

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Nolte Sheet Metal, Inc.

Case No. 06-0160-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

**ORDER GRANTING RECONSIDERATION
AND AMENDING FINDINGS OF FACT**

The Division of Labor Standards Enforcement ("DLSE") seeks reconsideration of the Decision of the Director issued on March 25, 2008 ("Decision"), on the basis that the Decision incorrectly calculated the unpaid prevailing wages owed to two of the affected workers. Nolte Sheet Metal, Inc. ("Nolte") has not filed a response. Based on my review of DLSE's arguments and the relevant parts of the record, I will grant reconsideration and amend the Decision for the following reasons.

The Decision found, in pertinent part, that Alfredo and Mario Rojas were not entitled to be paid either prevailing wages or overtime for their daily travel to and from the project jobsite. Accordingly, the total hours assessed were modified by deducting the three hours of travel time per day claimed by the two workers, and the assessed unpaid wages for those workers were reduced by subtracting the full prevailing wages claimed for the deducted travel time.

DLSE argues that this reduction was excessive, because Nolte actually paid Alfredo and Mario Rojas for all of the hours assessed, albeit at a non-prevailing wage rate, and the Decision erroneously gives Nolte credit against its prevailing wage obligation for wages it paid those workers for the deducted, non-prevailing wage, travel hours. DLSE concludes that the unpaid prevailing wages for Alfredo and Mario Rojas should therefore be increased from those found in the Decision by \$5,235.76 and \$371.26, respectively. DLSE did not request

reconsideration of the reduction in hours, but only of the application of that reduction to the unpaid prevailing wages due.

Nolte's payroll records establish that those workers were actually paid for the claimed travel hours at the average rates of \$9.75 and \$8.25 per hour, respectively. I therefore agree with DLSE's assertion that the correct reduction in prevailing wages due is the difference between the prevailing wages and the amount Nolte actually paid for the travel hours, rather than the full prevailing wages for the claimed travel hours.

IT IS THEREFORE ORDERED that reconsideration of the Decision of the Director issued on March 25, 2008, is granted, and that the Decision is hereby reissued in its entirety, except that the findings of fact are amended as set forth below:

FINDINGS

1. Affected subcontractor Nolte Sheet Metal, Inc. filed a timely Request for Review of the Civil Wage and Penalty Assessment issued by DLSE with respect to the Project.
2. Alfredo and Mario Rojas performed work on the Project subject to the Sheet Metal Worker (HVAC) classification and are therefore entitled to unpaid prevailing wages in the amounts of \$35,003.33 and \$3,660.57 respectively. Nolte is also liable for training fund contributions in the amount of \$0.76 per hour for 1,281 hours worked by Alfredo and Mario Rojas on the Project in the amount of \$973.56.
3. Nolte underpaid Sukhvir Kahira by \$114.08, the difference between straight time and holiday double time, for the four hours that he worked on the Admission Day holiday, September 9, 2005.
4. Nolte fully paid the applicable prevailing wages to all other workers on the Project.
5. In light of Findings 2 and 3, above, Nolte underpaid its employees on the Porterville Unified School District Educational Complex in Tulare County in the aggregate amount of \$39,751.54, including unpaid training fund contributions.
6. DLSE did not abuse its discretion in setting section 1775(a) penalties at the rate of \$50 per violation, and the resulting total penalty of \$10,000.00, as modified, for 200 violations is affirmed.

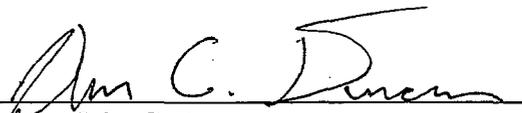
7. The unpaid wages found due in Finding No. 5 remained due and owing more than sixty days following issuance of the Assessment. Nolte is liable for an additional award of liquidated damages under section 1742.1 in the amount of \$34,144.52, and there are insufficient grounds to waive payment of these damages.

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

Wages Due:	\$38,777.98
Training Fund Contributions Due:	\$973.56
Penalties under section 1775, subdivision (a):	\$10,000.00
Penalties under section 1813:	\$0.00
Liquidated Damages:	\$39,751.54
TOTAL:	\$89,503.08

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

Dated: 4/4/08


John C. Duncan
Director of Industrial Relations

PROOF OF SERVICE

(Code Civ. Proc. §§ 1011, 1013, 1013a, 2015.5)

Case Name: Nolte Sheet Metal, Inc vs Division of Labor Standards Enforcement

Case No.: 06-0160-PWH

1. At the time of service I was over 18 years of age and not a party to this action.
2. My business address is 455 Golden Gate Ave., Ste. 9516, San Francisco, CA .
3. On April 8, 2008, I served the ORDER GRANTING RECONSIDERATION AND AMENDING FINDINGS OF FACT on the persons listed below by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

(A) **By personal service.** I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person no less than 18 years of age between the hours of eight in the morning and six in the evening.

(B) **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the address below and:

- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

(C) **By overnight delivery:**

- (1) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- (2) The notice or other paper was deposited in a box or other facility regularly maintained by the carrier, or delivered to an authorized courier or driver authorized to receive documents, in an envelope or package designated by the carrier with delivery fees paid or provided for, addressed to the person to whom it is to be served, at the office address as last given by that person on the document filed in the cause and served on the party making service.

(D) **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons listed below and providing them to a professional messenger service for service.

(E) **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

(F) **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

<u>TYPE OF SERVICE</u>	<u>ADDRESSEE & FAX NUMBER (IF APPLICABLE)</u>
B2	Mr. Oral E. Micham Oral E. Micham Inc P. O. Box 745 Woodlake, CA 93286 Telecopy Number:
B2	Mr. Ernest Nolte Nolte Sheet Metal Inc. 1560 N. Marks Fresno, CA 93722 Telecopy Number:
B2	Mr. Thomas M. Giovacchini The Law Firm of Thomas Giovacchini 1326 Chorro Street San Luis Obispo, CA 93401 Telecopy Number:
B2	Ms. Sherry L. Gentry [DLSE Case No.: 40-17943/010] Division of Labor Standards Enforcement 5555 California Ave., Ste. 200 Bakersfield, CA 93309 Telecopy Number: (661) 395-3872
A	Mr. Ramon Yuen-Garcia [DLSE Case No.: 40-17943/010] Division of Labor Standards Enforcement 455 Golden Gate Ave., 9th Fl. San Francisco, CA 94102 Telecopy Number: (415) 703-4806
B2	Ms. Luisa Camacho Porterville Unified School District Kitchell Const. Mgmnt 600 West Grand Ave

Porterville, CA 93257

Telecopy Number:

B2

Ms. Sherri Cooper

Travelers Casualty & Surety Co. of America

CSC - Lawyers Incorporated Service

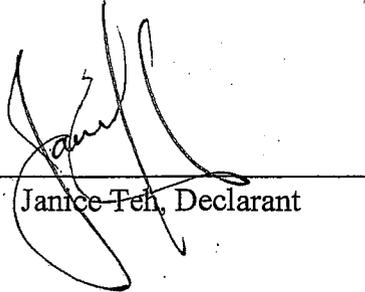
P. O. Box 526036

Sacramento, CA 95852-6036

Telecopy Number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: April 8, 2008



Janice Teh, Declarant