STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Unispec Construction, Inc. Case No. 21-0118-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected prime contractor Unispec Construction, Inc. (Unispec) requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE), dated May 19, 2021, with respect to work performed by its subcontractor Unitech Construction Group, Inc. (Unitech) on the Riviera Village Enhancement Phase IV Project (Project) for the City of Redondo Beach (City or Awarding Body) in Los Angeles County.[1] The Assessment determined that $62,517.48 in unpaid prevailing wages and training fund contributions and $66,850 in statutory penalties were due. On January 19, 2022, an amended audit reduced the unpaid prevailing wages owed to $60,504.84, with no change in the statutory penalties assessed, for a total amount due of $127,354.84.[2]

A Hearing on the Merits occurred on February 22, 2023, March 22, 2023, and April 5, 2023, before Hearing Officer Ann Wu. Joseph Hart appeared as counsel for DLSE. Jack Haber appeared for Unispec. Deputy Labor Commissioner Norbert Flores (DLSE Investigator) testified in support of the Assessment. Haber testified in opposition to the Assessment. The Hearing Officer admitted into evidence DLSE Exhibit Numbers 1

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[1] Unitech did not request review of the Assessment. Therefore, the Assessment is final as against Unitech. (Lab. Code, § 1742, subd. (a); Cal. Code Regs., tit. 8, § 17222.) The findings made in this decision relating to Unitech are made solely to determine liability against Unispec.

[2] During the hearing, DLSE withdrew $2,200 in penalties assessed under Labor Code section 1771.1 for violation of contractor registration requirements, which further reduced the Assessment to a total of $125,154.84.

through 38, and Unispec Exhibits A, F through T, and W though Y.[3] Unispec filed a closing brief on April 26, 2023. DLSE did not file a closing brief. The matter was submitted for decision on May 10, 2023.

Prior to the Hearing on the Merits, the parties stipulated to the following:

- The work subject to the Civil Wage and Penalty Assessment required the payment of prevailing wages and employment of apprentices.
- Unispec filed the Request for Review timely.
- DLSE made its enforcement file available to Unispec timely.
- No back wages have been paid or deposit made with the Department of Industrial Relations as a result of the Civil Wage and Penalty Assessment.

The issues for decision are as follows:

- Whether DLSE issued the Civil Wage and Penalty Assessment timely.
- Whether Unitech properly classified workers for all work performed on the Project.
- Whether Unitech paid the required prevailing wages to workers for all hours worked on the Project.
- Whether Unitech paid the required training fund contributions for all hours worked on the project.
- Whether Unispec is liable for wages found due and owing.
- Whether Unispec is liable for liquidated damages on wages found due and owing.
- Whether the Labor Commissioner abused her discretion in assessing penalties pursuant to Labor Code section 1775.
- Whether Unispec is liable for penalties assessed under Labor code section 1775.

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[3] DLSE Exhibit Numbers 8, 9 and 10 were withdrawn and replaced by DLSE Exhibit Numbers 33, 34 and 35, respectively. The Hearing Officer took official notice of Unispec Exhibit F, which is a printout of a webpage from the Department of Industrial Relations website. (Cal. Code Regs., tit. 8, § 17245, subd. (a).) During the hearing, Unispec withdrew its Exhibits P and R.

- Whether Unitech employed apprentices in the required minimum ratio of apprentices to journeypersons on the project.
- Whether Unitech submitted contract award information to all applicable apprenticeship committees in a timely and factually sufficient manner.
- Whether Unitech requested the dispatch of apprentices from all applicable apprenticeship committees in a timely and factually sufficient manner.
- Whether the Labor Commissioner abused her discretion in assessing penalties pursuant to Labor Code section 1777.7.
- Whether Unispec is liable for penalties assessed under Labor Code section 1777.7.

For the reasons set forth below, the Director of Industrial Relations finds that DLSE carried, for the most part, its initial burden of presenting evidence that provided prima facie support for the Assessment, as amended. (See Cal. Code Regs., tit. 8, § 17250, subd. (a).) Unispec did not carry its burden of proving that the basis for the Assessment was incorrect. (See Cal. Code Regs., tit. 8, § 17250, subd. (b).) Accordingly, the Director issues this decision affirming the Assessment, except as modified.

FACTS

<u>The Project</u>.

The City advertised the Project for bid on August 24, 2017. (DLSE Exhibit No. 3, p. 43; DLSE Exhibit No. 28.) The Project involved "demotion [sic], minor grading, driveway approach, decorative concrete paver sidewalk, concrete sidewalk, street benches, trash receptacles, landscaping and irrigation system, electrical, street lights replacement, and other works per plans and specifications" for the Riviera Village area in the City of Redondo Beach. (DLSE Exhibit No. 4, p. 44.) The bidding and contract documents indicated that the Project was a public work that required the contractor and any subcontractors to comply with prevailing wage and apprenticeship requirements. (DLSE Exhibit No. 4, p. 44; DLSE Exhibit No. 32, pp. 1, 3-6, 117-120.) The City estimated the cost of the Project at $460,000. (DLSE Exhibit No. 32, p. 1; Unispec Exhibit N.)

The successful bidder was Unispec, and it contracted with the City on November 28, 2017 to perform work on the Project. (DLSE Exhibit No. 6, pp. 49-50; DLSE Exhibit No. 32.) Unispec designated Unitech as its subcontractor for demolition and electrical work. (DLSE Exhibit No. 32, p. 16; Unispec Exhibit A.) Unitech had workers on the Project between December 6, 2017 and October 31, 2018. (DLSE Exhibit Nos. 33, 34.) The City accepted the work on November 12, 2019, and the notice of completion was recorded on November 19, 2019. (DLSE Exhibit No. 5.)

The Prevailing Wage Determinations.

Unitech classified all workers on Certified Payroll Records (CPRs) it prepared as Laborers. (DLSE Exhibit Nos. 33, 34, 35.) Accordingly, one prevailing wage determination (PWD) at issue is Laborer, SC-23-102-2-2017-2. (DLSE Exhibit No. 14, p. 478.) DLSE contends that Unitech misclassified the workers who performed electrical work on the Project. Specifically, DLSE reclassified two of the workers from the Laborer classification to Electrician – Transportation Systems and Transportation Systems Technician. Therefore, the general PWD, LOS-2017-2, which contains those Electrician crafts, is also at issue. (DLSE Exhibit No. 13, p. 470.) Both the Laborer and Electrician classifications are apprenticeable. (DLSE Exhibit Nos. 13, 14.)

Another PWD at issue in this matter is that of Operating Engineer, SC-023-63-2-2017-1.[4] One individual included in the amended audit was listed as an Operating Engineer in the City's inspection reports, and DLSE asserted that no training fund contributions were paid on behalf of this individual. (DLSE Exhibit No. 11; Unispec Exhibit H.)

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[4] Neither party submitted the Operating Engineer PWD as evidence. The Director takes official notice of the Operating Engineer PWD, SC-023-63-2-2017-1. (Cal. Code Regs., tit. 8, § 17245, subd. (a).)

The Complaint.

On December 14, 2018, DLSE received a complaint from Nicholas Santos from the Center for Contract Compliance (CCC) alleging underpayment of prevailing wages, worker misclassification, and apprentice violations against Unitech.[5] (DLSE Exhibit Nos. 20, 21, 24, 31; DLSE Exhibit No. 32, p. 17; Unispec Exhibit I.) DLSE assigned Deputy Labor Commissioner Norbert Flores to conduct an investigation. (DLSE Exhibit Nos. 20, 21.)

The Investigation.

On January 16, 2019, DLSE served a request for information to the City, as well as a notice of investigation and request for payroll records to both Unispec and Unitech.[6] (DLSE Exhibit Nos. 21, 28.) Shortly thereafter, the City provided the bid and contract documents and project specifications, inspection reports and photos of the Project site. (DLSE Exhibit Nos. 4-7, 11, 21, 27, 28, 30, 32.) The City advised that the Project had an estimated completion date of February 2019. (DLSE Exhibit No. 28.)

On January 22, 2019, the DLSE Investigator received a phone call from Haber in response to the notice of investigation served January 16, 2019. (DLSE Exhibit No. 21.) The DLSE Investigator asked Haber for the subcontract between Unispec and Unitech, and Haber advised that he did not have a subcontract, only a verbal agreement. (DLSE Exhibit 21; DLSE Exhibit No. 20, p. 542.) Haber advised the DLSE Investigator that he

[5] The DLSE Investigator explained that the Center for Contract Compliance is a stakeholder and files many prevailing wage complaints against contractors.

[6] To the extent that Unispec contends DLSE was required to notify it of the complaint within 15 days from receipt under Labor Code section 1775, subdivision (c), this time limit is directory and not mandatory because the statute does not provide a consequence or penalty for the failure to act within the specified time. (*California Correctional Peace Officers v. State Personnel Board* (1995) 10 Cal.4th 1133, 1145.) Thus, the fact that DLSE's did not notify Unispec of the prevailing wage complaint within 15 days of receipt, but did so 33 days after receipt, does not invalidate DLSE's enforcement action.

would reach out to Unitech to provide CPRs.[7] (*Ibid.*) Later that day, Binyamin "Benny" Afruta of Unitech emailed Unitech's CPRs to the DLSE Investigator; Afruta copied Haber on the email. (DLSE Exhibit No. 34.) On January 23, 2019, the DLSE Investigator emailed Afruta and Haber advising that the CPRs were non-compliant. (DLSE Exhibit No. 34.) He explained that the CPRs provided were non-compliant because they were in eCPR format and because the workers' names were redacted.

On January 28, 2019, Afruta emailed the DLSE Investigator and Haber another set of CPRs along with a copy of the Public Works Contract Award Information (DAS 140 form) and the Request for Dispatch of an Apprentice (DAS 142 form) he claimed he sent to the Laborers Southern California Joint Apprenticeship Committee (Laborers JAC) for the Project.[8] (DLSE Exhibit Nos. 16, 21, 35, 36.) In response, the DLSE Investigator emailed Afruta confirming receipt of the compliant CPRs.[9] (Unispec Exhibit S.) Also, he asked Afruta whether he received any response from the Laborers JAC and to provide any such response, and whether he submitted any other forms to any other

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[7] The DLSE Investigator and Haber also discussed the appropriate rate of pay for an unregistered apprentice. (DLSE Exhibit No. 21, p. 547.) Haber was advised that unregistered apprentices must be paid at the journeyperson rate.

[8] The DLSE Investigator explained that Unitech failed to provide proof—such as documentation of email or facsimile transmission—that the DAS 140 and 142 forms were submitted to the applicable apprenticeship committees. He agreed on cross-examination that Unispec Exhibit G appeared to show that the DAS 140 and 142 forms were faxed to the Laborers JAC. The date of the facsimile transmission was January 4, 2018. (Unispec Exhibit G.) The DLSE Investigator noted that Unispec Exhibit G did not show that the forms were submitted to the other applicable apprenticeship committees as required. This was in reference to the applicable apprenticeship committees for the Electrician classification, consisting of the I.B.E.W. Local Union No. 40 Los Angeles County Chapter Neca J.A.C., the Southern California Chapter of the Associated Builders & Contractors, Inc., Electrical U.A.C., and the LA County Intelligent Transportation Systems Electrical Joint Apprenticeship and Training Committee. (See DLSE Exhibit No. 20, p. 544.)

[9] To the extent that Unispec contends otherwise, "compliant" CPRs referred to the removal of the redaction of workers' names, not to whether the CPRs showed compliance with prevailing wage requirements. (See Lab. Code, § 1776, subd. (a) [payroll records must show the names of workers and other identifying information].)

apprenticeship committees and to provide any such forms. (DLSE Exhibit Nos. 21, 36; Unispec Exhibit S.) Review of the DLSE enforcement file showed that the applicable apprenticeship committees had provided information that they did not receive any DAS forms from Unitech for the Project. (DLSE Exhibit No. 21.) The DLSE Investigator explained that the CCC provided this information to DLSE as part of the complaint.[10]

On January 29, 2019, the DLSE Investigator discussed the case with Santos of the CCC. (DLSE Exhibit No. 21.) Santos advised the DLSE Investigator that on January 12, 2018, he observed three workers connecting "electrical from new post to ground utilities," and on January 30, 2018, he observed five workers and the owner installing traffic lights and setting poles. (*Ibid.*) On January 31, 2019, Santos emailed the DLSE Investigator a set of Unitech CPRs that the CCC received from the City in response to a request. (DLSE Exhibit No. 33.) The DLSE Investigator explained that the CPRs provided by the CCC (which were obtained from the City) did not match the CPRs provided by Afruta. The CPRs from the City listed workers that did not appear on the CPRs provided by Afruta. Further, workers identified as apprentices on the CPRs submitted to the City were not included in the CPRs provided by Afruta. This suggested to the DLSE Investigator that there was falsification of the CPRs.

On February 2, 2019, DLSE mailed employee questionnaires both in English and Spanish to workers listed on the CPRs. (DLSE Exhibit No. 21.) DLSE received a questionnaire response from one worker, Izhak Ohaion.[11] (*Ibid.*; DLSE Exhibit No. 12.) Another worker who received a questionnaire, Jorge Alberto Pleitez Goday, called and

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[10] At hearing, DLSE did not submit the underlying documentary evidence from the applicable apprenticeship committees confirming that Unitech failed to submit DAS 140 and 142 forms referenced in DLSE Exhibit No. 21.

[11] Ohaion indicated on his questionnaire response that his regular rate of pay on the Project was $55. (DLSE Exhibit No. 12, p. 468.) This is more than the $53.73 total hourly rate required by the Laborer PWD and reflected on the CPRs. (DLSE Exhibit Nos. 14, 33, 34, 35.)

advised the DLSE Investigator that he never worked for Unitech and did not work on the Project.[12] (*Ibid.*) Two of the questionnaires were returned as undeliverable. (*Ibid.*)

The DLSE Investigator reviewed the documents received during the investigation. The Unitech CPRs classified all workers as Laborer. (DLSE Exhibit No. 35.) However, the daily inspection reports and the photos provided by the City indicated that Unitech workers performed street light installation work, which was outside the scope of work for Laborer but within that for Electrician.[13] (DLSE Exhibit Nos. 11, 13, 14, 19.) The file also contained documentation from the California Apprenticeship Council showing that Unitech made no training fund contributions in the four years prior to December 10, 2018. (DLSE Exhibit Nos. 24, 31.)

On February 26, 2020, the DLSE Investigator contacted the City to request the notice of completion for the Project. (DLSE Exhibit No. 29.) The City provided the notice of completion recorded on November 19, 2019, which indicated that the City accepted the work on the Project on November 12, 2019. (*Ibid.*)

On May 17, 2021, the DLSE Investigator called and left messages for both Haber and Afruta.[14] (DLSE Exhibit No. 21.) When Afruta called back, the DLSE Investigator asked Afruta about the Project and about his failure to list Electricians on the CPRs. (*Ibid.*) Afruta responded that he did some of the work. (*Ibid.*) The DLSE Investigator advised Afruta that Afruta did not list himself on the CPRs. (*Ibid.*) He also asked Afruta about the workers listed as apprentices on the CPRs but who were not registered

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[12] Goday's name did not appear in the City's inspection reports. (See DLSE Exhibit No. 11.)

[13] On cross-examination, the DLSE Investigator agreed that the City inspection reports contained errors in referencing Unispec and Unitech. (Unispec Exhibit M.) However, there was no evidence to suggest that any such errors had any material impact on the accuracy of the Assessment. He also agreed on cross-examination that the photos provided by the City showed workers performing work within the scope of the Cement Mason craft. (DSLE Exhibit 19, p. 511.) The audit did not include any workers classified as Cement Masons.

[14] The DLSE Investigator explained that he worked on other investigations between February 26, 2019 and May 17, 2021.

apprentices, the worker listed as an Electrician on the City's Inspection Report but listed on the CPRs as a Laborer, as well as whether he paid fringe benefits to workers. (*Ibid.*) To all these questions, Afruta responded that he did not recall. (*Ibid.*) The DLSE Investigator advised Afruta that he would perform an audit using the information he had, and that Afruta could provide proof of compliance. (*Ibid.*)

When Haber called the DLSE Investigator back on May 18, 2021, they discussed the investigation. (DLSE Exhibit No. 21.) The DLSE Investigator asked Haber for the subcontract with Unitech, and Haber advised that he only had a verbal agreement with Unitech. (*Ibid.*) In the same teleconference, the DLSE Investigator informed Haber of his determination that Unitech misclassified workers on the Project. (*Ibid.*) In response, Haber indicated that the CPRs were submitted to the City and uploaded to the Department, and nobody told him there were any issues with the CPRs. (*Ibid.*)

<u>The Audit</u>.

On May 19, 2021, the DLSE Investigator prepared an audit summary of the Project. The audit summary listed the Unitech worker names, worker classifications, the periods worked, the hours worked, the total wages paid, the total wages required, the amounts found owing and unpaid, penalties, and the training funds required to be paid. (DLSE Exhibit No. 2, p. 11.) He prepared the audit summary and the individual audit worksheets for each of the listed workers on the Project using the information contained in the CPRs, the applicable PWDs, the City inspection reports and the photos provided by the City. (See DLSE Exhibit Nos. 11, 13, 14, 19, 33, 34, 35.)

It appears that the worker names and hours worked were obtained from the CPRs and City inspection reports.[15] For the workers listed on the CPRs, it appears that the DLSE Investigator credited Unitech with the basic hourly rate indicated on the CPRs but provided no credit for any fringe benefits or training fund contributions indicated on the CPRs. This applied to workers Oscar Alarcon, Olivero B. Gonzalez, Jorge Alberto Pleteiz Goday, Carlos Garcia, Jesus Morilo, and Danilo Elmar Garay Lopez. For worker

[15] For those workers listed only in the City inspection reports, it appears that the DLSE Investigator assumed they worked eight hours each day.

Manuel Venegas Monroy, he did not credit Unitech with the basic hourly rate indicated on the CPRs. Instead, the DLSE Investigator credited Unitech with a basic hourly rate of $20. For worker Izhak Ohaion, he credited Unitech with the basic hourly rate of $55 indicated on Ohaion's questionnaire response which resulted in no wages found owning and unpaid for him. For workers Joey Cortez and Marcos Diaz, who were listed in the City inspection reports only, and as Laborers, it appears that the DLSE Investigator credited Unitech with a basic hourly rate of $20.[16] For worker Victor Sandoval, who was listed in the City inspection reports only, and as an Operating Engineer, it appears that the DLSE Investigator credited Unitech with the basic hourly rate of $30. He did not calculate any unpaid wages for Afruta; he only calculated unpaid training fund contributions for Afruta.

The audit determined that the total amount of unpaid prevailing wages was $62,517.48, comprised of $60,611.04 in underpaid wages and $1,906.44 in unpaid training fund contributions. (DLSE Exhibit No. 2, p. 11.) The audit found 343 violations of underpaid prevailing wages under Labor Code section 1775. (*Ibid.*)

<u>The Penalty Review</u>.

The DLSE Investigator summarized his investigation and audit in the Penalty Review. (DLSE Exhibit No. 20.) He determined that Unitech underpaid and misclassified workers, omitted workers from the CPRs, failed to pay fringe benefits, failed to make training fund contributions, failed to submit contract award information to all applicable apprenticeship committees for both the Laborer and Electrician crafts, failed to request dispatch of apprentices from all applicable apprenticeship committees, and failed to meet the minimum ratio requirement as Unitech failed to employ any registered apprentices on the Project.[17] (*Ibid.*)

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[16] Also, the City inspection reports listed other workers not included in the CPRs. The DLSE Investigator did not include those other workers in the audit.

[17] The DLSE Investigator calculated the total number of journeyperson hours of work performed by Unitech workers on the Project, as well as the number of days journeypersons worked on the Project, for both the Laborer and Electrician crafts.

The Senior Deputy Labor Commissioner reviewed the Penalty Review to determine the appropriate penalty rates. The DLSE Investigator proposed penalties for underpayment of prevailing wages under Labor Code section 1775 at $150 per violation.[18] (DLSE Exhibit No. 2, p. 11.) This amounted to $51,450 in section 1775 penalties for the 343 violations found. (*Ibid.*; DLSE Exhibit No. 20, p. 532.) He also proposed apprenticeship penalties under Labor Code section 1777.7 for failure to submit contract award information to the applicable apprenticeship committees at $100 per violation for the 330 violations found.[19] (DLSE Exhibit No. 20, pp. 544-545.) Although the DLSE Investigator noted that Unitech had no public works violations in the prior three years, he did not recommend mitigation of penalties because of the severity and extent of the violations on this Project. (*Id.*, at p. 546.) On May 19, 2021, the Senior Deputy Labor Commissioner approved the $150 per violation penalty rate under section 1775 but reduced the section 1777.7 penalty rate to $40 per violation. (*Id.* at p. 533.)

The Assessment.

The Assessment was issued on May 19, 2021 against both Unispec and Unitech.[20] (DLSE Exhibit No. 1, pp. 9-10.) The Assessment was based on DLSE's determination that Unitech failed to pay the correct prevailing wages to workers, that

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(DLSE Exhibit No. 17.) He found that Unitech did not employ any apprentices on the Project. (*Ibid.*)

[18] The audit summary worksheet indicted section 1775 penalties at $150 per violation for the 343 violations found. (DLSE Exhibit No. 2, p. 11.) However, the individual audit worksheets for each worker listed the section 1775 penalties at $200 per violation. (DLSE Exhibit No. 2, pp. 13-26.) The Penalty Review contained the correctly calculated section 1775 penalty reflected on the audit summary worksheet. (DLSE Exhibit 20, p. 533.)

[19] He calculated 330 violations for the number of calendar days from the first day and the last day a Laborer journeyperson performed work on the Project. (*Id.* at pp. 544-545.)

[20] The contractor and subcontractor are jointly and severally liable for the amounts found due in an assessment. (§ 1743, subd. (a).)

Unitech misclassified workers, that Unitech under-reported workers and failed to report all workers on the Project. (DLSE Exhibit No. 1, p. 1.) The Assessment was also based on DLSE's determination that Unitech failed to pay the required training fund contributions for the hours worked. (*Ibid.*) The Assessment also found that Unitech failed to submit contract award information to all the applicable apprenticeship committees in the geographic area of the Project and failed to employ apprentices in the required minimum ratio of apprentices to journeypersons on the Project. (DLSE Exhibit No. 1, p. 2.) In addition to the unpaid wages and penalties reflected in the audit, the Assessment imposed section 1777.7 penalties of $13,200, based on 330 violations of apprenticeship requirements assessed at $40 per violation. (DLSE Exhibit No. 1., p.2; DLSE Exhibit No. 2.) Unispec requested review of the Assessment on June 18, 2021. (DLSE Exhibit No. 22, pp. 549, 556-565, 568.)

The Amended Audit.

On January 19, 2022, the DLSE Investigator prepared an amended audit. (DLSE Exhibit No. 3; Unispec Exhibit H.) He removed worker Victor Sandoval from the audit after Sandoval explained that he was a subcontractor using his own equipment such that he was not employed by Unitech. The removal of Sandoval from the audit reduced the wages found due owing and unpaid on his behalf from $2,012.54 to zero. (DLSE Exhibit No. 2, pp. 11, 25; DLSE Exhibit No. 3, pp. 27, 41.) There was no change to the training funds required or the penalties assessed under section 1775.[21] The amended audit determined that the total amount of unpaid wages was $60,504.84, comprised of $58,598.40 in underpaid wages and $1,906.44 in unpaid training fund contributions. (DLSE Exhibit No. 3, p. 27.) The $51,450 in penalties assessed under Labor Code section 1775 remained the same. (*Ibid.*)

[21] All workers on a public works project, regardless of whether they are classified as employee or independent contractor, must be paid prevailing wages. (See § 1771 [the prevailing wage rate "shall be paid to all workers employed on public works"]; § 1723 ["'Worker' includes laborer, worker, or mechanic."].) Sandoval's removal from the audit for underpaid wages did not affect the amount of unpaid training funds required on his behalf or the penalties assessed for unpaid training funds.

Unispec's Defense.

Haber testified for Unispec. Haber's testimony consisted of his description of Unispec's exhibits. The designation of subcontractors showed that Unitech's portion of work on the Project was estimated to be $145,000. (Unispec Exhibit A.) Unitech performed all the electrical work on the Project. Prevailing wage enforcement investigations may be triggered by a complaint filed by a worker, a former worker, or the general public.[22] (Unispec Exhibit F.) The audit was amended to remove Sandoval. (Unispec Exhibit H.) The investigation of the instant matter was initiated from a complaint filed by the CCC. (Unispec Exhibit I.) Previously, Unispec resolved a complaint a former worker filed with the Employment Development Department for back pay. (Unispec Exhibit J.) Haber filed a Public Records Act request with the City for the City's inspection reports of the Project, but he received no response. (Unispec Exhibit K.) The City acknowledged that the inspection reports for December 18 and 22, 2017 incorrectly identified workers as working for Unispec rather than Unitech.[23] (Unispec Exhibits L, M.) The City attributed the error to the inspection reports being completed by an associate civil engineer who was filling in for the City inspector during the week of December 18, 2017. (Unispec Exhibit M.) The Project was supposed to be a 50-working day project. (Unispec Exhibit N.) However, the Project was delayed several times such that there were intervening weeks where no work was performed. (See Unispec Exhibit O.) The City released only part of the retention on the Project to Unispec due to a dispute about completion. (Unispec Exhibit Q.) Prior to issuance of the Assessment, Haber's last email communication with the DLSE Investigator was on January 28, 2019. (Unispec Exhibit S.) Haber printed the eCPR search results for the Project from the Department of Industrial Relations website. (Unispec Exhibit W.) Two Unispec workers classified as Cement Masons worked on the Project during the week ending June 24, 2018. (Unispec

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[22] To the extent Unispec contends otherwise, the Center for Contract Compliance is considered the "general public" and may file prevailing wage complaints.

[23] Haber did not explain what impact, if any, the City's errors on the inspection reports had on DLSE's audit.

Exhibit X.) Unitech provided CPRs to DLSE in accordance with the Labor Commissioner's Public Works Manual. (Unispec Exhibit Y.)

DISCUSSION

The California Prevailing Wage Law (CPWL), set forth at Labor Code section 1720 et seq., requires the payment of prevailing wages to workers employed on public works construction projects.[24] The purpose of the CPWL was summarized by the California Supreme Court 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.) 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); see also *Lusardi*, 1 Cal.4th at p. 985.)

Contractors and subcontractor who fail to pay the correct prevailing wage to workers on public works projects, are required to pay the difference between the correct prevailing wage and the amount they paid to the workers. (§ 1775, subd. (a)(2)(E).) In addition, section 1775, subdivision (a) prescribes penalties for failing to pay the correct prevailing wage rate. The prevailing rate of per diem wage includes fringe benefits and training fund contributions pursuant to section 1773.1 and section 1777.5, subdivision (m). Further, section 1742.1, subdivision (a), provides for the imposition of liquidated damages (essentially a doubling of the unpaid wages) if the

[24] All further references are to the Labor Code.

unpaid wages are not paid within 60 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, it may issue a written civil wage and penalty assessment pursuant to section 1741. An affected contractor or subcontractor may appeal the assessment by filing a request for review under section 1742. The request for review is transmitted to the Director of Industrial Relations, who assigns an impartial hearing officer to conduct a hearing in the matter as necessary. (§ 1742, subd. (b).)

DLSE has the initial burden of presenting evidence that "provides prima facie support for the Assessment . . ."[25] (Cal. Code Regs., tit. 8, § 17250, subd. (a).) When that burden is met, "the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment . . . is incorrect." (Cal. Code Regs., tit. 8, § 17250, subd. (b); accord, § 1742, subd. (b).) At the conclusion of the hearing process, the Director issues a written decision affirming, modifying or dismissing the assessment. (§ 1742, subd. (b).)

<u>The Assessment Was Timely.</u>

Pursuant to section 1741, subdivision (a), the Assessment had to 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

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[25] "'Evidence' means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact." (Evid. Code, § 140.) "Prima facie" is defined as: "Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue <a prima facie showing>." (Black's Law Dict. (12th ed. 2024).) "Prima facie evidence is that which will support a ruling in favor of its proponent if no controverting evidence is presented. [Citations.] It may be slight evidence which creates a reasonable inference of fact sought to be established but need not eliminate all contrary inferences. [Citation.]" (*Evans v. Paye* (1995) 32 Cal.App.4th 265, 280.) Further, "[a]ll burdens of proof and burdens of producing evidence shall be construed in a manner consistent with relevant sections of the Evidence Code . . ." (Cal. Code Regs, tit. 8, § 17250, subd. (d).)

occurs last." Here, the City accepted the Project on November 12, 2019 and the notice of completion was recorded on November 19, 2019. (DLSE Exhibit No. 5.) Accordingly, the Assessment issued on May 19, 2021 was timely, as it was served 18 months from the November 19, 2019 recording of the notice of completion.

Unitech Underpaid Certain Workers on the Project.

DLSE met its burden to show that Unitech misclassified and underpaid two workers on the Project as Laborers instead of Electricians for the days indicated on the audit. Based on the City's inspection reports describing electrical work and the photos of the Project site depicting the installation of street lights, as well as the contract documents describing the scope of work for the Project to include electrical and street light replacement, the designation of subcontractors indicating that Unitech performed electrical work, and the scope of work provisions for the Electrician craft, DLSE made a prima facie showing that Jesus Morilo and Danilo Elmar Garay Lopez were incorrectly classified as Laborers on the CPRs for the days indicated. (DLSE Exhibit Nos. 4, 11, 13, 19, 32-35; Unispec Exhibit A.) Based on the same evidence, as well as the applicable PWDs for the Laborer and Electrician crafts, DLSE also met its burden to show that Morilo and Lopez were not paid the required prevailing wages for their work as Electricians on the Project. (DLSE Exhibit Nos. 4, 11, 13, 14, 19, 32-35; Unispec Exhibit A.)

DLSE also met its burden to show that Unitech omitted two workers from the CPRs and failed to pay them the required prevailing wages on the Project. Joey Cortez and Marcos Diaz were identified on the City's inspection reports as performing work for Unitech on the Project, but these workers were not listed on Unitech's CPRs. (DLSE Exhibit Nos. 11, 33-35.)

DLSE likewise met its burden to show that Unitech underpaid Danilo Elmar Garay Lopez for the hours he was classified as a Laborer apprentice based on the CPRs and Laborer PWD. (DLSE Exhibit Nos. 14, 33-35.) Because Lopez was not a registered apprentice, Unitech was required to pay him as a journeyperson. (§ 1777.5, subd. (c).) Therefore, DLSE had sufficient reason to upgrade Lopez to a journey-level Laborer.

However, for the other workers listed on the amended audit as Laborers, DLSE did not come forward with evidence making a prima facie showing of failure to pay prevailing wages or fringe benefits. Those workers include Oscar Alacon, Olivero B. Gonzalez, Jorge Alberto Pleteiz Goday, Carlos Garcia, Jesus Morilo, Danilo Elmar Garay Lopez and Emanuel Venegas Monroy.[26] The complaint by the CCC, which initiated the investigation, did not allege other failure to pay required prevailing wages or fringe benefits beyond the alleged worker misclassification, failure to pay training fund contributions and apprenticeship violations. The investigation also did not reveal any evidence to suggest that Unitech failed to pay the required prevailing wages or fringe benefits to those workers. Instead, the one worker who provided a questionnaire response, Izhak Ohaion, stated that he was paid $55 per hour on the Project, more than the required $53.73 total hourly rate per the Laborer PWD.[27] (DLSE Exhibit No. 12.) Accordingly, DLSE did not have sufficient evidence to state a prima facie case of underpaid prevailing wages for those eight workers outside the misclassification for electrical work and unregistered apprenticeship. For these reasons, the Assessment as to underpaid wages must be reduced by the following amounts: $3,493.60 for Alacon, $4,684.60 for Gonzalez, $4,873.92 for Goday, $1,826.20 for Garcia, $4,809.84 for Morilo, $9,448.60 for Lopez and $8,193.92 for Monroy, for a total reduction of $37,330.68.[28]

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[26] Goday indicated that he did not work for Unitech nor did he work on the Project. (DLSE Exhibit No. 21.) Thus, DLSE cannot make a prima facie showing of underpaid prevailing wages or unpaid training fund contributions with respect to him. For Goday, the amended audit found 23 violations of underpaid prevailing wages, and assessed $4,873.92 in unpaid prevailing wages and $124.20 in unpaid training fund contributions on his behalf.

[27] Neither the audit nor the amended audit found any wages owing and unpaid for Ohaion. (DLSE Exhibit No. 2, p. 11; DLSE Exhibit No. 3, p. 27.)

[28] The reductions for Alacon, Gonzalez, Goday, Garcia and Monroy are for the amounts attributed to the alleged unpaid wages listed on the individual audit investigation worksheets. (DLSE Exhibit No. 3, pp. 29-32, 40.) The reductions for Morilo and Lopez are for the amounts attributed to the alleged underpaid wages listed on the

Unispec offered no evidence to counter DLSE's prima facie showing that Unitech underpaid the required prevailing wages to its workers on the Project. Unispec's vague assertions of errors on the City's inspection reports and its nonspecific contention that the City's photos of the Project site depicted both Unispec and Unitech workers is insufficient to dispute DLSE's case for underpayment and misclassification of workers. Thus, regarding the underpayment of wages, Unispec failed to satisfy its "burden of proving that the basis for the Civil Wage and Penalty Assessment . . . is incorrect." (Cal. Code Regs., tit. 8, § 17250, subd. (b).) The Assessment as to unpaid prevailing wages is affirmed in the modified amount of $21,267.72.[29]

Unitech Failed to Make Training Fund Contributions.

Section 1777.5, subdivision (m)(1), requires contractors on public works projects who employ journeypersons or apprentices in any apprenticeable craft to pay training fund contributions to the California Apprenticeship Council or to an apprenticeship committee approved by the Department of Apprenticeship Standards. DLSE established a prima facie case that Unitech failed to make training fund contributions on behalf of the workers on the Project, except for Goday who denied working for Unitech.[30] This determination was based on the documentation from the California Apprenticeship Committee confirming that Unitech made no training fund contributions in the four years preceding December 11, 2018. (DLSE Exhibit No. 31.)

Unispec offered no evidence or argument to counter DLSE's prima facie showing that Unitech failed to make training fund contributions on behalf of workers on the Project. Thus, regarding the failure to pay training funds, Unispec failed to satisfy its

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individual audit investigation worksheets for those weeks they were classified as Laborers, and for the amounts attributed to the differential between the basic hourly rate and the total hourly rate for the Laborer craft for those weeks they were reclassified as Electricians. (*Id.* at pp. 33-36.)

[29] This is the amount of the unpaid wages of the amended audit, $58,598.40, less the amount of the $37,330.68 reduction described above.

[30] The amended audit assessed unpaid training fund contributions in the amount of $124.20 on behalf of Goday improperly as he did not work on the Project.

"burden of proving that the basis for the Civil Wage and Penalty Assessment . . . is incorrect." (Cal. Code Regs., tit. 8, § 17250, subd. (b).) As a result, the unpaid training fund contributions are affirmed, however, the amount is reduced from $1,906.44 to $1,782.24 to account for removing $124.20 in contributions associated with Goday.

The Labor Commissioner Did Not Abuse Her Discretion in Assessing Penalties Under Section 1775.

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 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.

(iii) The penalty may not be less than one hundred twenty dollars ($120) . . . if the Labor Commissioner determines

> that the violation was willful, as defined in subdivision (c) of Section 1777.1.[31]
>
> . . .
>
> (D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

Abuse of discretion by DLSE is established if the "agency's nonadjudicatory action . . . is inconsistent with the statute, arbitrary, capricious, unlawful or contrary to public policy." (*Pipe Trades v. Aubry* (1996) 41 Cal.App.4th 1457, 1466.) In reviewing for abuse of discretion, however, the Director is not free to substitute his or her own judgment "because in [his or her] own evaluation of the circumstances the punishment appears to be too harsh." (*Pegues v. Civil Service Commission* (1998) 67 Cal.App.4th 95, 107.)

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." (Cal. Code Regs., tit. 8, § 17250, subd. (c).)

DLSE assessed section 1775 penalties at the rate of $150, which is less than the statutory maximum, for 343 prevailing wage violations on the Project. (DLSE Exhibit No. 3, p. 27; DLSE Exhibit No. 20, pp. 532-534, 545-546.) The burden was on Unispec to prove that DLSE abused its discretion in setting the penalty amount under section 1775. Unispec provided no evidence to dispute either DLSE's prima facie showing of worker misclassification and the resulting underpayment of prevailing wages, or of Unitech's failure to make required training fund contributions for all workers on the Project. Unispec did not provide any evidence that Unitech made a good faith mistake, or that Unitech or Unispec promptly and voluntarily corrected the misclassification error and the

[31] Section 1777.1, subdivision (e) 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 deliberately refuses to comply with its provisions."

consequent failure to pay the correct prevailing wage when these issues were brought to their attention. Unispec failed to present any reasonable defense against worker misclassification or failure to pay training funds, which supports the finding that the violations were willful.

Section 1775, subdivision (a)(2), grants the Labor Commissioner the discretion to mitigate the statutory maximum penalty per day considering prescribed factors, but it does not mandate mitigation in all cases. Further, the Director is not free to substitute her own judgment. The Labor Commissioner imposed a penalty rate of $150 per violation, which is less than the statutory maximum. Unispec has not shown an abuse of discretion in the rate selected by the Labor Commissioner. Further, the reduction in the total amount of underpaid wages found in the Assessment does not itself alter the number of prevailing wage violations because Unitech failed to make training fund contributions on behalf of all workers on the Project. However, the total number of violations found must be reduced from 343 to 320 to account for the 23 violations associated with Goday, who did not work on the Project. Accordingly, the assessment of section 1775 penalties at the rate of $150 is affirmed for 320 violations. Thus, the total penalty amount is $48,000.

<u>Unitech Failed to Comply with Apprenticeship Requirements</u>.

Sections 1777.5 through 1777.7 set forth the statutory requirements governing the employment of apprentices on public works projects. The apprenticeship requirements apply to public works contracts of $30,000 or more. (§ 1777.5, subd. (o).) These requirements are further addressed in regulations promulgated by the California Apprenticeship Council. (Cal. Code Regs., tit. 8, §§ 227 to 230.1.)

In general, and unless an exemption applies, section 1777.5 and the applicable regulations require the hiring of apprentices to perform one hour of work for every five hours of work performed by journeypersons in the applicable craft or trade. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).) Prior to commencing work on a contract for public works, every contractor must submit contract award information to applicable apprenticeship programs that can supply apprentices to the project. (§ 1777.5, subd.

(e).) "The information shall be provided to the applicable committees "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 . . ." (Cal. Code Regs., tit. 8, § 230, subd. (a).) The Division of Apprenticeship Standards (DAS) has prepared a form, the DAS 140, that a contractor may use for that purpose.

A contractor does not violate the requirement to employ apprentices in the 1:5 ratio if it has properly requested dispatch of apprentices and no apprenticeship committee in the geographic area of the public works project dispatched apprentices during the pendency of the project, provided the contractor made the request in enough time to meet the required ratio. The request for dispatch must be made by "written notice of at least 72 hours (excluding Saturdays, Sundays, and holidays) before the date on which one or more apprentices are required." (Cal. Code Regs., tit. 8, § 230.1, subd. (a).) DAS has prepared another form, the DAS 142, that a contractor may use to request dispatch of apprentices from apprenticeship committees.

The Laborer and Electrician crafts are apprenticeable. (DLSE Exhibit Nos. 13, 14.) Here, DLSE relied on an allegation made by the CCC that Unitech did not comply with apprenticeship requirements on the Project. (DLSE Exhibit Nos. 20, 21, 24, 31; Unispec Exhibit I.) DLSE also relied on the CPRs to show that Unitech did not employ any registered apprentices on the Project. (DLSE Exhibit Nos. 33-35.) DLSE requested proof from Unitech that it submitted contract award information to all the applicable apprenticeship programs and requested the dispatch of apprentices to the Project, and Unitech provided a copy of a Form 140 and Form 142 addressed to the Laborers JAC without proof of submission. (DLSE Exhibit Nos. 16, 21, 36; Unispec Exhibit S.) DLSE also relied on documentation in its investigation file indicating that the other applicable apprenticeship committees for the Electrician craft did not receive any DAS forms from Unitech for the Project. (DLSE Exhibit No. 21.) Accordingly, DLSE established a prima facie case showing that Unitech violated the ratio requirement of section 1777.5 subdivision (g), as well as the notice and dispatch requirements of section 1777.5, subdivision (e), and the related regulations, sections 230 and 230.1, for both the Laborer and Electrician crafts.

At hearing, Unispec presented confirmation of a facsimile transmission sent to the Laborers JAC on January 4, 2018, along with copies of an unsigned Form 140 that differed from the Form 140 that Afruta previously provided to the DLSE Investigator and the same Form 142 previously provided to him. (Unispec Exhibit G.) The Form 140 submitted January 4, 2018, was not sent timely to the Laborers JAC, as Unitech had Laborers on the project on December 6, 2017. (*Ibid.*, DLSE Exhibit Nos. 33, 34.) Even if the Form 142 was submitted to the Laborers JAC timely, Unispec nevertheless failed to meet its burden of proof that the Assessment was incorrect as to the apprenticeship violations because Unispec provided no evidence to show that Unitech submitted contract award information or requested dispatch of apprentices from the applicable apprenticeship programs for the Electrician craft. (See DLSE Exhibit No. 20, p. 544.)

<u>The Labor Commissioner Did Not Abuse Her Discretion in Assessing Penalties Under Section 1777.7</u>.

Section 1777.7 provides, in relevant part:

> 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 within a three-year period, if the noncompliance results in apprentice 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.

(§ 1777.7, subd. (a)(1).) The phrase quoted above -- "knowingly violated Section 1777.5" -- is defined by the regulation, section 231, subdivision (h) which was in effect at both the time of the Project and the Assessment, 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 requirement of Section 1777.5 if the contractor had previously been found to have violated that Section, or the contract and/or bid documents notified the contractor of the obligation to comply with Labor Code provisions applicable to public works projects, or the contractor had previously employed apprentices on a public works project.

Failure to provide a contract award notice is a continuing violation for the duration of the work, starting no later than the first day on which the contractor has workers employed upon the public work, and ending when a notice of completion is filed by the awarding body. (§ 230, subd. (a).) Penalties for that failure, as well as failure to meet the required 1:5 ratio, can be assessed "for each full calendar day of noncompliance . . ." (§ 1777.7, subd. (a)(1).) The determination of the Labor Commissioner as to the penalty is reviewable only for abuse of discretion. (§ 1777.7, subd. (d).) 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).)

As discussed above, Unitech did not employ registered apprentices in the required 1:5 ratio of apprentice to journeyperson hours, nor did it submit contract award information to all applicable apprenticeship committees or request the dispatch of apprentices from all applicable apprenticeship committees. Unitech "knowingly violated" the ratio requirement because it employed no registered apprentices. Moreover, there is an irrebuttable presumption that Unitech knew or should have known of the apprenticeship requirements of section 1777.5 applied because the contract documents for the Project notified the contractor and its subcontractors of their obligations to comply with prevailing wage and apprenticeship requirements. (DLSE Exhibit No. 4, p. 44; DLSE Exhibit No. 32, pp. 1, 3-6, 117-120.) Since Unitech was aware of its obligations under the law yet failed to submit contract award information or request the dispatch of apprentices to all applicable apprenticeship committees, Unispec failed to meet its burden of proof by providing evidence that

Unitech complied with section 1777.5. As Unitech knowingly violated the law, a penalty should be imposed under section 1777.7.

DLSE imposed a penalty rate of $40 per violation for Unitech's apprenticeship violations, which is less than the statutory maximum. DLSE calculated 330 calendar days of noncompliance for the number of days between the first day and the last day a Laborer journeyperson performed work on the Project, which is less than the statutory maximum. (DLSE Exhibit No. 20, pp. 544-545.) Unispec did not show an abuse of discretion under section 1777.7, subdivision (d), as to either the penalty rate or those number of days of violations as found in the Assessment. Accordingly, penalties at the rate of $40 for 330 days in the amount of $13,200 are affirmed.

<u>Unispec is Jointly and Severally Liable for Wages Found Due and Owing, Liquidated Damages and Penalties Assessed under Sections 1775 and 1777.7</u>.

Section 1743, subdivision (a), provides, in pertinent part, that "[t]he contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon." The prime contractor can avoid liability if it proves it was ignorant of the subcontractor's failure to pay the specified prevailing rate of wages to its workers on the Project, and that it met each of the following four specific requirements:

> (1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and sections 1771, 1776, 1777.5, 1813 and 1815.
>
> (2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.
>
> (3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing wage rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public work project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to section 1813.

(§ 1775, subd. (b); see § 1742, subd. (b) [contractor bears burden to prove basis for assessment is incorrect]; Cal. Code Regs., tit. 8, § 17250, subd. (c).) Essentially, section 1775, subdivision (b), creates what is euphemistically referred to as a "safe harbor" for the prime contractor. To qualify for the safe harbor, the prime contractor must strictly comply with the requirements of the subdivision. The prime contractor's knowledge of the subcontractor's failure to pay prevailing wage rates, or the failure on the part of the prime contractor to establish each of the four specific requirements, results in the prime contractor's liability.

Here, Unispec failed to meet the first requirement of section 1775, subdivision (b). Unispec had no written contract with its subcontractor Unitech. (DLSE Exhibit No. 21, p. 547.) Unispec also provided no evidence to show that it met the other three requirements of subdivision (b). To the extent that Unispec contends it had no knowledge of Unitech's failure to pay prevailing wages on the Project, Unispec was put on notice of DLSE's investigation no later than January 22, 2019, when Haber called the DLSE Investigator in response to the notice of investigation served on January 16, 2019. (*Ibid.*) For these reasons, Unispec cannot show that it met the safe harbor provisions of section 1775, subdivision (b). Accordingly, Unispec is jointly and severally liable for the Assessment.

Liquidated Damages.

Section 1742.1, subdivision (a), provides for the imposition of liquidated damages, 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 . . .

The statutory scheme regarding liquidated damages provides contractors two alternative means to avert liability for liquidated damages (in addition to prevailing on the case or settling the case with DLSE with waiver of liquidated damages). Under section 1742.1, subdivision (a), the contractor has 60 days from issuance of the assessment to pay the workers all or a portion of the wages assessed and thereby avoid liquidated damages on the amount of wages so paid. Under section 1742.1, subdivision (b), a contractor may entirely avert liquidated damages if, within 60 days from issuance of the assessment, the contractor deposits with the Department of Industrial Relations the full amount of the assessment, including all statutory penalties.

In this case, no back wages were paid nor was any deposit made with the Department because of the Assessment. Accordingly, Unispec is liable for liquidated damages under section 1742.1 for the unpaid prevailing wages as modified in this Decision.

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

FINDINGS AND ORDER

1. The work subject to the Civil Wage and Penalty Assessment was performed on a public work and required the employment of apprentices and the payment of prevailing wages under the California Prevailing Wage Law, Labor Code sections 1720 through 1861.
2. The Labor Commissioner served the Civil Wage and Penalty Assessment timely.
3. Unispec Construction, Inc. filed the Request for Review timely.
4. The Labor Commissioner’s enforcement file was requested and produced in a timely fashion.
5. No back wages have been paid or deposit made with the Department of Industrial Relations as a result of the Civil Wage and Penalty Assessment.

6. Unitech Construction Group, Inc. misclassified and underpaid workers who performed electrical work on the Project.
7. Unitech Construction Group, Inc. underpaid workers it classified as Laborer apprentices on the Project.
8. Unitech Construction Group, Inc. failed to make the required training fund contributions on behalf of all workers on the Project.
9. Unispec Construction, Inc. is liable for wages found due and owing in the amount of $21,267.72.
10. Unispec Construction, Inc. is liable for liquidated dates on wages found due and owing in the amount of $21,267.72.
11. Unispec Construction, Inc., is liable for training fund contributions found due and owing in the amount of $1,782.24.
12. The Labor Commissioner did not abuse her discretion in assessing penalties pursuant to Labor Code section 1775.
13. Unispec Construction, Inc. is liable for penalties assessed pursuant to Labor Code section 1775 in the amount of $48,000.
14. Unitech Construction Group, Inc. failed to submit contract award information for the Project to all applicable apprenticeship committees in a timely and factually sufficient manner.
15. Unitech Construction Group, Inc. failed to request the dispatch of apprentices for the Project to all applicable apprenticeship committees in a timely and factually sufficient manner.
16. The Labor Commissioner did not abuse her discretion in assessing penalties pursuant to Labor Code section 1777.7.
17. Unispec Construction, Inc. is liable for penalties assessed pursuant to Labor Code section 1777.7 in the amount of $13,200.

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

Basis of the Assessment	Amount
Wages Due:	$21,267.72
Liquidated Damages:	$21,267.72
Training Fund Contributions Due:	$1,782.24
Penalties under section 1775:	$48,000.00
Penalties under section 1777.7:	$13,200.00
TOTAL:	**$105,517.88**

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

The Civil Wage and Penalty Assessment is affirmed and modified 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: 6/5/26

Jennifer Osborn, Director
California Department of Industrial Relations