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<sup>1</sup> All further references to "section" are to California Code of Regulations, title 8, unless otherwise indicated.

2. Whether Monet knowingly violated Labor Code section 1777.5, and section 230.1, subdivision (a), by not timely issuing requests for dispatch of apprentices in a DAS Form 142 or equivalent (DAS 142) to all apprenticeship committees in the geographic area of the Project site for the crafts of laborer, plumber and cement mason while concurrently failing to employ on the Project registered apprentices in those crafts in the ratio of one hour of apprentice work for every five hours of journeyman work.
3. Whether Monet knowingly violated Labor Code section 1777.5, and section 230.1, subdivision (a), by not employing on the Project registered apprentices in the ratio of one hour of apprentice work for every five hours of journeyman work in the crafts of laborer, plumber and cement mason.
4. If Monet knowingly committed any of the violations stated above, what penalty shall be assessed against Monet under Labor Code section 1777.7.

In this decision, the Director finds that Monet did not violate Labor Code section 1777.5, section 230, subdivision (a), and section 230.1 subdivision (a), as to the craft of laborer. The Director further finds that Monet knowingly violated Labor Code section 1777.5, section 230, subdivision (a), and section 230.1 subdivision (a), as to the crafts of plumber and cement mason. After reviewing DLSE's penalty assessment de novo, the Director finds that mitigation of the penalty amount is warranted and reduces the penalty against Monet under Labor Code section 1777.7 to the sum of \$15,760.00, computed at the mitigated rate of \$80.00 per day for the 197 days beginning October 31, 2013, and ending May 16, 2014. Accordingly, the Director affirms the Determination in part and modifies the Determination in part.

#### **FINDINGS OF FACT**

1. Monet is a general building contractor based in the City of Glendale, California. Monet successfully bid on a contract with the City of Pasadena to perform construction work on the Project. The Invitation to Bid instructed Monet that the Project was subject to the provisions of Labor Code section 1720 et seq., and applicable regulations, governing prevailing wages and use of apprentices on public works projects. The Invitation to Bid contained a section entitled in all capital letters "PAYMENT OF PREVAILING WAGES AND EMPLOYMENT OF

APPRENTICES” stating in part: “Contractor is required to utilize apprentices as required by the California Labor Code and applicable regulations....”

2. The first day that Monet had workers employed upon the Project was October 31, 2013 (all of the workers that day were laborers). The last day that Monet had workers employed upon the Project was May 29, 2014.

3. Monet employed journeymen workers on the Project in three crafts: laborers, plumbers and cement masons. The applicable prevailing wage determinations for these crafts designated each of these crafts as apprenticeable. For these three crafts, in the area of the Project site there was one apprenticeship committee for laborers, six for plumbers, and two for cement masons, as follows:

(a) Laborers:

- Laborers Southern California Joint Apprenticeship Committee, Azusa, California

(b) Plumbers<sup>2</sup>:

- Glendale, Burbank San Fernando Valley & Antelope Valley Plumbers & Steamfitters J.A.T.C., Burbank, California (Glendale, Etc. Plumbers & Steamfitters J.A.TC.)
- Los Angeles & Vicinity Steamfitters & Industrial Pipefitter J.A.T.C., Gardena, California
- Los Angeles Metropolitan Plumbers J.A.T.C., Los Angeles, California

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<sup>2</sup> DLSE relied upon its Exhibit 14 to establish the number of plumber apprenticeship committees in the area of the Project site: a hardcopy of the Department’s website page listing 10 committees. DLSE’s witness, however, testified that one of these committees – Landscape & Irrigation Fitter of Southern California J.A.T.C. -- was inapplicable because Monet did not perform landscape and irrigation fitter work on the Project. In addition, the list contains an apprenticeship committee for air conditioning and refrigeration – Los Angeles & Orange Counties Air-Conditioning & Refrigeration J.A.T.C. – but the record does not establish that Monet performed any such work on this Project. Further, the record fails to establish that two additional committees on this list were within the geographic area of the Project site: (1) California American Fire Sprinkler Association, U.A.C. is listed with an address in Ripon, located in Northern California; there was no evidence that this program operated in the area of the Project site; (2) Road Sprinkler Fitters U.A. Local 669 J.A.T.C. is listed with an address in Columbia, Maryland;

- Pomona and San Gabriel Valleys Plumbers & Steamfitters J.A.C., Rancho Cucamonga, California
  - Southern California Chapter of the Associated Builders & Contractors, Inc. Plumbers U.A.C., Anaheim, California
  - Sprinkler Fitters U.A. Local 709 J.A.C., Whittier, California
- (c) Cement Masons:
- Southern California Cement Masons Joint Apprenticeship Committee, Arcadia, California. (So. Calif. Cement Masons JAC/Arcadia)
  - Southern California Laborers Cement Mason Joint Apprenticeship Committee, Azusa, California (So. Calif. Laborers Cement Mason JAC/Azusa)

4. As to issuance of DAS 140's, for the nine apprenticeship committees listed above, Monet did not issue a DAS 140 to five committees, Monet timely issued a DAS 140 to only one committee, and Monet untimely issued a DAS 140 to three committees, as follows:

(a) One Timely DAS 140: On October 14, 2013, Monet timely issued a DAS 140 to the Laborers Southern California J.A.C.

(b) Three Untimely DAS 140s: As stated in the "Discussion" section below, the deadline for Monet to issue the DAS 140s was October 31, 2013, because this was the first day Monet employed workers upon the Project. For plumbers, Monet issued a DAS 140 to the Glendale, Etc. Plumbers & Steamfitters J.A.TC. on or about December 13, 2013 – six weeks late. For cement masons, Monet issued DAS 140s to the two committees on May 7, 2014 – over six months late.

(c) No Issuance of DAS 140s: Monet did not issue a DAS 140 to any of the five other plumber committees.

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there was no evidence that this program operated in the area of the Project site. Accordingly, from the list of 10 committees in Exhibit 14, the record establishes that six were in the plumber craft applicable to the Project.

5. Monet was not approved to train apprentices by any of the nine committees in the area of the Project site. The four DAS 140s that Monet issued (as stated above) each contained the following conspicuous printed statement:

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: <http://www.dir.ca.gov/das/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

(Emphasis added in part.)

The website address stated in the above-quoted statement from the DAS 140s listed all nine of the apprenticeship committees for the crafts of laborer, plumber and cement mason in the area of the Public Work site.

6. As to issuance of DAS 142s for laborers, on October 31, 2013, Monet timely issued a DAS 142 to the one laborer committee in the area of the Project site: Laborers Southern California J.A.C. That committee refused to dispatch laborer apprentices to Monet because Monet had checked box "3" on its DAS 140 (discussed above) rather than box "1". By checking box "3" rather than box "1" Monet had communicated to that committee that Monet would employ and train the apprentices in accordance with the California Apprenticeship Council regulations, including section 230.1 subdivision (c) – but not in accordance with particular standards of that committee. Because the committee refused to dispatch apprentices, Monet did not hire any laborer apprentices for the Project. Monet employed laborer journeymen for a total of 1,910.5 hours.

7. As to the issuance of DAS 142s for plumbers, Monet failed to submit a DAS 142 to five of the six plumber apprenticeship committees in the area of the Project site. As to the one plumber committee to whom Monet issued a DAS 142 (Glendale, Etc. Plumbers and Steamfitters J.A.T.C.), Monet issued it untimely: one day after the work was done. Monet issued it on December 18, 2013 – for work done on December 17. Monet acknowledged in its fax transmittal of this DAS 142 that was sent solely "for filing" – i.e., not for the purpose of having

the committee dispatch an apprentice. Consequently, Monet did not have a plumber apprentice work on December 17. However, Monet did have a plumber apprentice work on the Project on January 8, 9, and 10, 2014, for a total of 24 apprentice hours. Monet had plumber journeymen working on the Project for a total of 491.5 hours.

8. As to issuance of DAS 142s for cement masons, Monet never issued a DAS 142 to one committee (So. Calif. Laborers Cement Mason JAC/Azusa). However, Monet twice issued timely DAS 142s to the other committee in the area of the Project site (So. Calif. Cement Masons JAC/Arcadia): a DAS 142 issued on May 8, 2014 requested two apprentices to work on May 16; and a DAS 142 issued on May 22, 2014 requested two apprentices to report to work on May 29. However, Monet did not conduct any work on the Project on May 16. As to May 29, So. Calif. Cement Masons JAC/Arcadia committee dispatched two apprentices, who each worked eight hours – however, Monet did not have a journeyman cement mason working with the dispatched apprentices on that particular day. Monet had cement mason journeymen working on the Project a total of 112 hours.

9. The three DAS 142s that Monet issued, as stated above, each contained the following conspicuous printed statement:

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: <http://www.dir.ca.gov/DAS/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards. **Except for projects with less than 40 hours of journeyman work, you must request and employ apprentices in no less than 8 hour increments.**

(Emphasis in original.)

The DAS 142s that Monet issued also contained the following conspicuous printed statement:

You may use this form to make your written request for the dispatch of an apprentice. Requests for dispatch must be in writing and submitted at least 72 hours in advance (excluding weekends and holidays) via first class mail, fax or email. **Proof of submission may be required.** Please take note of California Code of Regulations, Title 8, § 230.1 (a) for all applicable requirements regarding apprenticeship requests and/or visit <http://www.dir.ca.gov/DAS/DASApprenticesOnPublicWorksSummaryOfRequirements.htm>. (Emphasis in original.)

10. The City of Pasadena filed its Notice of Completion of the Project on May 16, 2014.

11. The Determination assessed penalties under Labor Code section 1777.7, subdivision (a)(1) at the rate of \$180.00 per day. The Determination computed the number of days that Monet was in violation of Labor Code section 1777.7 as 210 days, commencing with the first day that Monet employed workers upon the Project, October 31, 2013, through the last day that Monet employed workers upon the project, May 29, 2014.

12. As of the time the Determination was issued, DLSE's database showed no final determinations of Labor Code violations by Monet. It showed that Monet had been issued a Determination of Civil Penalty and a Civil Wage and Penalty Assessment in two other cases, but both of those cases were still within the 60-day period after issuance within which the contractor can submit a request for review.

## DISCUSSION

Labor Code 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. Section 227 provides that the regulations "shall govern all actions pursuant to ... Labor Code Sections 1777.5 and 1777.7." In the review of alleged violations of the public works apprentice requirements, "... the affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5." (Lab. Code, § 1777.7, subd. (c)(2)(B).)

### The DAS 140 Requirement.

As to the requirement to issue the DAS 140, Labor Code section 1777.5, subdivision (e) states: "Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work."

The governing regulation for issuing the DAS 140 is section 230, subdivision (a). Section 230, subdivision (a) specifies the requirement for contractors who are already approved

to train by an apprenticeship program sponsor in the apprenticeable craft or trade -- and the requirement for contractors such as Monet who are not so approved -- as follows:

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. The information shall be provided to the applicable apprenticeship committee within ten (10) days of the date of the execution of the prime contract or subcontract, but in no event later than the first day in which the contractor has workers employed upon the public work.... The DAS Form 140 or written notice shall include the following information, but shall not require information not enumerated in Section 230:

- (1) the contractor's name, address, telephone number and state license number;
- (2) full name and address of the public work awarding body;
- (3) the exact location of the public work site;
- (4) date of the contract award;
- (5) expected start date of the work;
- (6) estimated journeyman hours;
- (7) number of apprentices to be employed;
- (8) approximate dates apprentices will be employed.

(§ 230, subd. (a), emphasis added.)

Here, Monet employed journeymen workers upon the Project in the three apprenticeable crafts of laborer, plumber and cement mason – for which there were a total of nine apprenticeship committees in the area of the Project site. Monet failed to issue a DAS 140 to five of those nine committees. Monet timely issued a DAS 140 to only one committee -- Laborers Southern California J.A.C. Monet untimely issued a DAS 140 to three committees – Glendale, Etc. Plumbers & Steamfitters J.A.T.C. (six weeks late), and So. Calif. Cement Masons JAC/Arcadia and So. Calif. Laborers Cement Masons JAC/Azusa (both over six months late). Accordingly, Monet violated Labor Code section 1777.5, subdivision (c), and section 230, subdivision (a).



The DAS 142 and One-to-Five Ratio Requirements.

Labor Code section 1777.5, subdivision (d) establishes that every contractor awarded a public work 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 ...." Labor Code section 1777.5, subdivision (g) specifies the ratio as not less than one hour of apprentice work for every five hours of journeyman work:

The ratio of work performed by apprentices to journeymen 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 journeyman work.

The governing regulation for the one-to-five ratio of apprentice hours to journeyman hours is 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 one hour of work performed by an apprentice for every five hours of labor performed by a journeyman, unless covered by one of the exemptions enumerated in Labor Code Section 1777.5 or this subchapter.<sup>3</sup> Unless an exemption has been granted, the contractor shall employ apprentices for the number of hours computed above before the end of the contract. 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 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.... All requests for dispatch of apprentices shall be in writing, sent by first class mail, facsimile or email. Except for projects with less than 40 hours of journeyman work, each request for apprentice dispatch shall be for not less than an 8 hour day per each apprentice, or 20% of the estimated apprentice hours to be worked for an employer in a particular craft or trade on a project, whichever is greater, unless an employer can provide written evidence, upon request of the committee dispatching the apprentice or the Division of Apprenticeship Standards, that circumstances beyond the employer's control prevent this from occurring.... [Emphasis added.]

<sup>3</sup> The record established no exemptions for Monet.

Monet Did Not Violate the DAS 142 and One-to-Five Ratio Requirements for Laborers.

Monet timely submitted a DAS 142 to the single laborer apprenticeship committee in the area of the Project site, the Laborers Southern California J.A.C. However, this committee refused to dispatch laborer apprentices to Monet. It refused to do so because Monet had checked box "3" on its DAS 140 (discussed above) rather than box "1" –thereby stating that Monet would employ and train the apprentices in accordance with the California Apprenticeship Council regulations, including section 230.1 subdivision (c) – but not stating that Monet would comply with the standards of this particular committee. Monet's conduct in checking box "3" but not box "1" on the DAS 140 was fully in compliance with Labor Code section 1777.5, subdivision (c), which states in relevant part:

The employment and training of each apprentice shall be in accordance with either of the following: (1) The apprenticeship standard and apprentice agreements under which he or she is training; (2) The rules and regulations of the California Apprenticeship Council.

Section 230.1, subdivision (a) provides that in this circumstance, the contractor is excused from the one-to-five ratio requirement:

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 dispatches from each such committee in the geographic area....

...if 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.

Accordingly, Monet did not violate the DAS 142 and 1:5 ratio requirements as to the craft of laborer.

Monet Violated the DAS 142 and One-to-Five Ratio Requirements for Plumbers.

As to the craft of plumber, Monet did violate the DAS 142 and one-to-five ratio requirements of Labor Code section 1777.5, subdivisions (d) and (g), and section 230.1, subdivision (a). Monet issued a DAS 142 to only one of the six plumber committees in the area of the Project site (Glendale, Etc. Plumbers and Steamfitters J.A.T.C.), and Monet issued this single DAS 142 on December 18, 2013 -- one day after the work was to be done on December 17. Monet acknowledged in its fax transmittal of this DAS 142 that was sent solely "for filing" -- i.e., not for the purpose of having the committee dispatch an apprentice. Consequently, Monet did not have a plumber apprentice work on December 17.

For the entire length of the Project, Monet only had 24 plumber apprentice hours, which occurred on January 8, 9, and 10, 2014. Monet had plumber journeymen working on the Project for a total of 491.5 hours, so the one-to-five ratio required 98.3 hours of apprentice plumber work. Accordingly, Monet failed to satisfy the one-to-five ratio by 74.3 apprentice hours.<sup>4</sup>

Monet Violated the DAS 142 and One-to-Five Ratio Requirements for  
Cement Masons.

As to the craft of cement mason, Monet violated both the DAS 142 and one-to-five ratio requirements of Labor Code section 1777.5, subdivisions (d) and (g), and section 230.1, subdivision (a). Monet issued a DAS 142 to one of the two committees in the area of the Project site (So. Calif. Cement Masons JAC/Arcadia), and Monet had apprentice cement masons work a total of 16 hours on the Project. Monet had journeymen cement masons work a total of 96 hours on the Project. So the one-to-five ratio required 19.2 apprentice hours -- for which Monet fell short.

Monet's shortfall was actually 22.4 hours, rather than the 3.2 hours indicated above. For the day that the apprentice cement masons worked their 16 hours (May 29, 2014), Monet failed to have any journeyman cement mason on the job. This violated the requirement of section

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<sup>4</sup> If Monet had employed apprentice plumbers on the Project for the 98.3 hours required by the one-to-five ratio, Monet would not have been in violation of the DAS 142 requirement, because there is no requirement to issue a DAS 142 if the contractor is "... already employing sufficient registered apprentices ... to comply with the one-to-five ratio ..." (Section 230.1, subdivision (a).) Here, however, Monet failed to submit the DAS 142 concurrent with its failure to employ apprentices satisfying the one-to-five ratio, and so Monet violated both the DAS 142 requirement and the one-to-five ratio requirement.

230.1, subdivision (c): "Where an employer employs apprentices under the rules and regulations of the California Apprenticeship Council, as set forth in Labor Code section 1777.5(c)(2), apprentices employed on public works must at all times work with or under the direct supervision of journeyman/men." So DLSE correctly re-classified the 16 apprentice hours as journeyman hours, giving Monet a total of 112 journeyman hours on the Project. The one-to-five ratio thereby required 22.4 apprentice hours – but Monet had 0 apprentice hours.

Assessment of the Penalty.

If a contractor "knowingly violated Section 1777.5" a civil penalty is imposed under Labor Code section 1777.7, subdivision (a)(1), which states in relevant part:

A contractor or subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance.

The phrase quoted above -- "knowingly violated Section 1777.5" -- is defined by section 231, subdivision (h) 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, or the contractor had previously employed apprentices on a public works project.

Here, the record establishes that Monet knowingly violated Labor Code section 1777.5.

First, under section 231, subdivision (h), there is an irrebuttable presumption that Monet knew or should have known of these apprenticeship requirements because the contract and the bid documents notified Monet of the obligation to comply with the Labor Code provisions applicable to public works projects. As to the bid documents, the City of Pasadena's Invitation

to Bid instructed Monet that the Project was subject to the provisions of Labor Code section 1720 et seq., and applicable regulations, governing the payment of prevailing wages on public works projects and governing apprentices. As to apprentices, the Invitation to Bid stated: “Contractor is required to utilize apprentices as required by the California Labor Code and applicable regulations....”

Second, Monet’s violations of Labor Code section 1777.5 were not due to circumstances beyond its control. In this regard, Boctor, Monet’s President, testified that Monet’s failures were due to the fact that Monet’s plumbing subcontractor Jim Isaacs Plumbing Company withdrew its bid on the Project on October 11, 2013 – less than three weeks before Monet’s work on the Project commenced – and the City of Pasadena did not send written notice to Monet that it approved Monet’s request for a substitution until November 4, 2013. These facts are entirely immaterial. As discussed above, Monet was required to submit the DAS 140 to the apprenticeship committees no later than the first day of work on the Project (in this case, October 31, 2013) – and the fact that the City of Pasadena had not yet informed Monet of its consent to the substitution of Jim Isaacs Plumbing Company did not interfere in any manner with the simple task of Monet sending those DAS 140s to the nine apprenticeship committees in the area of the Project site.

The record thus conclusively establishes that Monet’s violations were knowingly made. This record is further buttressed by the fact that the DAS 140s and DAS 142s that Monet did issue to apprenticeship committees clearly and unequivocally stated the apprenticeship requirements – thereby establishing Monet’s actual notice of those requirements (in addition to the actual notice Monet received from the Invitation to Bid). These forms stated the website addresses at which Monet could easily obtain the names and contact information of the apprenticeship committees for laborers, plumbers and cement masons in the area of the Project site. The DAS 140s clearly stated the requirement to send the DAS 140 to all of those committees. The DAS 142s clearly stated the required ratio of one apprentice hour for every five journeyman hours, and the 72-hour deadline for issuance.

Since Monet knowingly violated Labor Code section 1777.5, a penalty must be assessed under Labor Code section 1777.7. Under Labor Code section 1777.7, subdivision (f)(2), upon the contractor’s request for review of the penalty, the Director decides the appropriate amount of

the daily penalty de novo.<sup>5</sup>

Here, DLSE assessed the penalty at a daily rate of \$180 for each calendar day of noncompliance. However, under Labor Code section 1777.7 subdivision (a)(1), the penalty rate cannot be above \$100 unless the contractor "... knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter." (Lab. Code § 1777.7, subd. (a)(1).) The plain meaning of this provision is that the case at hand must be a knowing violation of Labor Code section 1777.5 within three years from a prior such violation. Here, the record did not establish any prior violation by Monet: as of the issuance of the Determination, DLSE's database showed only that Monet had been issued a Determination of Civil Penalty and a Civil Wage and Penalty Assessment in two other cases, but both of those cases were still within the 60-day period after issuance within which Monet could submit a request for review. Accordingly, the maximum allowable penalty under Labor Code section 1777.7, subdivision (a)(1) is \$100.

In deciding the appropriate penalty de novo – up to the \$100 maximum -- the Director is to consider the following factors:

- (A) Whether the violation was intentional.
- (B) Whether the party has committed other violations of section 1777.5.
- (C) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.
- (D) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

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<sup>5</sup> Amendments to section 1777.7 went into effect on January 1, 2015, including amending the standard of review from review de novo to review for abuse of discretion. The amended statute does not state that the amendments apply to pending cases. Statutes apply prospectively unless there is a clearly expressed statutory intent otherwise. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 936.) In this matter, application of the amendments to section 1777.7 would change the legal consequences to Monet in that it would preclude Monet from a new review of the alleged conduct to determine whether a penalty is appropriate at all, or whether the penalty should be less than that imposed. It would alter Monet's burden on the issue of penalty by requiring Monet to establish that the Labor Commissioner abused his or her discretion where no such burden existed before. (*Id.*, at p. 938.) Moreover, equity requires that Monet, who requested review in this matter on July 25, 2014 -- long before the change in the law -- not be prejudiced by delay in this matter coming to hearing.

(E) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

(Lab. Code § 1777.7, subs. (f)(1), (f)(2).)

Here, two of the factors favor a high penalty. Under factor “A,” the evidence addressed above establishes that the violation was intentional. Monet knew the requirements on issuing the DAS 140 and DAS 142, and the one-to-five ratio requirement, but Monet chose not to comply. Under factor “C” there is no evidence that Monet took any steps to remedy these violations.

Factor “B” however, favors a low penalty: the record does not establish any other violations of Labor Code section 1777.5 as of the time DLSE issued the Determination.

Factors “D” and “E” favor a middle-level penalty. For the crafts of plumber and cement mason, there were a total of 603.5 journeyman hours. The one-to-five ratio therefore required 120.7 apprentice hours, but Monet had apprentices work only 24 hours – resulting in 96.7 hours of lost training opportunities for apprentices. Further, Monet’s failure to issue DAS 140s harmed the apprenticeship programs by denying them information on this public works project occurring in their geographic area utilizing their crafts; such information would have been useful to the programs in helping them accomplish their mission.

In applying these factors, the Director concludes that a daily penalty of \$80.00 is the appropriate penalty under Labor code section 1777.7.

The remaining issue is the number of days the penalty is imposed. The number of days is set by section 230, subdivision (a):

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.

Here, DLSE assessed the penalty as beginning on October 31, 2013, which was the first day that Monet employed workers upon the Project. This is appropriate, given that the DAS 140 must be issued no later than the first day the contractor employs workers on the public works project. (Section 230, subd. (a).)

As to the end date, the City of Pasadena filed its Notice of Completion on May 16, 2014. DLSE, however, extended the penalty period to May 29, 2014, because on May 29 Monet had two cement mason apprentices work on the Project. This extension of the penalty period beyond

the filing of the Notice of Completion is impermissible under section 230, subdivision (a). By statute, the penalty period ended on May 16, 2014.

Accordingly, the aggregate penalty assessed under Labor Code section 1777.7, as modified by this Decision, is \$15,760.00, computed at the rate of \$80.00 per day for the 197 days beginning October 31, 2013, and ending May 16, 2014.

### FINDINGS

1. Affected contractor Monet Construction Inc. knowingly violated Labor Code section 1777.5 and section 230, subdivision (a) by not timely issuing public works contract award information in a DAS Form 140 or its equivalent to all apprenticeship committees for the crafts of plumber and cement mason in the geographic area of the Project site. No such violation occurred as to the craft of laborer.

2. Affected contractor Monet Construction Inc. knowingly violated Labor Code section 1777.5 and section 230.1, subdivision (a) by not timely issuing requests for dispatch of apprentices in a DAS Form 142 or its equivalent to all apprenticeship committees in the geographic area of the Project site for the crafts of plumber and cement mason while concurrently failing to employ on the Project registered apprentices in those crafts in the ratio of one hour of apprentice work for every five hours of journeyman work. No such violation occurred as to the craft of laborer.

3. Affected contractor Monet Construction Inc. violated Labor Code section 1777.5 and section 230.1, subdivision (a) by not employing on the Project registered apprentices in the crafts of plumber and cement mason in the ratio of one hour of apprentice work for every five hours of journeyman work. No such violation occurred as to the craft of laborer.

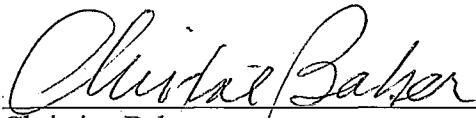
4. For the above-stated violations of Labor Code section 1777.5, section 230, subdivision (a), and section 230.1, subdivision (a), affected contractor Monet Construction Inc. is found liable for an aggregate penalty under Labor Code section 1777.7 in the sum of \$15,760.00, computed at \$80.00 per day for the 197 days beginning October 31, 2013 and ending May 16, 2014.



**ORDER**

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

Dated: 4/6/2016

  
Christine Baker  
Director of Industrial Relations