STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

G Coast Construction, Inc. Case No. 12-0137-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor G Coast Construction, Inc. (G Coast) submitted a timely request for review of the Civil Wage and Penalty Assessment (Assessment) issued by Division of Labor Standards Enforcement (DLSE) with respect to the Promenade Repair and Maintenance Project Phase I in Ventura County. The Assessment determined that $20,002.33 in unpaid prevailing wages, training fund contributions, and statutory penalties was due. A Hearing on the Merits was conducted on August 31, 2012, and November 21, 2012, in Los Angeles, California, before Hearing Officer Harold Jackson. Ezra Levi appeared for G Coast and David Cross appeared for DLSE. On the second day of hearing, DLSE amended the Assessment downward to $18,768.33 in unpaid prevailing wages, training fund contributions, and statutory penalties. The matter was submitted for decision on November 21, 2012.

The issues for decision are:

- Whether the Assessment correctly found that G Coast failed to report and pay the required prevailing wages for all hours worked on the Project by the affected workers.
- Whether DLSE abused its discretion in assessing penalties under Labor Code section 1775[1] at the mitigated rate of $30.00 per violation.

[1] All further statutory references are to the California Labor Code, unless otherwise indicated.

- Whether G Coast failed to pay the required prevailing wage rates for overtime work and is therefore liable for penalties under section 1813.
- Whether G Coast has demonstrated substantial grounds for appealing the Assessment, entitling it to a waiver of liquidated damages.

The Director finds that G Coast has disproven the basis of the Assessment as to the issue of alleged unreported hours for one employee. However, the Director finds that G Coast failed to pay the affected workers the correct prevailing wage rate for their work on the Project by not paying a predetermined pay rate increase for Laborers and not paying training fund contributions for all employees. Therefore, the Director issues this Decision affirming and modifying the Assessment.

FACTS

The City of Ventura (City) advertised the Project for bid on September 2, 2010. G Coast was awarded the contract, which was entered on November 22, 2010, for concrete promenade repair and maintenance. G Coast's employees worked on the Project from approximately April 2, 2011, through October 21, 2011.

Applicable Prevailing Wage Determinations (PWDs): The following applicable PWDs and scopes of work were in effect on the bid advertisement date:

Cement Mason for Southern California (SC-23-203-2-2010-1): This PWD was issued August 22, 2010, and provides the rates used in the Assessment for all cement work.[2] This PWD requires a training fund contribution of $0.45 per hour. However, according to its Certified Payroll Records (CPRs), G Coast paid no training fund contributions.

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[2] Throughout the relevant time period, the prevailing hourly wage due under the Cement Mason PWD was $49.50, comprised of a base rate of $29.50, fringe benefits totaling $19.55 and a training fund contribution of $0.45. Daily overtime and Saturday work required time and one-half and Sunday and holiday work required double time.

Operating Engineer for Southern California Group 8 (SC-23-63-2-2009-1): This PWD was issued August 22, 2009, and provides the rates used in the Assessment for all Operating Engineer work.[3] This PWD requires a training fund contribution of $0.65 per hour. However, according to its CPRs, G Coast paid no training fund contributions.

Laborer Group 1 (SC-23-102-2-2010-2): This PWD was issued August 22, 2010, and provides the rates used in the Assessment for work involving concrete screeding for rough strike-off, concrete water curing, and demolition laborer work such as cleaning brick, general or construction labor or general clean-up. This PWD contains a predetermined wage rate increase applicable to projects with bid advertisement dates on or after September 1, 2010, for work taking place on and after July 1, 2011.[4] Before the date the predetermined wage rate increase applies, this PWD provides the prevailing wage rate for Laborers is $42.03, plus a training fund contribution of $0.64 per hour. With the predetermined wage rate increase, this PWD provides that the prevailing wage rate for Laborers is $44.03, plus a training fund contribution of $0.64 per hour. However, for the duration of the Project, including work done after June 30, 2011, according to its CPRs, G Coast paid its Laborers at the lower rate of $42.03 per hour and paid no training fund contributions.

The Assessment: DLSE served the Assessment on April 3, 2012. The Assessment found that G Coast failed to pay the required prevailing wages, including the required prevailing wage rate for overtime, and failed to make the required training fund contributions for any of the affected workers. The Assessment found a total of $14,492.33 in underpaid prevailing wages, including $2,679.13 in unpaid training fund

[3] Throughout the relevant time period, the prevailing hourly wage due under the Operating Engineer PWD was $57.11, comprised of a base rate of $39.72, fringe benefits totaling $16.74 and a training fund contribution of $0.65. Daily overtime and Saturday work required time and one-half and Sunday and holiday work required double time.

[4] Until July 1, 2011, the prevailing hourly wage due under the Laborer PWD was $42.67, comprised of a base rate of $26.33, fringe benefits totaling $15.70 and a training fund contribution of $0.64. Daily overtime and Saturday work required time and one-half and Sunday and holiday work required double time. With the predetermined pay rate increase, effective July 1, 2011, the prevailing hourly wage increased to $44.67, comprised of a base rate of $27.29, fringe benefits totaling $16.74 and a training fund contribution of $0.64.

contributions. Penalties were assessed under section 1775 in the amount of $30.00 per violation for 172 violations, totaling $5,160.00, and penalties under section 1813 in the amount of $25.00 per violation for fourteen overtime violations, totaling $350.00. DLSE determined that penalties at the mitigated rate of $30.00 per violation were warranted by its finding that G Coast had no prior prevailing wage violations but the error was not a good faith mistake and it was not promptly and voluntarily corrected when brought to G Coast's attention.

Assessment as Revised: On the second day of hearing, DLSE moved to amend the Assessment to revise it downward and the Hearing Officer granted the motion. As revised, the Assessment credited G Coast with slight overpayments in wages paid to Laborers before the predetermined wage rate increase took effect, and charged G Coast with underpayments to those workers after that date. As revised, the Assessment found a total of $13,868.33 in unpaid prevailing wages, including $2,698.13 in training fund contributions, penalties under section 1775 in the amount of $30.00 per violation for 154 violations, totaling $4,620.00, and penalties under section 1813 in the amount of $25.00 per violation for eleven violations, totaling $275.00.

DLSE deputy Yoon-Mi Jo testified that she investigated the complaint of prevailing wage violations on the Project and found underpayment of prevailing wages, no payment of training fund contributions, and no payment of the predetermined wage rate increase for Laborers. DLSE's revised Assessment shows G Coast failed to make required training fund contributions for seventeen employees. Jo based the amount of wages underpaid by G Coast on G Coast's CPRs and found that five employees were underpaid, four of whom were underpaid solely by virtue of G Coast not complying with the predetermined pay rate increase for Laborers. Jo also obtained an employee questionnaire from employee Mario Gomez.

Jo testified that Gomez met with her at DLSE on February 13, 2012. He told her he started working on the Project in mid-June 2011 and continued through September 2011, riding to work each day with the foreman on the Project, Daniel Estrada, Sr. Gomez told her he was paid cash every Friday at the rate of $90.00 per day, representing

$100.00 less $10.00 for gasoline. Gomez gave her a sworn affidavit stating that in addition to him, his co-workers were paid in cash. Jo also showed Gomez a photograph dated June 30, 2011, provided by the complaining party, showing two persons working at the job site but not revealing a face or any other identifying feature. Jo said Gomez recognized himself in the photograph, but did not tell her the basis for his self-identification.

No other worker besides Gomez complained about being underpaid. Jo determined the amount of underpaid wages assessed for Gomez by reference to the hours worked by Estrada according to the CPRs for weeks ending June 18 through September 3. The CPRs list Gomez as working three days in July 2011, and no more. The Assessment, however, credited G Coast only with the $90.00 per day cash payments Gomez said he received from Estrada.

Gomez testified that he was hired by Estrada and worked on the Project from mid-June to September. He rode to work with Estrada and two co-workers. Estrada paid him each Friday $100.00 cash minus $10 for gasoline. Gomez did not keep a calendar or any other record of the days he worked on the Project. Gomez's only basis for knowing the days he worked was his memory of when Estrada worked. Gomez also testified that he did not receive a paycheck for the three days the CPRs show he worked in July.

The DLSE questionnaire for Gomez shows a signature and indicates his rate of pay was $43.00. On the bottom of the questionnaire appear the words "I signed and wrote my address but did not fill in the rest." Gomez admitted to writing those words on the bottom and could not explain why he wrote the words, but maintained he did not fill in the rest. Gomez further testified that the signature on the questionnaire was not his and he did not remember if he signed it or not. Gomez, who speaks Spanish, stated a man at DLSE translated in Spanish for him when he wrote the words on the bottom and he may have been confused by the translation.

As to the Assessment finding of failure to pay its Laborers the predetermined wage increase, G Coast admits its failure but states it was not aware of the required

increase. The bid date was October 5, 2010, and G Coast anticipated the Project would end before the predetermined wage increase came into effect. G Coast asserts the beginning of the job was delayed by the awarding body for budgetary reasons and had it started earlier, the job would have been completed before the effective date of the predetermined wage increase. G Coast asserts its failure to pay is an innocent, good faith mistake for which G Coast should not be penalized.

As to its failure to make training fund contributions, G Coast states it was short of funds due to alleged City underpayments on the contract. G Coast objects to the unpaid training fund contributions found due in the Assessment because it was not prepared to discuss the issue at the hearing, despite the fact that it was listed by DLSE on the Assessment, its supporting audit, and the joint statement of issues submitted before the hearing.

G Coast also contends that Gomez did not work on the Project more than the three days in the third week of July listed for him on the CPRs, for which he was paid by check. Ezra Levi, President of G Coast, testified he went to the job site at least twice a week, and many weeks on a daily basis. He never saw Gomez working there before or after the week ending July 23, 2011, when Gomez worked for three days. Levi saw Gomez at the job site on two of those three days and decided to terminate Gomez's employment because Gomez would disappear from the job site for lengthy periods. G Coast also presented unsworn statements signed by three co-workers stating that Gomez did not work more than the three days in July 2011.

G Coast also argues that Gomez previously signed a questionnaire stating "paid in full no complaints."

DISCUSSION

Sections 1720 and following set forth a scheme for determining and requiring the payment of prevailing wages to workers employed on public works construction projects. Specifically:

> 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, supra.*)

Section 1775, subdivision (a) requires, among other things, that contractors and subcontractors pay the difference to workers who were paid less than the prevailing wage rate, and prescribes penalties for failing to pay the prevailing wage rate. Section 1742.1, subdivision (a) provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if those wages are not paid within sixty days following service of a Civil Wage and Penalty Assessment under section 1741.

When DLSE determines that a violation of the prevailing wage laws has occurred, a written Civil Wage and Penalty Assessment is issued pursuant to section 1741. An affected contractor or subcontractor may appeal the Assessment by filing a Request for Review under section 1742. Subdivision (b) of section 1742 provides in part that "[t]he contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect."

DLSE Was Entitled To Introduce And Rely On Evidence At Hearing On The Merits.

Before the hearing, G Coast moved to preclude DLSE under section 1742, subdivision (b) and California Code of Regulations, title 8, section 17224, subdivision (d) (Rule 24(d)) from introducing evidence at the hearing on the merits based on the date of G Coast's receipt of the evidence before the hearing. The Hearing Officer ruled against G Coast's motion and that ruling is adopted here. Section 1742, subdivision (b) requires

DLSE to provide G Coast an opportunity to review the evidence to be utilized at the hearing within 20 days of the DLSE's receipt of the written request for review. Rule 24(d) provides that a DLSE failure to timely provide that opportunity to review the evidence precludes it from introducing the evidence at the hearing. The Request for Review in this case is dated May 1, 2012. On May 15, 2012, DLSE gave G Coast written notice of opportunity to review the evidence to be utilized at the hearing. G Coast complains that it was not until July 30, 2012, that it actually received a package of exhibits that DLSE intended to use at the originally scheduled hearing date. Section 1742(b) and Rule 24(d), however, do not apply to the date G Coast ultimately received copies of DLSE's proposed exhibits. Instead, those provisions apply to the time within which DLSE must give G Coast an opportunity to review the evidence to be utilized at the hearing on the merits. DLSE complied with that obligation. DLSE is, therefore, not precluded from introducing such evidence at the hearing on the merits.

The Affected Workers Are Entitled To Receive Prevailing Wages For Their Documented Work On The Project.

Employers on public works must keep accurate payroll records, recording, among other things, the work classification, straight time and overtime hours worked and actual per diem wages paid for each employee. (§ 1776, subd. (a).) This is consistent with the requirements for construction employers in general, who are required to keep accurate records of the hours employees work and the pay they receive. (Cal. Code Regs., tit. 8, § 11160, subd. 6.) When an employer fails to maintain accurate time records, a claim for unpaid wages may be based on credible estimates from other sources sufficient to allow the decision maker to determine the amount by a just and reasonable inference from the evidence as a whole. In such cases, the employer has the burden to come forward with evidence of the precise amount of work performed to rebut the reasonable estimate. (*Anderson v. Mt. Clemens Pottery Co.* (1945) 328 U.S. 680, 687-688 [rule for estimate-based overtime claims under the federal Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.]; *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 726-727 [applying same rule to state overtime wage claims]; and *In re Gooden Construction Corp.* (USDOL Wage

Appeals Board 1986) 28 WH Cases 45 [applying same rule to prevailing wage claims under the federal Davis-Bacon Act, 40 U.S.C. §§ 3141 et seq.].) This burden is consistent with an affected contractor's burden under section 1742 to prove that the basis for an Assessment is incorrect.

In this case, the Assessment for additional hours claimed by Gomez is based on Gomez's assertion that he drove with co-workers to the job for over two months and his recollection of the dates that occurred. The credibility and accuracy of Gomez's testimony and recollection are a central issue in this case. Therefore, a credibility determination is necessary. For the following reasons, I find G Coast's witness to be more credible.

Evidence Code section 780 provides in pertinent part:

> Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:
>
> (a) His demeanor while testifying and the manner in which he testifies.
> (b) The character of his testimony.
> (c) The extent of his capacity to perceive, to recollect, or to communication any matter about which he testifies.
> * * *
> (f) The existence or nonexistence of a bias, interest, or other motive.
> (g) A statement previously made by him that is consistent with his testimony at hearing.
> (h) A statement made by him that is inconsistent with any part of his testimony at the hearing.
> (i) The existence or nonexistence of any fact testified to by him.
> (j) His attitude toward the action in which he testifies or toward the giving of testimony.
> (k) His admission of untruthfulness.

Gomez states that he worked from mid-June to September on the Project on each day that Estrada worked, was paid in cash, and did not receive a check for the three days in July the CPRs showed he worked. The credibility of Gomez's testimony, however, is affected by his inconsistency as to the DLSE questionnaire. The questionnaire shows a signature for him, and Gomez admitted he added the words on the questionnaire that "I

signed and wrote my address but did not fill in the rest." Gomez testified, however, that the signature on the questionnaire was not his. Gomez could not reconcile his testimony that the signature was not his with the inconsistent written additions stating that the signature was his. At one point, Gomez testified he did not remember if he signed it or not, itself a statement difficult to accept at face value given that he maintained that the signature was not his. As well, Gomez's testimony at times seemed evasive and was not, in any event, corroborated by any record of the dates he worked. The photograph dated June 30, 2011, showing two persons working at the job site is not accepted as corroborative evidence because it does not reveal a face or other identifying feature. While Gomez claimed to DLSE to have recognized himself in the photograph, he gave no factual basis for his self-identification, which deprives the photograph of any evidentiary value.

In contrast, Levi presented forthright and credible evidence for G Coast that Gomez only worked three days for which he was paid in July, not the lengthy period Gomez claims. Levi was personally present at the work site often on a daily basis and at least twice a week over the term of the Project. Levi saw Gomez there only over the three day period in July for which he was paid. This testimony was corroborated by the three statements signed by co-workers stating Gomez did not work more than the three days in July. While those statements are of limited value because they are unsworn, they were not produced to DLSE in advance of the first day of hearing, and the workers were not presented for cross-examination, they function as administrative hearsay that provide at least some corroboration of Levi's testimony. Levi also was credible in his testimony that after co-workers complained about Gomez being absent for long stretches during his three days of work, he decided to discharge Gomez. The evidence that Gomez was discharged after three days establishes another motive for Gomez's claim, in that being discharged could provide a retaliatory motive as against G Coast. As to Levi's testimony that Gomez previously signed a questionnaire stating "paid in full no complaints," the only evidence of such a statement was the one signed by Estrada, not Gomez. Claiming that Gomez signed he had been paid in full when he did not is viewed as a mere mistake about which employee had written he was "paid in full." It does not provide adequate

grounds to discredit Levi's otherwise credible testimony that Gomez did not work from mid-June to September, as Gomez claims.

The record does not establish that G Coast failed to maintain accurate time records. In fact, DLSE relied on the CPRs in determining the dates and hours of work of all employees, except for Gomez, for whom DLSE relied on the dates and hours of work by Estrada. Therefore, G Coast has met its burden of disproving the basis of the Assessment as to the alleged unreported hours Gomez claimed to have worked on the Project.[5]

G Coast Failed To Pay Its Employees The Predetermined Wage Rate Increase For Laborers For The Work Performed On And After The Effective Date Of The Increase.

For work performed by Laborers on the Project for the week ending April 2, 2011 through June 30, 2011, the applicable prevailing wage rate was $42.03 per hour, excluding training fund contributions. G Coast paid each Laborer $42.67 per hour for work performed during that period. For work performed by Laborers from July 1, 2011, through August 13, 2011, after the predetermined wage rate increase took effect, the prevailing wage rate applicable for Laborers was $44.03 per hour, excluding training fund contributions. G Coast, however, continued to pay at the rate of $42.67 per hour throughout the rest of the Project, resulting in an underpayment to the workers. G Coast seeks to excuse the underpayment because it was unaware of the required increase and the Project was allegedly delayed by City.

G Coast is charged with constructive notice of the applicable prevailing wage rates, including any predetermined increase. Under the Laborer PWD, the predetermined increase is specifically applicable to projects with bid advertisement dates after September 1, 2010, for work after June 30, 2011. The bid advertisement date for the Project is September 2, 2010. Consequently, any Laborer work done on the Project after June 30, 2011, was required to be compensated at the higher predetermined wage rate.

[5] For the same reasons why Gomez's credibility is not accepted as to the three months he allegedly worked on the Project, his claim that he did not receive a paycheck for the three days the CPRs show he worked in July is also not accepted.

The fact of any delay in work attributable to City cannot impact the right of the workers to the predetermined increase in rates. Accordingly, the Assessment correctly found to be due the difference between the applicable prevailing wage rate based on the predetermined rate increase and the actual wages paid to Laborers for work after June 30, 2011. This conclusion, however, does not apply to the Assessment's finding that Gomez worked more than the three days in July showing on the CPRs, for the same reasons articulated as to underpaid wages for Gomez. With this understanding the following amounts of underpaid wages are found due: $226.54 to Atanacio Granados; $114.78 to Yehuda Yeddim; $35.60 to Roberto Rodriguez; $32.64 to Mario Gomez; and $102.24 to Samuel Gonzalez, for a total of $511.80 in underpaid wages.

G Coast Was Required to Pay Training Fund Contributions.

DLSE presented prima facie evidence that G Coast did not pay training fund contributions on the Project. G Coast presented no evidence to the contrary. G Coast objected to the hearing of this issue because it was not prepared to discuss it at the hearing. However, the issue was listed by DLSE on the Assessment, as revised, its supporting audit, and the joint statement of issues submitted before the hearing. Accordingly, it is a proper issue for the hearing. G Coast has failed to meet its burden of showing this basis for the Assessment, as revised, is incorrect, except to the extent the Assessment found that Gomez worked more than the three days in July showing on G Coast's CPRs. Accordingly, the assessment of unpaid training fund contributions must be modified and otherwise affirmed in the amount of $1,930.88, which takes into account $15.36 for the 24 hours worked by Mario Gomez as reflected on the CPRs.

DLSE's Penalty Assessment Under Section 1775 Does Not Constitute an Abuse of Discretion.

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

> (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) 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 ten dollars ($10) . . . 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 twenty dollars ($20) . . . 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 thirty dollars ($30) . . . if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.[6]

The Director's review of the Labor Commissioner's determination is limited to an inquiry into whether the action was "arbitrary, capricious or entirely lacking in evidentiary support ..." (*City of Arcadia v. State Water Resources Control Bd.* (2010) 191 Cal.App.4th 156, 170.) In reviewing for abuse of discretion, however, the Director is not free to substitute her own judgment "because in [her] own evaluation of the circumstances the punishment appears to be too harsh." (*Pegues v. Civil Service*

[6] Section 1777.1, subdivision (c) 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."

Commission (1998) 67 Cal.App.4th 95, 107.)

A contractor or subcontractor has the same burden of proof with respect to the penalty determination as to the wage assessment. Specifically, "the Affected Contractor or Subcontractor shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty." (Rule 50(c) [Cal. Code Regs., tit. 8, § 17250, subd. (c)].)

DLSE found that the mitigated penalty amount of $30.00 per violation was appropriate because G Coast did not have a prior record of failing to meet its prevailing wage obligations, but had failed to promptly and voluntarily correct the assessed underpayments. G Coast's own CPRs show that it failed to apply the predetermined wage rate increase for Laborers, and failed to pay training fund contributions for all workers, and G Coast provided no acceptable explanation or excuse for those failures. Consequently, the imposition of the $30.00 penalty rate in this case was not an abuse of discretion.

Because this decision finds Gomez's testimony to be not credible, and the assessment of wages for alleged unreported hours worked by him unwarranted, the total number of violation assessed under section 1775 is reduced in accord with those findings. Accordingly, the assessment of penalties under section 1775 penalties must be modified and otherwise affirmed in the amount of $3,480.00 for 116 violations, which takes into account three violations for the three days of underpayments to Mario Gomez reported on the CPRs.

Overtime Penalties Are Due For The Workers Who Were Underpaid For Overtime Hours Worked On The Project.

Section 1813 states, in pertinent part, as follows:

> The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8

hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. ...

Section 1815 states in full as follows:

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day and not less than 1½ times the basic rate of pay.

The Assessment, as revised, assessed penalties under section 1813 at $25.00 per violation for eleven violations, totaling $275.00. However, five of the eleven violations were based on allegations that Gomez worked from mid-June to September, which this Decision rejects. Therefore, the record establishes that G Coast violated section 1815 by paying less than the required prevailing overtime wage rate for six violations involving three employees. Unlike section 1775 above, section 1813 does not give DLSE any discretion to reduce the amount of the penalty, nor does it give the Director any authority to limit or waive the penalty. Accordingly, the assessment of penalties under section 1813 must be modified and otherwise affirmed in the amount of $150.00 for six violations.

G Coast Is Liable For Liquidated Damages.

Section 1742.1, subdivision (a) provides in pertinent part as follows:

After 60 days following the service of a civil wage and penalty assessment under Section 1741 . . ., the affected contractor, subcontractor, and surety . . . shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment . . . subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.

Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment . . . with respect to a portion of the unpaid wages covered by the assessment . . ., the director may exercise his or her

discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages.

Absent waiver by the Director, G Coast is liable for liquidated damages in an amount equal to any wages that remained unpaid sixty days following service of the Assessment. Entitlement to a waiver of liquidated damages in this case is partially tied to G Coast's position on the merits and specifically whether, within the sixty day period after service of the Assessment, it had "substantial grounds for appealing the assessment . . . with respect to a portion of the unpaid wages covered by the assessment. . . ." G Coast has presented no evidence or argument as to why liquidated damages should be waived as to the difference between the applicable prevailing wage rate based on the predetermined rate increase and the actual wages paid to Laborers. Therefore, G Coast is also liable for liquidated damages in an amount of $511.80.

FINDINGS

1. Affected contractor G Coast filed a timely Request for Review of the Civil Wage and Penalty Assessment issued by DLSE with respect to the Project.

2. G Coast kept accurate records of the hours worked by Mario Gomez.

3. G Coast failed to apply the required, predetermined increases to wages it paid to its workers in the Laborer classification resulting in underpayment of prevailing wages in the aggregate amount of $511.80.

4. G Coast failed to pay training fund contributions for all its employees on the Project under the applicable prevailing wage determinations in the aggregate amount of $1,930.00.

5. DLSE did not abuse its discretion in setting section 1775, subdivision (a) penalties at the rate of $30.00 per violation. Penalties under section 1775 are due for 116 violations on the Project, for a total of $3,480.00 in penalties.

6. Penalties under section 1813 at the rate of $25.00 per violation are due for six violations on the Project, for a total of $150.00 in penalties.

7. The unpaid wages found due in Finding Nos. 3 and 4 remained due and owing more than sixty days following issuance of the Assessment and there are insufficient grounds to waive payment of liquidated damages on those unpaid wages. G Coast is therefore liable for liquidated damages under section 1742.1 in the amount of $511.80.

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

Wages Due:	$511.80
Training Fund Contributions Due:	$1,930.00
Penalties under section 1775, subdivision (a):	$3,480.00
Penalties under section 1813:	$150.00
Liquidated Damages under section 1742.1, subdivision (a):	$511.80
TOTAL:	**$6,583.60**

Interest shall accrue on unpaid wages in accordance with section 1741, subdivision (b).

ORDER

The Civil Wage and Penalty Assessment is affirmed in part and vacated and remanded in part, 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: 5/24/2013

Christine Baker
Director of Industrial Relations