

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

GRFCO, Inc.

Case No. 16-0472-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor GRFCO, Inc. (GRFCO) submitted a request for review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on December 2, 2016, with respect to work of improvement known as the Sewer Point Repair Project Phase II (Project) performed for the City of Inglewood (Inglewood) in the County of Los Angeles. The Assessment determined that the following amounts were due: \$17.45 in unpaid prevailing wages, \$3,520.00 in Labor Code section 1775 statutory penalties,¹ \$50.00 in section 1813 statutory penalties, and \$17,100.00 in section 1777.7 statutory penalties. GRFCO timely filed its Request for Review of the Assessment on December 21, 2016.

A Hearing on the Merits was held in Santa Ana, California on November 8, 2017, before Hearing Officer Howard Wien. Jim Jackson (GRFCO's Project Manager for the Project) appeared for GRFCO, and Lance A. Grucela appeared for DLSE. Two witnesses testified at the hearing: Deputy Labor Commissioner Kari Anderson testified on behalf of DLSE and Jackson testified on behalf of GRFCO. The case stood submitted on November 8, 2017.

The issues for decision are:

- Whether the Assessment was timely.

¹ All further section references are to the California Labor Code, unless otherwise specified.

- Whether the Assessment correctly found that GRFCO had failed to report and pay the required prevailing wages for all hours worked on the Project by the affected workers.
- Whether GRFCO is liable for liquidated damages under section 1742.1, subdivision (a), and if so, in what amount.
- Whether the Labor Commissioner abused her discretion in assessing statutory penalties under section 1775 at the rate of \$80.00 per violation for 44 violations, totaling \$3,520.00.
- Whether the Assessment correctly found that GRFCO failed to pay the overtime prevailing wage rate for all overtime hours worked, thereby making GRFCO liable for a section 1813 statutory penalty of \$25.00 per violation for two violations, totaling \$50.00.
- Whether GRFCO knowingly violated section 1777.5 and California Code of Regulations, title 8, section 230.1, subdivision (a) by not issuing valid requests for dispatch of apprentices in a DAS Form 142 or its equivalent to the applicable apprenticeship committee in the geographic area of the Project for the craft of Laborer.
- Whether GRFCO knowingly violated section 1777.5 and California Code of Regulations, title 8, section 230.1, subdivision (a) by not employing apprentices on the Project in the ratio of one hour of apprentice work for every five hours of journeyman work in the craft of Laborer.
- Whether GRFCO is liable for section 1777.7 statutory penalties, and if so, in what amount.

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, but that GRFCO carried its burden of proving the basis for the Assessment was incorrect in part. (See Cal. Code Regs., tit. 8, § 17250, subs. (a), (b).) Accordingly, the Director issues this Decision affirming but modifying in part the Assessment.

FACTS

Inglewood advertised the Project for bid on March 13, 2014. GRFCO entered into a contract with Inglewood (the Contract) on May 29, 2014. GRFCO's scope of work under the Contract was to repair and replace damaged or defective pipes and pipe connections in Inglewood's sewer collection system. In the Contract, where GRFCO agreed to comply with the prevailing wage and apprentice requirements, paragraph 8 states:

Contractor specifically agrees to comply with the applicable provisions of California Labor Code Section 1777.5 relating to employment by Contractor and all subcontractors under it, of journeymen, or apprentices, or workmen in any apprentice craft or trade. Contractor specifically agrees to comply with the applicable provisions of California Labor Code Section 1770 through and including Section 1776 relating to payment of prevailing rates of wages to all workmen employed in the performance of the services contemplated by this Agreement by the Contractor and all subcontractors under it and to keep and maintain accurate certified payment records.

GRFCO had four journeymen Laborers (David Martinez, Jesus Ordoñez, Rosalio Luna, and Samuel Pacheco) and three journeymen Operating Engineers working on the Project on various days during the period July 30, 2014, to November 20, 2014. The Assessment solely pertained to the Laborers.

Jackson testified that as of the time of the Project, GRFCO had long experience with the requirements of California's prevailing wage law, including apprenticeship requirements. GRFCO had performed California public works projects for approximately 35 years, with the contracts totaling approximately \$400 million in revenue to GRFCO.

Applicable Prevailing Wage Determination and Predetermined Increase.

As determined by the bid advertisement date of March 13, 2014, the applicable prevailing wage determination for Laborers working in Los Angeles County was No. SC-23-102-2-2013-1, issued August 22, 2013 (the Laborer PWD). The scope of work of GRFCO's four journeyman Laborers fell within the classification of Laborers Group 1 in

the Laborer PWD.²

The Laborer PWD states the wage rates to be paid through June 30, 2014, and provides a predetermined increase for work performed on and after July 1, 2014, as follows:

<u>Work Performed through 6-30-14</u>		<u>Predetermined Increase 7-1-14</u>		
Basic Hourly Rate:	\$28.99 ³	+	\$1.20	= \$30.19
Health and Welfare:	6.81	+	\$0.00	= 6.81
Pension:	6.00	+	\$0.25	= 6.25
Vacation & Holiday:	4.25	+	\$0.22	= 4.47
Other Payment:	0.49	+	\$0.03	= 0.52
“Wages and/or Fringes”	0.00	+	\$0.05	= <u>0.05</u>
TOTAL prevailing wage as of July 1, 2014:				\$48.29 ⁴

GRFCO paid its four journeyman Laborers the required \$48.29 for the first eight weeks of GRFCO’s work on the Project. However, commencing with work performed on September 22, 2014, GRFCO paid \$0.05 less per hour, resulting in an hourly payment of \$48.24. Jackson testified that GRFCO decided to pay \$0.05 less per hour because on September 29, 2014, GRFCO had received from the Department of Industrial Relations (the Department) prevailing wage determination No. SC-23-102-2-2014-1, issued August 22, 2014 (the August PWD). The August PWD stated a total prevailing wage of \$48.24 – rather than \$48.29 – by deleting the \$0.05 for “Wages and/or Fringes” in the PWD’s predetermined increase. Jackson further testified that he believed the August PWD immediately superseded the Laborer PWD and predetermined increase, which otherwise specified the \$48.29 prevailing wage.

DLSE assessed the \$17.45 in wages found due under the Assessment by

² Since Laborers Group 1 is the sole group at issue in this case, this Decision will simply refer to the workers’ classification as “Laborer.”

³ The Laborer PWD states that daily overtime and Saturday work required 1-1/2 times the basic wage rate; Sunday and holiday work requires double the basic wage rate.

⁴ The Laborer PWD also provides that the contractor is to make a \$0.64/hour training fund payment to an approved apprenticeship program or the California Apprenticeship Council. Since the training funds were not paid directly to the workers and were not at issue in the Assessment, they are not included in the above discussion of the Laborer PWD prevailing wage requirements.

determining under GRFCO's certified payroll records (CPRs) that the four Laborers worked a total of 349 hours for which GRFCO failed to pay the \$0.05 predetermined increase for "wages and/or fringes." DLSE computed the \$3,520.00 section 1775 statutory penalty imposed by the Assessment by applying a penalty rate of \$80.00 for each calendar day, or portion thereof, for each Laborer not paid the \$0.05 predetermined increase. GRFCO's CPRs established 44 such violations, resulting in the \$3,520.00 assessed penalty.

DLSE assessed the \$50.00 section 1813 statutory penalty imposed by the Assessment by applying the \$25.00 daily penalty rate for two days for which GRFCO allegedly failed to pay one Laborer, Luna, the overtime rate required by the Laborer PWD. However, there was no evidence that GRFCO had failed to pay the overtime rate.

GRFCO's Issuance of Public Works Contract Award Information.

The Laborer PWD specified that Laborer is an apprenticeable craft. In the geographic area of the Project site there was one apprenticeship committee for this craft: Laborers Southern California Joint Apprenticeship Committee (the Laborer JAC).

On July 22, 2014, GRFCO mailed to the Laborer JAC a valid form DAS 140 – "Public Works Contract Award Information". The Laborer JAC received it the following day. On this DAS 140, GRFCO estimated the Project would provide 400 hours of Laborer apprentice work. GRFCO checked the box on the DAS 140 stating the following:

We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that *the apprentices must at all times work with or under the direct supervision of journeyman/men.*

(DLSE Exhibit No. 9, emphasis added.) The above-quoted citation of regulation section 230.1, subdivision (c) refers to California Code of Regulations, title 8, section 230.1, subdivision (c). That subdivision states in relevant part:

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.

GRFCO's Requests for Dispatch of Apprentices.

On July 22, 2014, GRFCO mailed to the Laborer JAC a DAS 142 form, "Request for Dispatch of Apprentice." It requested the dispatch of one Laborer apprentice. However, GRFCO left blank the line on which GRFCO was required to state the date and time the apprentice was to report to the Project site. The Laborer JAC received this DAS 142 the next day, and reported this omission to GRFCO. On July 24, 2014, GRFCO faxed the same DAS 142 form to the Laborer JAC but filled in the date the apprentice was to report as "7/28/14" and the time as "7 AM." On July 28, 2014, GRFCO did not have any journeymen Laborer working on the Project, and the Laborer JAC did not dispatch an apprentice to the Project that day.

The first day that GRFCO had a journeyman Laborer work on the Project was July 30, 2014. From that day through November 20, 2014, GRFCO's journeymen Laborers worked on the Project 57 days, totaling 969.5 hours. GRFCO did not issue to the Laborer JAC a request for dispatch of apprentices for any of those 57 days. GRFCO did not employ any apprentices on the Project.

Jackson testified there were two reasons GRFCO did not request dispatch of apprentices for any of the 57 days journeymen Laborers worked on the Project. The primary reason was that the Laborer JAC had never dispatched apprentices to GRFCO's public works projects because GRFCO was a non-union contractor. Jackson's secondary assertion – which Jackson was unable to explain in any logical or coherent fashion, or with any reference to applicable law – was that if GRFCO had requested dispatch of apprentices for the Project, DLSE would have assessed GRFCO penalties for issuing the requests in untimely fashion.

Anderson testified as to prior assessments and determinations of civil penalty that DLSE had issued to GRFCO for GRFCO's violations of prevailing wage requirements and apprenticeship requirements on other public works projects.

DISCUSSION

The Assessment Was Timely.

The limitations period for DLSE to serve an assessment is stated in section 1741, subdivision (a). Previously, the period in section 1741, subdivision (a) was 180 days. The Legislature increased it to 18 months in 2013. (Stats. 2013, ch. 792, § 1, eff. Jan. 1, 2014.) Section 1741, subdivision (a) 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.

For a notice of completion to be valid, it must be recorded no later than 15 days after the project was completed. (Civ. Code, § 9204.) The notice of completion “shall ... include the date of completion.” (*Id.*) If the notice of completion states an erroneous date of completion, the notice is still effective, but only if “the true date of completion is 15 days or less before the date of recordation of the notice.” (*Id.*)

Here, the notice of completion was invalid because it was recorded, if at all, more than 15 days after the Project was completed. The notice of completion stated – and established — that the Project was completed on July 15, 2015. (DLSE Exhibit No. 18.) This statement in the notice of completion was signed under penalty of perjury by Inglewood’s Director of Public Works, Louis A. Atwell, P.E., on September 21, 2015. These facts demonstrate that the recording could not have occurred until September 21, 2015, at the earliest – thereby making the notice of completion invalid under Civil Code section 9204. Moreover, nothing on the notice of completion states that it was actually recorded in the office of the Recorder of the County of Los Angeles. Because the notice of completion for the Project was invalid, it did not commence the running of the limitations period under section 1741, subdivision (a).

As to the second prong for commencing the 18-month limitations period, the date of acceptance of the Project, section 1741, subdivision (a) does not define what constitutes an “acceptance.” Case law, however, provides guidance. In *Madonna v. State of California* (1957) 151 Cal.App.2d 836, 840, the court noted that “[f]ormal acceptance

has been defined as that date at which someone with authority to accept does accept unconditionally and completely.” (See also *In re El Dorado Improvement Corporation* (9th Cir. 2003) 335 F.3d 835, 840 [“acceptance” occurs when public officials consent to dedication of improvement to the public “typically . . . by determining that the improvement was satisfactorily built”]; *Kray Cabling Company, Inc. v. County of Contra Costa* (1995) 39 Cal.App.4th 1588, 1591 [acceptance occurred when an inspector and the County had accepted the work as complete].) Here, Inglewood accepted the Project on July 15, 2015. The notice of completion states that July 15, 2015, “was the date said public entity accepted said work or structure,” a statement signed and certified by Atwell, a person with authority to accept the Project. Accordingly, the 18-month limitations period did not expire until January 15, 2017 – after DLSE had already served the Assessment on December 2, 2016.

GRFCO’s various arguments as to why the 18-month limitations period had expired prior to December 2, 2016 had no merit. First, GRFCO asserted that the limitations period commenced running on November 21, 2014, the day after GRFCO’s last day of work on the Project, when GRFCO sent an email to Inglewood stating, “Please accept this email as GRFCO’s Notice of Completion” Such an email from a contractor is not “a valid notice of completion” filed “in the office of the county recorder” as required by section 1741, subdivision (a). Nor does that email constitute an acceptance of work by Inglewood.

GRFCO alternatively asserted that the limitations period commenced running on March 18, 2015, when Inglewood’s public works director issued a memo to Inglewood’s finance department to process payment of GRFCO’s final invoice on the Project for the release of a \$42,040.18 retention. Under the plain language of section 1741, subdivision (a), such authorization of final payment to the contractor – and even the act of paying the final sum to the contractor – is insufficient in itself to constitute “acceptance” and to commence the running of the 18-month limitations period.

The statute of limitations is an affirmative defense, and the burden is on the party asserting the bar to establish the elements for application of the statute. (*Ladd v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1310.) This burden is consistent

with an affected contractor's burden under section 1742 to prove that the basis for an Assessment is incorrect. (§ 1742, subd. (b).) GRFCO did not carry its burden of demonstrating that the Assessment was untimely.

GRFCO Failed to Pay the Required Prevailing Wage.

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 construction 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 see *Lusardi*, at p. 985.)

Section 1775, subdivision (a) requires, among other provisions, that contractors and subcontractors pay the difference to workers who were paid less than the prevailing rate, and also prescribes penalties for failing to pay the prevailing rate. Section 1742.1, subdivision (a) provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, under specified circumstances discussed below.

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. DLSE has the burden of providing evidence that “provides prima facie support for the Assessment . . .” (Cal. Code Regs., tit. 8, § 17250, subd. (a).)

When that initial 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).)

Here, GRFCO’s CPRs and Jackson’s testimony established that GRFCO failed to pay its four Laborers on the Project the \$0.05 predetermined increase stated in the Laborer PWD for work performed on and after July 1, 2014, totaling \$17.45. GRFCO’s reason for failing to pay the predetermined increase was the intervention of the August PWD that was issued after the bid advertisement date. However, the August PWD is irrelevant to the Project. (See § 1773.2 [awarding body shall specify in the call for bids and the awarded contract the general rate of per diem wages].) The wages GRFCO’s was obligated to pay are the amounts due under the Laborer PWD in effect on the date of the bid advertisement, unadjusted by any subsequent PWD. Accordingly, the Assessment of \$17.45 in prevailing wages is affirmed.

GRFCO Is Liable for Section 1775 Statutory Penalties.

Section 1775, subdivision (a) — as it read in March 2014 when the Project was advertised for bid — states in relevant part:

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

(2)(A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B)(i) The penalty may not be less than forty dollars (\$40) . . . unless the failure of the contractor . . . to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily

corrected when brought to the attention of the contractor

(ii) The penalty may not be less than eighty dollars (\$80) . . . if the contractor . . . has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.⁵

Section 1775, subdivision (a)(2)(D), states: “The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for 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, the Director is not free to substitute his own judgment when “in [his] own evaluation of the circumstances the punishment appears to be too harsh.” (*Pegues v. Civil Service Commission* (1998) 67 Cal.App.4th 95, 107.) The contractor “shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty.” (Cal. Code Regs., tit. 8, § 17250, subd. (c).)

Here, the Labor Commissioner imposed the \$80.00 penalty rate under section 1775, subdivision (a)(2)(A)(ii), based on evidence that GRFCO was assessed penalties within the previous three years for failing to meet its prevailing wage obligations on other projects, and those penalties were not withdrawn or overturned. The requirements for the \$80.00 penalty rate were satisfied in this case, as of the issuance of the Assessment on December 2, 2016, as follows:

(1) DLSE issued an assessment against GRFCO on August 26, 2016, for another project, assessing \$66.18 in unpaid prevailing wages, \$12,960.00 in section 1775 statutory penalties, and \$1,325.00 in section 1813 statutory penalties. The \$12,960.00 in penalties under section 1775 was not withdrawn or overturned. Rather, GRFCO and DLSE settled the matter, with GRFCO paying less than the full amount of the assessment; and

⁵ Section 1775, subdivision (a)(2)(B)(iii) states the penalty may not be less than \$120.00 for willful violations, but that part of the subdivision is irrelevant here because the Assessment imposed a penalty of \$80.00.

(2) DLSE issued an assessment against GRFCO on November 20, 2015, for another project, assessing \$769.24 in wages, \$12,800.00 in section 1775 statutory penalties, and \$625.00 in section 1813 statutory penalties. As of the Hearing on the Merits in the present case, the \$12,800.00 in penalties under section 1775 was not withdrawn or overturned; GRFCO had requested review and the matter was still pending as of the date of the Assessment.

Faced with this evidence, GRFCO introduced no evidence to rebut an inference that the two prior assessments accurately reflect that it previously failed to pay required prevailing wages. For that reason, GRFCO has not carried its burden to show it did not have a “prior record of failing to meet its prevailing wage obligations.” (§ 1775, subd. (a)(2)(A)(ii).) Nor did GRFCO show the prior penalties were subsequently withdrawn or overturned. (§ 1775, subd. (a)(2)(B)(ii).)

GRFCO contends the \$80.00 rate was unwarranted under section 1775, subdivision (a)(2)(A)(i) because the failure to pay the \$0.05 predetermined increase was a good faith mistake and GRFCO promptly and voluntarily corrected it when the mistake was brought to GRFCO’s attention. This argument fails for three independent reasons.

First the provision in section 1775, subdivision (a)(2)(A)(i) regarding the contractor’s good faith mistake and prompt correction does not alter the \$80.00 minimum rate required by section 1775, subdivision (a)(2)(B)(ii), for contractors who were assessed section 1775 penalties within the previous three years that were not withdrawn or overturned. If the Assessment here had imposed a penalty rate higher than \$80.00, evidence of good faith mistake and prompt correction could be considered in reducing it to \$80.00, but the rate could not be less than \$80.00.

Second, after approximately 35 years performing California public works contracts, with revenue of approximately \$400 million, GRFCO knew or should have known that the Laborer PWD and its predetermined increase remained in effect throughout the Project. As stated, *ante*, the August PWD was issued after the bid advertisement date and thus was irrelevant to the Project. GRFCO’s mistake was not in good faith, but rather was committed in negligent or reckless disregard of prevailing wage requirements.

Third, GRFCO's evidence that it had voluntarily corrected its mistake by paying the four Laborers the \$17.45 was unconvincing. On September 30, 2016, GRFCO issued checks to 12 of its workers (including the four Laborers at issue in the present case). Each check was for \$50.00, less payroll deductions. Each check stated in the memo portion "DLSE Adjustment." Jackson testified that GRFCO had issued these checks in response to an assessment issued by DLSE on August 26, 2016, for \$66.18 in prevailing wages due for failure to pay the \$0.05 predetermined increase on another project performed for the City of Newport Beach. GRFCO submitted that assessment and the 12 checks as exhibits. GRFCO contended that these checks were to cover all work on all its projects from September 2014 to March 2015. However, the checks contained no reference to the Project in the present case. There is nothing in the checks to support the contention that they constituted payment of the \$17.45 due the four Laborers in the present case – rather than wages due for their work on other GRFCO projects.

Consequently, GRFCO's contention as to its alleged good faith mistake and correction under section 1775, section (a)(2)(A)(i), lacks merit. Accordingly, the Labor Commissioner did not abuse her discretion in setting the penalty rate at \$80.00 per violation.

As to the number of violations, the section 1775 penalty is imposed "for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates..." (§ 1775, subdivision (a)(1).) GRFCO's CPRs established GRFCO committed 44 violations of failure to pay the predetermined wage increase. Accordingly, the \$3,520.00 assessment of the section 1775 statutory penalty — calculated at the rate of \$80.00 per violation for 44 violations — is affirmed.

GRFCO Is Liable for Liquidated Damages.

Section 1742.1, subdivision (a) provides for the imposition of liquidated damages upon the contractor, essentially a doubling of the unpaid wages. It provides in part:

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.

As of DLSE's issuance of the Assessment on December 2, 2016, the statutory scheme regarding liquidated damages provided contractors three alternative ways to avert liability for liquidated damages (in addition to prevailing in the case or settling with DLSE).

First, under section 1742.1, subdivision (a), within 60 days of service of the assessment, the contractor could pay the workers all or a portion of the wages stated in the assessment, and thereby avoid liability for liquidated damages on the amount of wages so paid.

Second, under section 1742.1, subdivision (b), a contractor could avert liability for liquidated damages if, within 60 days from issuance of the assessment, the "full amount of the assessment or notice, including penalties has been deposited with the Department of Industrial Relations"

Third, the contractor could choose to rely upon the Director's discretion to waive liquidated damages under (former) section 1742.1, subdivision (a), which stated:

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.⁶

(§ 1742.1, subd. (a).)

⁶ 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, however, 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." (*Kizer v. Hannah* (1989) 48 Cal.3d 1, 7.) Here, the law in effect at the time the Assessment was issued (2016) allowed a waiver of liquidated damages in the Director's discretion, as specified, which could have influenced GRFCO'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 GRFCO 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.

Here, there was no evidence that GRFCO paid any of the back wages to any of its workers within 60 days following service of the Assessment.⁷ GRFCO admitted it did not deposit the amount of the Assessment, or any part thereof, with the Department within 60 days following service of the Assessment (or at any other time).

Further, there was no substantial ground for GRFCO appealing the Assessment. As a contractor with a long history of public works projects, GRFCO knew or should have known that it must adhere to the prevailing wage rate in the Laborer PWD as it existed on the date of the call for bids, including the predetermined wage increase. (§ 1773.2.) GRFCO's unilateral decision to rely on a later PWD supplies no substantial reason to appeal the Assessment.

Likewise, there was no substantial ground to assert the Assessment was untimely. GRFCO's two contentions that the Assessment was untimely because it emailed Inglewood asking for acceptance of its notice of completion and because Inglewood indicated it would process GRFCO's final invoice, do not equate to an acceptance of the work on the Project under section 1741, subdivision (a).

None of GRFCO's contentions amount to the requisite substantial grounds for appealing the Assessment of \$17.45 in underpaid prevailing wages. Accordingly, the Director does not waive payment of the liquidated damages, and GRFCO is liable for liquidated damages in the sum of \$17.45.

The \$50.00 Overtime Penalty Under Section 1813 Is Reversed.

Section 1815 states in full:

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 at not less than 1½ times the basic rate of pay.

⁷ As discussed, *ante*, GRFCO's contention that it paid the \$17.45 to the four Laborers in September 2016 (before DLSE issued the Assessment on December 2, 2016) via \$50.00 checks was not supported by the evidence.

Section 1813 states the penalty for violation of section 1815 as follows:

The contractor or any subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25.00) for each worker employed in the execution of the contract by the ... contractor ... for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article.

The Assessment imposed a \$50.00 statutory penalty under section 1813 based upon GRFCO's alleged failure to pay Luna the overtime rate for two days in which he worked overtime hours. However, there was no evidence supporting this determination. Accordingly, the section 1813 statutory penalty of \$50.00 is reversed.

GRFCO Violated Apprenticeship Requirements.

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

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

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

Contractors, as defined in Section 228 to include general, prime, specialty or subcontractor, shall employ registered apprentice(s), as defined by Labor Code Section 3077, during the performance of a public work project in accordance with the required 1 hour of work performed by an apprentice for every five hours of labor performed by a journeyman, unless covered by one of the exemptions enumerated in Labor Code Section 1777.5 or this subchapter.⁸ Unless an exemption has been granted, the contractor shall employ apprentices for the number of hours computed above before the end of the contract.

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

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

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

⁸ Here, the record established no exemption for GRFCO.

Completion is filed by the awarding body for the purpose of determining the accrual of penalties under Labor Code Section 1777.7.

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

Contractors who are not already employing sufficient registered apprentices (as defined by Labor Code Section 3077) to comply with the one-to-five ratio must request the dispatch of required apprentices from the apprenticeship committees providing training in the applicable craft or trade and whose geographic area of operation includes the site of the public work by giving the committee written notice of at least 72 hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices are required. If the apprenticeship committee from which apprentice dispatch(es) are requested does not dispatch apprentices as requested, the contractor must request apprentice dispatch(es) from another committee providing training in the applicable craft or trade in the geographic area of the site of the public work, and must request apprentice dispatch(es) from each such committee either consecutively or simultaneously, until the contractor has requested apprentice dispatch(es) from each such committee in the geographic area. All requests for dispatch of apprentices shall be in writing, sent by first class mail, facsimile or email.

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

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

. . . [I]f in response to a written request no apprenticeship committee dispatches or agrees to dispatch during the period of the public works project any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the apprenticeship committee's standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of this section as a result of failure to employ apprentices for the remainder of the project, provided that the contractor made the request in enough time to meet the above-stated ratio. If an apprenticeship committee dispatches fewer apprentices than the contractor requested, the contractor shall be considered in compliance if the contractor employs

those apprentices who are dispatched, provided that, where there is more than one apprenticeship committee able and willing to unconditionally dispatch apprentices, the contractor has requested dispatch from all committees providing training in the applicable craft or trade whose geographic area of operation includes the site of the public work. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).)

Here, GRFCO had journeymen Laborers working on the Project a total of 969.5 hours on 57 days. Laborer was an apprenticeable craft. GRFCO did not hire any apprentice Laborers for the Project. GRFCO thereby violated the requirement that it employ Laborer apprentices in the ratio of one hour of apprentice work for every five hours of journeyman work.

GRFCO did not issue a request for dispatch of apprentices for any of the 57 days that its journeymen Laborers worked on the Project. The first DAS 142 form that GRFCO issued was invalid because it failed to state the date and time the apprentice was to report to the job site. The second DAS 142 form that GRFCO faxed to the Laborer JAC on was invalid as well, for two reasons. First, it stated that the apprentice was to report to the job site on a day when GRFCO had no journeyman Laborer on site that day to supervise the apprentice as required by California Code of Regulations, title 8, section 230.1, subdivision (c). Second, it failed to provide the Laborer JAC with 72 hours' advance notice (excluding the weekend), as required by California Code of Regulations, title 8, section 230.1, subdivision (a).

Under these facts, GRFCO has not carried its burden to prove compliance with section 1777.5 (§ 1777.7, subd. (c)(2)(B); Cal. Code Regs., tit. 8, § 232.50, subd. (b).) Accordingly, this Decision finds that GRFCO violated section 1777.5 and California Code of Regulations, title 8, section 230.1, subdivision (a), by failing to issue valid requests for dispatch of apprentices and failing to have apprentices work on the Project in the 1:5 ratio of apprentice hours to journeyman hours.

Penalty Rate of \$300.00 Under Section 1777.7 Is Justified Under De Novo Review of the Facts.

Section 1777.7 states in relevant part:

(a) (1) If the Labor Commissioner or his or her designee determines after an investigation that a contractor or subcontractor knowingly violated Section 1777.5, the contractor and any subcontractor responsible for the violation shall forfeit, as a civil penalty to the state or political subdivision on whose behalf the contract is made or awarded, not more than 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 regulation 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,

A contractor or subcontractor has the same burden of proof with respect to the penalty determination as to the wage assessment; namely, the affected contractor has the burden of proving that the basis for assessment is incorrect. (Cal. Code Regs., tit. 8, § 17250, subd. (b).)

The Assessment determined that GRFCO violated section 1777.5 for 57 days and imposed a penalty of \$300.00 per day, totaling \$17,100.00. Under the former version of section 1777.7 applicable in this case (i.e., the version in effect on the bid advertisement date in 2014), the Director decides the appropriate penalty de novo. (§ 1777.7, subd. (f)(2).) In setting the penalty de novo, the Director is to consider all of the following circumstances:

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

(§ 1777.7, subd. (f)(1) and (2).)

Here, the evidentiary record establishes that GRFCO “knowingly” violated section 1777.5 under the irrebuttable presumption of California Code of Regulations, title 8, section 231, subdivision (h). The Contract notifies GRFCO of its obligation to comply with the Labor Code provisions applicable to public works projects. The Contract specifically references the apprenticeship requirements. Jackson’s testimony additionally established that the violations were “knowingly” made. Jackson testified that GRFCO had performed California public works projects for approximately 35 years during which GRFCO handled “hundreds” of DAS 140 and DAS 142 forms. Under these facts, GRFCO knew or should have known of the requirements of section 1777.5 and how to comply with them, but failed to comply.

A violation is not deemed to be “knowingly” made if “the failure to comply was due to circumstances beyond the contractor’s control.” (Cal. Code Regs., tit. 8, § 231, subd. (h).) Here, the evidentiary record establishes that GRFCO’s violations were not due to any matter beyond its control. GRFCO was faced with an exceedingly simple apprenticeship situation on the Project. There was only one apprenticeship committee to which GRFCO was required to issue the DAS 142 forms – the Laborer JAC. GRFCO had 57 days of journeyman Laborer work on the Project for which it could have submitted DAS 142 forms to the Laborer JAC. The evidence establishes that the sole reason GRFCO failed to submit any DAS 142 form to the Laborer JAC for any of those 57 days was GRFCO’s intentional decision not to do so. There was nothing here beyond GRFCO’s control.

Given that GRFCO committed a “knowing” violation, the analysis turns to the five de novo review factors “A” through “E” listed above.

Factor “A” – whether the violation was intentional – strongly favors the maximum penalty rate allowed by section 1777.7. Not only was GRFCO’s decision to not request apprentice dispatch intentional, it was made without any creditable justification. The chief reason for the decision, as asserted in Jackson’s testimony, was that the Laborer JAC had never dispatched apprentices to GRFCO’s projects because GRFCO was a non-union contractor. Past experience with dispatch of apprentices is not recognized in statute or regulation as a basis for an exception to the on-going requirement to request dispatch. Further, Jackson acknowledged that the Laborer JAC “may change in the future.” GRFCO had nothing to lose by issuing DAS 142 forms to comply with law and thereby determine if the Laborer JAC changed its practice. Moreover, if GRFCO had properly requested dispatch and the Laborer JAC then failed to dispatch apprentices, GRFCO would not be in violation of the 1:5 ratio requirement.⁹ (Cal. Code Regs., tit. 8, § 230.1, subd. (a).)

Factor “B” – whether GRFCO had committed other violations of section 1777.5 – also favors setting the penalty at the maximum rate permitted by section 1777.7. The evidentiary record establishes that prior to the issuance of the Assessment on December 2, 2016, GRFCO had committed three other violations of section 1777.5 on three separate public works projects for which DLSE issued three Determinations of Civil Penalty (DCP) against GRFCO on December 29, 2014. The violations in those three cases were as follows:

1. In DLSE Case No. 44-42221-133, DLSE assessed a section 1777.7 penalty of \$14,300.00 for GRFCO’s violation of section 1777.5 and California Code of Regulations, title 8, sections 230 and 230.1, based on GRFCO’s failure to issue notices of contract award information to applicable apprenticeship committees in the geographic area of the public work site, failure to request dispatch of apprentices, and failure to employ apprentices on the project in the required 1:5 ratio. GRFCO had performed its work on

⁹ As stated, *ante*, Jackson testified that the second reason GRFCO decided not to issue the DAS 142 forms to the Laborer JAC was that DLSE would have imposed penalties on GRFCO for untimely issuance of the DAS 142s. Jackson presented no coherent argument as to how a timely request for dispatch of apprentices – i.e., a DAS 142 issued at least 72 hours before the apprentice was to report to the site (excluding Saturdays, Sundays and holidays) -- could lead to penalties based on an untimely request.

the project from January 27, 2014, through June 13, 2014. The case was designated for hearing as Case No. 15-0074-PWH. After the hearing on the merits, the Director issued her Decision on March 22, 2016, finding that GRFCO had violated section 1777.5 and California Code of Regulations, title 8, sections 230 and 230.1 as stated in the DCP. The Decision reduced the assessed penalty from \$14,300.00 to \$8,580.00.¹⁰

2. In DLSE Case No. 40-42223-133, DLSE assessed a section 1777.7 penalty of \$3,800.00 (computed at \$100.00 per violation) for GRFCO's violation of section 1777.5 and California Code of Regulations, title 8, section 230, based on GRFCO's failure to issue notices of contract award information to applicable apprenticeship committees in the geographic area of the public work site, and GRFCO's failure to employ apprentices on the project in the required 1:5 ratio. GRFCO and DLSE entered into a settlement of the matter, but GRFCO failed to pay the full settlement sum. DLSE then obtained entry of judgment against GRFCO for the full \$3,800.00 penalty, and GRFCO paid that judgment.¹¹

3. In DLSE Case No. 44-42225-133, DLSE assessed a section 1777.7 penalty of \$2,700.00 (computed at \$100.00 per violation) for GRFCO's violation of section 1777.5 and California Code of Regulations, title 8, section 230, based on GRFCO's failure to issue notices of contract award information to applicable apprenticeship committees in the geographic area of the public work site, and GRFCO's failure to employ apprentices on the project in the required 1:5 ratio. GRFCO and DLSE entered into a settlement of the matter, but GRFCO failed to pay the full settlement sum. DLSE then obtained entry of judgment against GRFCO for the full \$2,700.00 penalty, and GRFCO paid that judgment.¹²

Accordingly, factor "B" strongly favors the maximum penalty rate allowed by

¹⁰ Pursuant to California Code of Regulations, tit. 8, section 232.45, the Hearing Officer took official notice of the Director's Decision in Case No. 15-0074-PWH (submitted in evidence as DLSE Exhibit No. 23).

¹¹ Pursuant to California Code of Regulations, tit. 8, section 232.45, the Hearing Officer took official notice of this Superior Court Judgment (submitted in evidence as Exhibit 24).

¹² Pursuant to California Code of Regulations, tit. 8, section 232.45, the Hearing Officer took official notice of this Superior Court Judgment (submitted in evidence as Exhibit 25).

section 1777.7.

De novo review factor “C” – whether, upon notice of the violation, GRFCO took steps to voluntarily remedy the violation – is not applicable here. DLSE did not commence its investigation and initiate communication with GRFCO until after GRFCO’s work on the Project had ceased.

De novo review factors “D” and “E” – whether, and to what extent, the violation resulted in lost training opportunities for apprentices and otherwise harmed apprentices or apprenticeship programs – favors a high penalty rate. GRFCO’s journeyman Laborers worked 969.5 hours on the Project. The 1:5 ratio required 194 hours of Laborer apprentice hours. GRFCO violation resulted in 194 hours of lost training opportunity for Laborer apprentices, and harm to the Laborer JAC by depriving it of the opportunity to have its apprentices receive that 194 hours of on-the-job training.

The evidentiary record in this case establishes that GRFCO’s contention that the Laborer JAC would not have dispatched apprentices to the Project is conjecture.¹³ As stated above, Jackson’s testimony that the Laborer JAC had never dispatched apprentices to GRFCO was followed by his admission that the Laborer JAC “may change in the future.” The statutory scheme of sections 1777.5 and 1777.7 does not contemplate that a contractor is permitted to refrain from issuing DAS 142 forms to applicable apprenticeship committees based on conjecture that the committees will not dispatch apprentices to the project. Rather, the contractor is required to submit the DAS 142 forms to give the applicable committees the opportunity to dispatch apprentices. Based on the totality of evidence, GRFCO failed to request dispatch of Laborer apprentices for the 57 days that GRFCO had journeyman Laborers working on the Project, thereby depriving apprentices and the apprenticeship program of training opportunities. The

¹³ The Laborer JAC’s failure to dispatch an apprentice in response to the DAS 142 form that GRFCO transmitted for work on July 28, 2014, does not support GRFCO’s conjecture that the Laborer JAC would never dispatch apprentices to the Project. As discussed, *ante*, the DAS 142 form that GRFCO mailed on July 22, 2014, failed to notify the Laborer JAC of the date and time the apprentice was to report to the job site. On Thursday, July 24, 2014, GRFCO faxed a corrected copy stating the apprentice was to report for work at 7:00 a.m. on Monday, July 28, 2014, but the corrected form provided insufficient notice in that it did not give the 72 hours’ notice (excluding the weekend) required by California Code of Regulations, title 8, section 230.1, subdivision (a).

weighing of the five de novo review factors supports the maximum penalty rate permitted by section 1777.7.

The maximum penalty rate allowed by section 1777.7 is \$300.00 per violation. Any penalty rate from \$101.00 to \$300.00 requires a determination that the contractor knowingly committed a second or subsequent violation of section 1777.5 within a three-year period, and that such violation resulted in apprenticeship training not being provided. (§ 1777.7, subd. (a)(1).) The evidence in this proceeding, as set forth and detailed above, establishes these factors.

Accordingly, this Decision sets the penalty rate at \$300.00 per violation, as found in the Assessment. GRFCO is liable for the section 1777.7 statutory penalty in the sum of \$17,100.00, computed at the rate of \$300.00 per day for the 57 days that GRFCO had journeymen Laborers working on the Project.

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

FINDINGS

1. Affected contractor GRFCO, Inc. timely filed a Request for Review of the Civil Wage and Penalty Assessment timely issued by the Division of Labor Standards Enforcement.

2. GRFCO, Inc. underpaid the prevailing wages owed to four Laborers on the Project – David Martinez, Jesus Ordoñez, Rosalio Luna and Samuel Pacheco — in the aggregate sum of \$17.45. Accordingly, the assessment of prevailing wages in the sum of \$17.45 is affirmed.

3. GRFCO, Inc. did not prove any basis for waiver of liquidated damages. Accordingly, under section 1742.1, subdivision (a), GRFCO, Inc. is liable for liquidated damages in the sum of \$17.45.

4. The Labor Commissioner did not abuse her discretion in assessing penalties under section 1775, subdivision (a), at the rate of \$80.00 per violation for 44 violations. Accordingly, the assessment of section 1775 statutory penalties in the sum of \$3,520.00 is affirmed.

5. There was no evidence that GRFCO failed to pay the overtime prevailing wage rate for all overtime hours worked, and therefore the assessment of a \$50.00 statutory penalty under section 1813 is dismissed.

6. GRFCO, Inc. knowingly violated section 1777.5 and California Code of Regulations, title 8, section 230.1, subdivision (a) by: (a) not issuing valid requests for dispatch of apprentices in a DAS 142 form or its equivalent to the Laborer apprenticeship committee in the geographic area of the Project for any of the 57 days that GRFCO, Inc. had journeymen Laborers working on the Project; and (b) not employing on the Project Laborer apprentices in the ratio of one hour of apprentice work for every five hours of journeyman work.

7. GRIFCO, Inc. is liable for an aggregate statutory penalty under section 1777.7 in the sum of \$17,100.00, computed at \$300.00 per day for the 57 days that its journeymen Laborers worked on the Project.

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

Wages:	\$	17.45
Liquidated damages under section 1742.1:	\$	17.45
Penalties under section 1775, subdivision (a):	\$	3,520.00
Penalties under section 1777.7:	\$	17,100.00
TOTAL:	\$	20,654.90

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

ORDER

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: 2/20/19



Victoria Hassid,
Chief Deputy Director
Department of Industrial Relations¹⁴

¹⁴ See Government Code sections 7, 11200.4.