

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Principles Contracting, Inc.

Case No. 17-0138-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected prime contractor Principles Contracting, Inc. (Principles) requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on March 13, 2017, with respect to the Andrews Elementary School Joint Use Project (Project) performed for the Whittier City School District (District) in Los Angeles County. The Assessment determined that \$30,454.37 in unpaid prevailing wages and statutory penalties were due. These included penalties against Principles under Labor Code sections 1775 and 1813,¹ as well as penalties assessed under section 1777.7 for apprenticeship violations.

A Hearing on the Merits was held on June 7, 2018, in Los Angeles, California before Hearing Officer Howard Wien. Luong Chau appeared as counsel for DLSE. No representative of Principles appeared. DLSE Deputy Labor Commissioner Norbert Flores testified in support of the Assessment.

In the Hearing, DLSE submitted as an exhibit an amended audit that determined the following sums were due: \$6,279.90 in unpaid prevailing wages, \$8,040.00 in section 1775 penalties, \$50.00 in section 1813 penalties, and \$2,640.00 in section 1777.7 penalties. At the conclusion of the Hearing, the Hearing Officer granted DLSE's request to file a post-Hearing final audit. DLSE filed its final audit on July 5, 2018. The final

¹ All subsequent references to sections are to the Labor Code, unless otherwise specified.

audit determined the following sums were due: \$8,462.98 in unpaid prevailing wages, \$6,840.00 in section 1775 penalties, and \$2,640.00 in section 1777.7 penalties.²

The issues presented for decision are:

- Was the Assessment timely?
- Did the Assessment as amended correctly find that Principles failed to report and pay the required prevailing wages for all hours worked on the Project by the affected workers?
- Did Principles provide contract award information to the applicable apprenticeship committees and request dispatch of apprentices for the craft of Plumber?
- Is Principles liable for penalties under sections 1775 and 1777.7, and did DLSE apply the correct penalty rates?
- Is Principles liable for liquidated damages?

For the reasons set forth below, the Director of Industrial Relations finds that DLSE carried its initial burden of presenting evidence at the Hearing that provided prima facie support for the Assessment, for the most part. (See Cal. Code Regs., tit. 8, § 17250, subd. (a).) Accordingly, the Director issues this Decision affirming and modifying in part the Assessment.

FACTS

The facts stated below are based on DLSE's exhibits admitted into evidence, other documents in the Hearing Officer's file, and the testimony of Deputy Labor Commissioner Flores.

Failure to Appear.

Principles' Request for Review of the Assessment was filed by its attorney Noah McCall of the Law Offices of Robert F. Schauer. On November 20, 2017, McCall appeared for Principles in a telephonic prehearing conference conducted by the Hearing Officer. Chau appeared for DLSE. In this conference, the Hearing on the Merits was set for March 15, 2018.

² The final audit eliminated the section 1813 penalties.

On December 13, 2017, the Law Offices of Robert F. Schauer withdrew as counsel for Principles in a letter that day to the Hearing Officer and to Principles. Thereafter, the Hearing Officer did not receive any communication from Principles' Chief Executive Officer Jeffrey Ross Signor or any other person purporting to be a representative of Principles in this matter. Given the lack of any communication from anyone representing Principles, the Hearing Officer decided not to proceed with the Hearing on Merits on March 15, 2018, but rather to conduct a telephonic prehearing conference on March 23, 2018, for the purpose of providing Principles a further opportunity to have a representative appear in the case and to continue the Hearing on the Merits to a subsequent date. However, no representative of Principles appeared for the March 23, 2018 prehearing conference. The Hearing Officer continued the Hearing on the Merits to June 7, 2018, commencing at 10:00 a.m. The Order of this continuance was served on Principles on April 11, 2018, by U.S. mail and by e-mail to Signor as Principles' CEO and registered agent for service of process.

On June 7, 2018, no representative of Principles appeared at the duly noticed Hearing on the Merits. At the designated time for the Hearing to commence, the Hearing Officer phoned Signor, but no one answered.

The Hearing Officer proceeded to conduct the Hearing on the Merits as noticed and scheduled in order to formulate a recommended decision as warranted by the evidence. (See Cal. Code Regs., tit. 8, § 17246, subd. (a) [“Upon the failure of any Party to appear at a duly noticed hearing, the Hearing Officer may proceed in that Party’s absence and may recommend whatever decision is warranted by the available evidence, including any lawful inferences that can be drawn from an absence of proof by the non-appearing Party”].) DLSE’s Exhibits Numbers 1 – 24 were admitted into evidence without objection.³ On July 5, 2018, DLSE submitted its final audit as DLSE Exhibit Number 25.

The Assessment.

On September 25, 2014, the District advertised an invitation for bids for the Project. Principles, as the general contractor, entered into a public works contract with

³ By the end of the Hearing, DLSE withdrew the following exhibits, so they were not admitted: DLSE Exhibit Numbers. 4, 8, 11, 15, and 17 through 23.

the District to complete the Project. The Project consisted of Principles' improving a track-and-field athletic area, including soil grading; installing drainage and irrigation piping; constructing a running track, concrete basketball court area, and woodchip exercise area; adding concrete paving and a walkway; and remodeling the existing girls and boys restrooms. Principles' contract with the District provided that the Project required payment of prevailing wages.

Principles prepared certified payroll records (CPRs) for the Project. The CPRs show that Principles' first day of work on the Project was December 19, 2014, and the final day was August 14, 2015.

The audit of unpaid prevailing wages was based solely upon Flores's finding that the CPRs misclassified six workers by using lower-paying classifications. Based upon the bid advertisement date of September 25, 2014, the following are the relevant prevailing wage determinations (PWDs) applicable to the Project, from which Flores obtained the prevailing wage rates for the four classifications at issue:

- Landscape/Irrigation Tender: SC-102-X-14-2014-1 (Landscape Tender PWD). It states the total prevailing wage rate as \$17.12/hour.⁴
- Landscape/Irrigation Laborer: SC-102-X-14-2014-1 (Landscape Laborer PWD). It states the total prevailing wage rate as \$46.82/hour.
- Landscape Operating Engineer: SC-63-12-33-2014-2 (Landscape Operating Engineer PWD). It states the total prevailing wage rate as \$55.01/hour.
- Plumber, Industrial and General Pipefitter: LOS-2014-2 (Plumber PWD). It states the total prevailing wage rate as \$64.42/hour.

Flores's sole evidence of the work performed by the six workers consisted of inspection field reports (IFRs) that Flores obtained from the District. Using the IFRs, Flores reclassified the six workers who were performing duties that fell within the relevant PWDs, as follows:

1. Reclassification of Noe Sanchez from Landscape Laborer to Plumber: In the CPRs, Principles did not classify any worker as Plumber. DLSE reclassified one worker, Noe Sanchez, from Landscape Laborer to Plumber for the five days of work from March

⁴ The prevailing wage rates stated in the four prevailing wage determinations addressed here do not include training funds, since training funds are not paid to workers.

23 through March 27, 2015, for eight hours per day. The Plumber hourly rate was \$17.60 greater than that for Landscape Laborer. Multiplying the 40 hours of work by \$17.60 shows an underpayment of \$704.00 for this misclassification.⁵

2. Reclassification of Indalecio Sanchez from Landscape Tender to Landscape Laborer: In the CPRs, Principles classified worker Indalecio Sanchez as Landscape Tender on February 16 and 17, 2015, totaling 16 hours. DLSE reclassified those 16 hours as Landscape Laborer work. The Landscape Laborer hourly rate was \$29.70 greater than that for Landscape Tender. Multiplying the 16 hours of work by \$29.70 shows an underpayment of \$475.20 for this misclassification.⁶

3. Reclassification of five workers from Landscape Laborers to Landscape Operating Engineers⁷: In the CPRs, Principles did not classify any worker as Landscape Operating Engineer. DLSE reclassified five workers from Landscape Laborer to Landscape Operating Engineer for a total of 391 hours of work. The Landscape Operating Engineer hourly rate was \$8.19 greater than that for Landscape Laborer. Multiplying the 391 hours by \$8.19 shows an underpayment of \$3,202.29 for this misclassification.⁸

DLSE assessed \$6,840.00 in penalties under section 1775 at the rate of \$120.00 for 57 worker-days that Principles failed to pay the applicable prevailing wages. According to Flores's testimony, DLSE Senior Deputy Lorna Espiritu did not mitigate the penalty rate due to evidence of willful intent to violate prevailing wage law.

Flores testified he further investigated whether Principles complied with statutory apprentice requirements under section 1777.5. Flores determined that Principles did not comply with those requirements as to the trade of Plumber. Principles did not provide public works contract award information to the three applicable apprenticeship committees in the geographic region of the Project for the trade of Plumber; Principles failed to request an apprentice from those apprenticeship committees, and Principles

⁵ DLSE's final audit, however, erroneously calculated this underpayment as \$1,206.80.

⁶ DLSE's final audit, however, erroneously calculated this underpayment as \$541.12.

⁷ One of these five workers was Noe Sanchez, for whom DLSE reclassified 40 hours of work as Plumber work discussed above.

⁸ DLSE's final audit, however, erroneously calculated this underpayment as \$6,715.06.

failed to hire an apprentice in that trade. DLSE assessed a section 1777.7 penalty of \$2,640.00 at the rate of \$40.00 per day for 66 days.

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), and *Lusardi*, at p. 985.)

Section 1775, subdivision (a) requires, among other provisions, that contractors and subcontractors pay the difference to workers who received less than the prevailing wage rate, and also prescribes penalties for failing to pay the prevailing wage 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, but it does not mandate mitigation when the Labor Commissioner determines that mitigation is inappropriate.

Section 1742.1, subdivision (a), provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if unpaid prevailing wages are not paid within 60 days following the service of a civil wage and penalty assessment under

section 1741. Under section 1742.1, subdivision (b), a contractor may entirely avert liability for liquidated damages if, within 60 days from issuance of the CWPA, the contractor deposits into escrow with the Department of Industrial Relations (DIR) the full amount of the assessment of unpaid wages, plus the statutory penalties. In addition, on March 13, 2017, when the Assessment was issued, former section 1742.1 allowed the Director to exercise his or her discretion to waive the liquidated damages if the contractor demonstrated it had substantial grounds to appeal the assessment.⁹

In general, and unless an exemption applies, section 1777.5 and the applicable regulations require the hiring of apprentices to perform one hour of work for every five hours of work performed by journeymen in the applicable craft or trade. (§ 1777.5, subd. (d); Cal. Code Regs., tit. 8, § 230.1, subd. (a).) Prior to commencing work on a contract for public works, every contractor must submit contract award information to applicable apprenticeship programs that can supply apprentices to the project. (§ 1777.5, subd. (e).) The Division of Apprenticeship Standards (DAS) has prepared form DAS 140 that a contractor may use to submit contract award information to an applicable apprenticeship committee. (Cal. Code Regs., tit. 8, § 230, subd. (a).)

A contractor does not violate the requirement to employ apprentices in the 1:5 ratio of apprentice to journeyman if it has properly requested the dispatch of apprentices and no apprenticeship committee in the geographic area of the public works project dispatches apprentices during the pendency of the project, provided the contractor made the request in enough time to meet the required ratio. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).) DAS has prepared another form, DAS 142, which a contractor may use to request dispatch of apprentices from apprenticeship committees. Thus, the contractor is

⁹ On June 27, 2017, the Director's discretionary waiver power was deleted from section 1742.1 by Senate Bill 96. (Stats. 2017, ch. 28, § 16 (SB 96).) Legislative enactments are to be construed prospectively rather than retroactively, unless the legislature expresses its intent otherwise. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 936.) Further, "[a] statute is retroactive if it substantially changes the legal effect of past events." Here, the law in effect at the time the civil wage and penalty assessment was issued allowed a waiver of liquidated damages in the Director's discretion, as specified, which could have influenced the contractor's decision as to how to respond to the assessment. Applying the current terms of section 1742.1 as amended by SB 96 in this case would have retroactive effect because it would change the legal effect of past events (i.e., what the contractor elected to do in response to the assessment). Accordingly, this Decision finds that the Director's discretion to waive liquidated damages in this case under section 1742.1, subdivision (a) is unaffected by SB 96.

required to both notify apprenticeship programs of upcoming opportunities and to request dispatch of apprentices.

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

The Assessment Was Timely.

The limitations period for DLSE to serve an assessment is stated in section 1741, subdivision (a). Section 1741, subdivision (a), has been in effect without amendment since January 1, 2014. (Stats. 2013, ch. 792, § 1, eff. Jan. 1, 2014).¹⁰ It states in relevant part:

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.

In this case, the District’s notice of completion was recorded in the Los Angeles County Recorder’s office on September 11, 2015. It states that the Project was completed on September 8, 2015. Having been recorded within 15 days from completion, the notice of completion was valid, and commenced the running of the 18-

¹⁰ For most purposes on a public works project, the bid advertisement date determines the applicable Labor Code sections and applicable sections of the California Code of Regulations, title 8. As stated above, the bid advertisement date of this Project was September 25, 2014.

month limitations period on September 11, 2015. (See Civ. Code, § 9204.) The day on which 18-month period ended was Saturday, March 11, 2017. In computing the time within which an act is to be performed, if the last day is a Saturday, the time shall be extended to the following Monday. (Cal. Code Regs., tit. 8, §§ 17202, subd. (o) and 17203, subd. (a).) DLSE served the Assessment on Monday, March 13, 2017.

Accordingly, the Assessment was timely.

Principles Failed to Pay Required Prevailing Wage Rates, But for Fewer Hours Than DLSE Assessed.

Reclassification of Noe Sanchez from Landscape Laborer to Plumber for 40 hours of work from March 23 through March 27, 2015. The five IFRs for March 23 through March 27, 2015, constitute prima facie support for this reclassification. Each IFR contains two pages. The first page of each IFR is a form report in which the daily information is typed into spaces outlined on the form. The second page solely contains photocopies of photos that appear related to the description of work on the first page.¹¹ The written descriptions of work on the first pages sufficiently described plumbing work performed,¹² and the photos on the second pages show the worker performing the plumbing work. Therefore, DLSE presented prima facie support for finding unpaid wages in the amount of \$704.00, which represents the \$17.60 difference in hourly rates between Landscape Laborer and Plumber for the 40 hours.

Reclassification of five workers from Landscape Laborers to Landscape Operating Engineers. DLSE's reclassification of workers from Landscape Laborers to Landscape Operating Engineers was based solely upon Flores's review of the IFRs. The IFRs omit certain information, the result of which is that they fail to constitute prima facie evidence for reclassification as to some hours reflected in DLSE's audit. For example, the first page of the IFR does not state or describe the trades working at the job

¹¹ The second pages of the IFRs are undated. Since there was no testimony on the creation of the IFRs, no evidence verifies that the photos on the second page were taken on the date of work stated on the first page. However, Flores testified that DLSE obtained the IFRs from the District. There was no evidence that the District presented the IFRs with pages out-of-order. Accordingly, this Decision finds there is inferential evidence that each photo on the second page of the IFR was taken on the date of work stated on the corresponding first page.

¹² For example, the March 23, 2015 IFR description states in part, "Remove the E urinal to lowered/opened the wall for plumbing rough in". The March 24, 2015 IFR states in part, "Continued the scope of work @ building J restrooms, plumbing rough in for new D F and urinal." The March 25, 26 and 27, 2015 IFRs state similar descriptions, ending on March 27, 2015, with "... installed the urinal."

site and, accordingly, does not state or describe the number of workers in each trade. The first page of the IFRs also does not list or describe the equipment or tools used at the job site. For example, there is no statement that any operating equipment listed in the Landscape Operating Engineer PWD (e.g., backhoe, forklift, skid loader, earthmoving equipment, roller operator, or trencher) was used by Landscape Operating Engineers on the Project. The photos on the second page of the IFRs are of varying evidentiary value. Some show workers working, and some show operating equipment at the jobsite. But some are of such poor quality that a viewer cannot discern whether a person is operating the equipment, or instead whether the equipment is merely parked. For all of the IFRs, the first and second pages do not contain sufficient information to support an inference that more than one Landscape Operating Engineer worked on the same day.

Accordingly, this Decision concludes that the IFRs constitute prima facie evidence for 309 hours of the 391 hours of work that DLSE reclassified from Landscape Laborer to Landscape Operating Engineer, but for not the remaining 82 hours. The IFRs that do constitute prima facie evidence for the 309 hours satisfy the following two criteria: (a) the first page description of the work performed states work that reasonably falls within the Landscaping Operating Engineer scope of work and reasonably could have been performed by use of operating equipment; and (b) at least one of the photos on the second page of the IFR can reasonably be viewed as showing operating equipment performing the landscaping work described on the first page.

Thus for this reclassification, DLSE presented prima facie support for finding unpaid wages in the amount of \$2,530.71, which represents the \$8.19 difference in hourly rates between Landscape Laborer and Landscape Operating Engineer for the 309 hours.

Reclassification of Indalecio Sanchez from Landscape Tender to Landscape Laborer for 16 hours of work on February 16 and 17, 2015. This reclassification was made pursuant to footnote “c” of the Landscape Laborer PWD and Landscape Tender PWD. It states in relevant part, “The first employee on the jobsite shall be a Landscape/Irrigation Laborer, the second employee on the jobsite must be an Apprentice or a Landscape/Irrigation Laborer; and the third and fourth employees may be Tenders.” Here, on February 16 and 17, 2015, Principles employed a four-man crew, with each worker working eight hours per day. The CPRs classified the workers as follows: (a)

Noe Sanchez: Landscape Laborer; (b) Gregory Mills: Landscape Laborer; (c) Jacob Garcia: Landscape Tender; and (d) Indalecio Sanchez: Landscape Tender.

The final audit did not reclassify Mills's 16 hours of work or Garcia's 16 hours of work on these days. Therefore on these days Mills was Landscape Laborer and Garcia was Landscape Tender. As to Noe Sanchez, this Decision's reclassification of 309 hours of work, *ante*, from Landscape Laborer to Landscape Operating Engineer for five workers includes Noe Sanchez's 16 hours on February 16 and 17, 2015. Therefore, on those two days Noe Sanchez was neither a Landscape Laborer nor a Landscape Tender. Footnote "c" of the PWD, quoted above, thus requires that Indalecio Sanchez's 16 hours of work be reclassified as Landscape Laborer work, so that on those two days there were two Landscape Laborers and one Landscape Tender. Principles thus underpaid Indalecio Sanchez \$475.20, which represents the \$29.70 difference in hourly rates between Landscape Tender and Landscape Laborer for 16 hours.

Summarizing the analysis given, *ante*, this Decision modifies the final audit's determination of \$8,462.98 in unpaid prevailing wages to find, instead, \$704.00 in unpaid wages for 40 hours of work by Noe Sanchez as Plumber, \$2,530.71 for 309 hours of work by Noe Sanchez and four other workers as Landscape Operating Engineers, and \$475.20 for 16 hours of work by Indalecio Sanchez as Landscape Laborer, for a total of \$3,709.91 that Principles underpaid its workers. Principles presented no evidence to carry its burden to disprove the basis for, or the accuracy of, this determination. Principles is liable for payment of prevailing wages in the aggregate sum of \$3,709.91. (Cal. Code Regs., tit. 8, § 17250, subd. (a).)

DLSE's Penalty Assessment Under Section 1775 Is Modified in Accordance with This Decision Disallowing a Portion of the Violations Asserted by DLSE.

Section 1775, subdivision (a)(2)(B)(iii), states that the penalty for failure to pay the required prevailing wage rates may not be less than \$120.00 if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of section 1777.1.¹³ Section 1775, subdivision (a)(2)(D), provides that the determination of

¹³ Section 1777.1, subdivision (d) as it existed from 2012-2014 defines a willful violation 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." That provision is now found in section 1777.1, subdivision (e).

Labor Commissioner as to the amount of the penalty shall be reviewable only for an abuse of discretion. 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 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.)

DLSE assessed section 1775 penalties at the rate of \$120.00 based on the evidence that Principles willfully misclassified its workers. DLSE presented prima facie evidence of willful misclassification. As discussed, *ante*, (a) one worker performed 40 hours of Plumber work, but in the CPRs Principles did not classify any worker as Plumber; (b) five workers performed 309 hours of Landscape Operating Engineer work, but in the CPRs Principles did not classify any worker as Landscape Operating Engineer. The burden was on Principles to prove that DLSE abused its discretion in setting the penalty under section 1775 at the rate of \$120.00 per violation. (Cal. Code Regs., tit. 8, § 17250, subd. (c).) Principles failed to carry that burden, and the penalty rate is affirmed.

As to the number of violations, Principles misclassified one Plumber for five days and one Landscape Laborer for two days. As to the misclassification of the five Landscape Operating Engineers, the IFRs are prima facie evidence that the 309 hours of misclassification occurred on 39 worker-days. Accordingly, Principles is liable for section 1775 penalties in the sum of \$5,520.00 calculated at the \$120.00 rate for a total of 46 worker-days in which the prevailing rate was not paid.

Principles Is Liable for Liquidated Damages.

In a prehearing conference in which Principles was represented by counsel, Principles stipulated that it did not pay any back wages to its workers within 60 days following service of the Assessment and it did not deposit any monies with the Department of Industrial Relations as a result of the Assessment. Further, Principles presented no evidence or argument that it had substantial grounds for appealing the Assessment as a basis for the Director’s discretionary waiver of liquidated damages. (§ 1742.1.) Accordingly, Principles is liable for liquidated damages in the amount of the

unpaid prevailing wages, \$3,709.91.

Principles Violated Apprentice Requirements.

As found above, Principles had its worker Noe Sanchez perform five days of Plumber work, eight hours per day, from March 23 through March 27, 2015. Plumber is an apprenticeable craft, according to the Plumber PWD. Principles violated the requirement of section 1777.5 and California Code of Regulations, title 8, section 230.1, subdivision (a), in that it did not employ apprentices in the ratio of one hour of apprentice work for five hours of journeyman work, and Principles violated California Code of Regulations, title 8, section 230, subdivision (a) and section 230.1, subdivision (a), by failing to timely and properly issue DAS 140 and DAS 142 forms or their equivalents to the three apprenticeship committees to which it was required to issue those forms for the craft of Plumber.

On De Novo Review, Principles Is Liable for a Penalty at the Rate of \$40.00 for 66 Penalty Days Under Section 1777.7.

If a contractor knowingly violates section 1777.5, a civil penalty is imposed under section 1777.7 in an amount not exceeding \$100.00 for each full calendar day of noncompliance. (Former § 1777.7, subd. (a)(1).)¹⁴ A contractor “knowingly” violates 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. (Cal. Code Regs., tit. 8, § 231, subd. (h).) DLSE provided prima facie evidence that Principles’ violation of the apprenticeship requirements was made knowingly. The Plumber work stated in the IFRs’ descriptions of work and photos was so clearly within the scope of work of Plumber, and so clearly outside the scope of work of Landscape Laborer, as to require a finding that the classification in the CPRs was knowingly false.

DLSE also presented evidence establishing that Principles did issue DAS 140 and DAS 142 forms to applicable apprenticeship committees for the crafts of Cement Mason and Landscape Laborer, and Principles hired Cement Mason apprentices on the Project. This provides prima facie evidence – which Principles did not rebut – that Principles

¹⁴ Under the former version of section 1777.7 applicable in this case (i.e., the version in effect in 2014), the Director decides the appropriate penalty de novo. (Former § 1777.7, subd. (f)(2).)

knew of the apprenticeship requirements but failed to comply. Moreover, Principles' failure to comply was not due to any circumstances beyond its control. The above evidence also establishes that Principles' violations were intentional within the meaning of section 1777.7, subdivision (f)(1)(A). Given these considerations, the assessment of the section 1777.7 penalties at the rate of \$40.00 is affirmed.

As to the number of penalty days, the Assessment determined that the total penalty was \$2,640.00 by applying the \$40.00 penalty rate for 66 days of violation. Flores testified that DLSE set the penalty rate at 66 days because DLSE decided to use a penalty period commencing with the first day of Plumber work on the Project and ending on the last day that a journeyman in any craft worked on the Project. Flores, however, miscalculated the length of this period. The first day of Plumber work was March 23, 2015, and the final day that any journeyman worked on the Project was August 14, 2015. This was a period of 144 days.

Flores also testified that DLSE imposed this penalty pursuant to the regulation requiring contractors to provide contract award information to the applicable apprenticeship committees. The regulation states that contract award information shall be provided to the applicable apprenticeship committees no "later than the first day in which the contractor has workers employed upon the public work." It further states:

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

(Cal. Code. Regs., tit. 8, § 230, subd. (a).) Thus, per the regulation, a failure to provide contract award information is a violation that runs throughout the duration of a contract, not limited solely to the days on which workers were present on the Project or the days on which apprentices should have been present but were not. Applying this regulation to a failure to notify Plumber apprenticeship committees in this case could result in a penalty period of 172 days, from the first day Principles had Plumbers employed upon the Project on March 23, 2015, to the filing of the notice of completion on September 11, 2015. Given that DLSE only assessed the penalty for 66 days, however, this Decision

will not impose a higher penalty than stated in the Assessment.¹⁵ Accordingly, this Decision affirms the Assessment's imposition of the section 1777.7 statutory penalty at the rate of \$40.00 for 66 days of violations, totaling \$2,640.00.

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

FINDINGS AND ORDER

1. DLSE timely issued the Civil Wage and Penalty Assessment.
2. Principles Contracting, Inc. underpaid its workers \$3,709.91 in prevailing wages.
3. Penalties under section 1775 are due from Principles Contracting, Inc. in the amount of \$5,520.00 for 46 violations at the rate of \$120.00 per violation.
4. Liquidated damages are due from Principles Contracting, Inc. in the full amount of the unpaid wages, \$3,709.91.
5. Penalties under section 1777.7 are due from Principles Contracting, Inc. in the amount of \$2,640.00.
6. The amounts found due in the Assessment, as affirmed and modified by this Decision, are as follows:

Wages due:	\$3,709.91
Penalties under section 1775, subdivision (a):	\$5,520.00
Liquidated damages:	\$3,709.91
Penalties under section 1777.7:	\$2,640.00
TOTAL:	\$15,579.82

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


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¹⁵ The section 1777.7 penalty stated in the Assessment was unchanged in the amended audit DLSE introduced at the Hearing and in DLSE's post-Hearing final audit.

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

Dated: May 27, 2019


Victoria Hassid
Chief Deputy Director
Department of Industrial Relations¹⁶

¹⁶ See Government Code sections 7, 11200.4.