

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

General Underground Fire Protection

Case No. 11-0055-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

**DECISION OF THE ACTING DIRECTOR OF INDUSTRIAL
RELATIONS**

Affected contractor General Underground Fire Protection (GUFFP) submitted a timely request for review of the Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to the City of Lakewood (City) Watermain Replacement - 2009 (Project) in Los Angeles County. The Assessment determined that \$22,442.54 in unpaid prevailing wages and statutory penalties was due. A Hearing on the Merits was conducted on July 15, 2011, in Los Angeles, California, before Hearing Officer Christine Harwell. Charles L. Mollis appeared for GUFFP, and David L. Bell appeared for DLSE. The matter was submitted for decision on August 11, 2011, after post hearing briefing. Because the Assessment appeared to contain an erroneous assessment of penalties for days on which no violations were assessed, the record was reopened for further explanation. DLSE submitted additional information on October 19, 2011, and GUFFP responded October 25, 2011. The matter was resubmitted on October 25, 2011.

The issues for decision are:

- Whether the Assessment correctly found that GUFFP failed to pay the required prevailing overtime rate for overtime hours worked on the Project by one worker, Armando Maldonado.
- Whether the Assessment correctly found that GUFFP failed to pay a predetermined

rate increase for all hours worked on or after July 1, 2010, on the Project by one worker, Maldonado.

- Whether DLSE abused its discretion in assessing penalties under Labor Code section 1775¹ at the mitigated rate of \$30.00 per violation.
- Whether GUPP is liable for penalties under section 1813 for the failure to pay Maldonado the required prevailing overtime rate for work in excess of eight hours per day.
- Whether GUPP has demonstrated substantial grounds for appealing the Assessment, entitling it to a waiver of liquidated damages.

The Acting Director finds that GUPP has failed to prove that the basis of the Assessment was incorrect. GUPP has not established that DLSE abused its discretion in assessing penalties under section 1775, subdivision (a) at the rate of \$30.00 per violation for GUPP's failure to pay the required prevailing overtime rate to Maldonado. Except for errors discovered by the Hearing Officer, which reduce the number of violations for which penalties were assessed under section 1775, GUPP has not proven there is a basis to reduce either the section 1775 or section 1813 penalties. GUPP has proven the existence of grounds for a waiver of liquidated damages for its failure to pay the predetermined rate increase but not for its failure to pay overtime found due and owing. Therefore, the Acting Director of Industrial Relations modifies and affirms the Assessment, as set forth below.

Facts

The City advertised the Project for bid on September 19, 2009, and awarded the contract to GUPP to replace a water main in the residential area of City. Work on the Project was performed on regular weekdays from approximately October 3, 2009, through July 17, 2011. GUPP's foreman, Danny Jewell, was present daily.

The applicable prevailing wage determination (PWD), Sewer and Storm Drain Tradesman (LOS-2009-2), provided that throughout the relevant time period, the

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

prevailing hourly wage due was \$20.80 (Calculated at \$21.03 – Training fund hourly requirement \$0.23.) Daily overtime and Saturday work required \$27.885 and Sunday/holiday work was listed at \$34.61.² For work on or after July 1, 2010, a \$1.60 predetermined increase applied to the straight time prevailing wage rate. This resulted in a straight time rate of \$21.96, an overtime rate of \$29.625 and Sunday/holiday work at \$37.29.

The Assessment: The Assessment found that GUPF failed to pay the required prevailing wages and predetermined increases on those wages, including failure to pay the required prevailing wage rate for overtime. The Assessment found a total of \$12,572.54 in underpaid prevailing wages. At the hearing DLSE advised that the Assessment was pursued only as to Maldonado, which reduced the assessed unpaid wages from \$12,572.54 to \$12,119.94.³ The Assessment was based on GUPF's failure to pay Maldonado for overtime hours Maldonado worked and for GUPF's failure to pay Maldonado for the rate increase effective July 1, 2010. The reduction decreased the total number of section 1775 penalties from 194 to 170, totaling \$5,100.00. The section 1775 penalties for violations after July 1, 2010, were based on GUPF'S failure to pay both the predetermined rate increase and overtime. DLSE mitigated the penalties from \$50.00 to \$30.00 per violation because GUPF had no record of prior prevailing wage violations. In addition, penalties were assessed under section 1813 for 162 overtime violations, at the statutory rate of \$25.00 per violation, totaling \$4,050.00.

The Assessment determined that Maldonado was not allowed a duty free, minimum half hour lunch break during the approximately nine months that he worked on the Project. As a result, the Assessment found that Maldonado had worked in excess of eight hours and was entitled to overtime wages for an additional half hour each day. In addition, the Assessment determined that on specified days Maldonado worked from 7:00 a.m. until as late as 6:30 or 7:00 p.m. The Assessment determined that Maldonado was

² The assessment erroneously lists \$34.970. However no Sunday rates apply to this CWPA; so the error does not effect this decision.

³ DLSE did not comply with the administrative regulations for amending the Assessment (Cal. Code Regs., tit. 8, §17226); there was no objection by GUPF.

owed prevailing wages for 431 hours of unpaid overtime.

In response to the hearing officer's inquiry about discrepancies in the Assessment, DLSE asserted that:

- the Assessment did not include an additional three and one-half hours of wages for hours Maldonado had worked on January 19, 2010, with the accompanying section 1775 and section 1813 penalties;
- the section 1775 and section 1813 penalties assessed for April 1, and April 2, 2010, were incorrect;
- section 1775 penalties should have been assessed for GUPP's failure to pay prevailing wages and predetermined rate increase for July 1 and July 2, 2010;
- the Assessment erroneously omitted section 1813 penalties for July 1, and July 2, 2010.

By DLSE's supplemental submission, its corrections would make the wage assessment actually \$12,119.94; and both section 1775 penalties and section 1813 penalties would be increased by a net amount of one day's violation. DLSE again did not seek to formally amend its Assessment. GUPP objected to any increased claim by DLSE after the submission of the evidence.

Inadequate Lunchtime Breaks: Maldonado claimed that the workers were not given at least one-half hour of duty free time for lunch each day. Usually workers had only 20 to 25 minutes for lunch. Sometimes Maldonado was unable to finish his lunch or did not eat until he got home after work. The Assessment counted the half hour lunch as overtime wages in light of the fact that Maldonado already worked at least eight hours each day.

Overtime Hours: Maldonado claimed that he worked the same hours as the other workers, from 7:00 a.m. to as late as 6:30 or 7:00 p.m. almost daily until near the end of the Project. Maldonado said that every time he received a check without overtime payment he would ask "What's going on with overtime?" He received no response. The foreman, Jewell, was present at the Project site every day and therefore already knew his

hours. Maldonado said he heard Jewell report the hours worked by the workers when Jewell would call the office from his truck, and Jewell would always report "eight" for each day's work and/or "forty" for a week's work for each employee.

Maldonado prepared a DLSE calendar form for Deputy Labor Commissioner, Minerva Hernandez with the information that demonstrated his hours. The hours of work listed by Maldonado for several days were marked off with "X" strike-outs, but Maldonado could not explain why he had stricken hours he had initially listed for those days.⁴

GUPP did not produce either Jewell or the inspector on the job to testify at hearing; there was no testimony regarding how Jewell kept track of the hours of work each day. Terry Householder, the Secretary/Treasurer of GUPP, testified that Jewell telephoned the office approximately once per week with the time for each of the workers. GUPP business office staff would prepare time cards by hand from Jewell's information. The only time records GUPP kept were the hours telephonically reported by Jewell and recorded at the GUPP office. The time cards prepared from Jewell's telephonic report are GUPP's records from which paychecks were prepared. Those timecards record that Maldonado was credited with eight hours of work almost every day, except on those days Maldonado worked less than 8 hours. No time cards were kept on the Project site. The records of the telephoned-in daily hour log generally correspond with Maldonado's record for the dates he worked, but not for the number of hours.

Householder visited the Project four or five times and coordinated his visits with Jewell. Householder advised Jewell that the workers were to have one-half hour for lunch and he was under the impression that all workers took the full one-half hour each day.

It was GUPP's policy that any overtime had to be preapproved on the Project. Householder testified that the City requested that the Project working hours be from 7:00

⁴ For certain days Maldonado initially listed and claimed overtime on the DLSE calendar the dates were "X"ed out. He was recorded by GUPP as not working at all on those days, for instance: on December 23 and 24, 2009, Maldonado took Holiday days off; for January 21 and 22, 2010, Maldonado is listed for zero hours each day as "out of town." On February 5, 2010, a day with no "X" for which Maldonado listed that he worked from 7:00 a.m. to 6:00 p.m. on the DLSE calendar, GUPP recorded him as off sick; for February 9, 2010, Maldonado had taken a vacation day. No wages or penalties for these days are part of the Assessment.

a.m. to 4:00 p.m. only. Householder explained that because the Project was taking place in a residential area, the City placed restrictions on working before or after regular business hours and prohibited work after dark. Householder believed that it became dark as early as 4:30 or 5:00 p.m. in mid-winter, when much of the work occurred, and that Maldonado and the others would be unable to see their work due to the lack of sunlight and therefore would not be able, or allowed, to continue working. Householder had explained these restrictions to Jewell. When Maldonado asked for overtime after the Project was completed, Householder told him that no overtime had been approved so Maldonado would not be allowed to put in overtime after the fact.

Failure to pay the Predetermined Increase for July 1, 2010 to July 17, 2010: It is uncontested that GUPP paid Maldonado the correct prevailing wage rate for his straight time hours until June 30, 2010. It is uncontested that GUPP did not pay Maldonado the predetermined prevailing wage rate increase that took effect on July 1, 2010.

Hernandez determined that GUPP had also failed to pay six other Sewer and Storm Drain Tradesmen the required predetermined increase for the last three weeks of the project. Hernandez telephoned GUPP and spoke to Carla Distrola, the Chief Financial Officer of GUPP, regarding Maldonado's overtime claim and the predetermined increase. Distrola disputed that Maldonado had worked overtime but agreed that the increased rate for all the workers, including Maldonado, should have been paid. When Distrola asked about Maldonado's increase, Hernandez told Distrola not to pay the increase to Maldonado because he had filed a complaint with the Labor Commissioner and it would be handled by this action. Distrola paid the other workers the amounts due each of them for the predetermined increase.

Discussion

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

The overall purpose of the prevailing wage law . . . is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from

substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees.

(Lusardi Construction Co. v. Aubry (1992) 1 Cal.4th 976, 987 [citations omitted]

(Lusardi).) DLSE enforces prevailing wage requirements not only for the benefit of workers but also “to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.” (§ 90.5, subd. (a), and *Lusardi, supra.*)

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

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

Maldonado is Entitled To Receive Prevailing Wages For His Overtime Work On The Project.

Employers on public works must keep accurate payroll records, recording, among other things, the work classification, straight time and overtime hours worked and actual per diem wages paid for each employee. (§ 1776, subd. (a).) This is consistent with the requirements for construction employers in general, who are required to keep accurate records of the hours employees work and the pay they receive. (Cal. Code Regs., tit. 8, § 11160, subd. 6.) When an employer fails to maintain accurate time records, a claim for

unpaid wages may be based on credible estimates from other sources sufficient to allow the decision maker to determine the amount by a just and reasonable inference from the evidence as a whole. In such cases, the employer has the burden to come forward with evidence of the precise amount of work performed to rebut the reasonable estimate. (*Anderson v. Mt. Clemens Pottery Co.* (1945) 328 U.S. 680, 687-688 [rule for estimate-based overtime claims under the federal Fair Labor Standards Act, 29 U.S.C. §§201 et seq.]; *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 726-727 [applying same rule to state overtime wage claims]; and *In re Gooden Construction Corp.* (USDOL Wage Appeals Board 1986) 28 WH Cases 45 [applying same rule to prevailing wage claims under the federal Davis-Bacon Act, 40 U.S.C. §§3141 et seq.].) This burden is consistent with an affected contractor's burden under section 1742 to prove that the basis for an Assessment is incorrect.

DLSE initially assessed GUPP with 162 days of overtime underpayments based on the calendar of hours prepared by Maldonado. The calendar Maldonado prepared is the only record of the actual hours he worked prepared by someone present. Hernandez calculated that Maldonado had been unpaid for 431 hours of overtime, including the one-half hour for each of the days Maldonado worked more than eight hours because he did not receive an uninterrupted one-half hour lunch break. There being no other daily record of hours worked, Maldonado's records therefore are sufficiently reliable to be the basis from which DLSE could determine unpaid overtime by a just and reasonable inference.

As seen from Householder's and Maldonado's testimony, GUPP did not have a sufficiently precise system of reporting work hours. There was no first-hand evidence that what Jewell reported was based on fact; that it was recorded contemporaneously with the work; or that it was accurately reported. Jewell did not testify, and Jewell's affidavit was not introduced at hearing. Similarly there is nothing, other than Maldonado's and Householder's testimony, to demonstrate that the reporting process was reliable or unreliable because neither any other workers nor the foreman testified or submitted affidavits. While GUPP produced records it maintained for each pay period and Maldonado had no objective documents to contest their accuracy, the burden was on

GUPP to prove the precise number of hours Maldonado worked. GUPP has failed to meet its burden to disprove the claimed hours with sufficient precision. For this reason, the Assessment of unpaid wages is affirmed.

GUPP Was Required To Pay Maldonado The Predetermined Rate Increase For Sewer and Storm Drain Tradesmen For The Work Performed On The Project on and after July 1, 2010.

GUPP paid the correct prevailing wage rate through June 2010, but failed to pay the predetermined increase for the three weeks at the end of the Project commencing July 1, 2010. The only reason GUPP did not pay Maldonado the increase when the error was brought to its attention is that it was told not to do so by DLSE. The arrearages are due to Maldonado as assessed.⁵

DLSE's Penalty Assessment Under Section 1775 Does Not Constitute An Abuse Of Discretion As To The Failure To Pay Overtime.

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

(1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

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

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

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

(B)(i) The penalty may not be less than ten dollars (\$10) . . . unless

⁵ The unpaid wages will not be increased by the three and one half hours noted by DLSE in its post hearing submission because DLSE did not move to amend the Assessment. (See, Cal. Code Regs., tit. 8, § 17226.)

the failure of the . . . 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 . . . subcontractor.

(ii) The penalty may not be less than twenty dollars (\$20) . . . if the . . . subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than thirty dollars (\$30) . . . if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.^[6]

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 own judgment “because in [his] own evaluation of the circumstances the punishment appears to be too harsh.” *Pegues v. Civil Service Commission*, 67 Cal.App.4th 95, 107.

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

GUFP has presented no evidence why the mitigated amount assessed for its failure to pay overtime was an abuse of discretion. Therefore, the penalty assessment of \$30.00 per violation is affirmed.

The number of violations is reduced by three for the erroneous assessment of

⁶ Section 1777.1, subdivision (c) defines a willful violation as one in which “the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.”

penalties for January 19, April 1, and April 2, 2010.⁷ Because the penalties assessed for violations in July 2010 were for both the shortened lunch period and the failure to pay the predetermined rate increase, the assessment's basis for imposing 1775 penalties was not solely based on the failure to pay the predetermined rate increase and therefore does not constitute an abuse of discretion.

In regard to the failure to pay the predetermined increase of July 1, 2010, once GUPP was informed of its error it readily made the correction and paid all of the workers but Maldonado. The only reason GUPP did not pay Maldonado was because DLSE told it not to do so. It therefore constituted an abuse of discretion to punish GUPP for following DLSE's instruction. If the ten section 1775 penalties for violations in July 2010 had been based solely on GUPP's non-payment of the predetermined rate increase, they would have been remanded as an abuse of discretion. However, the penalties are not remanded because the section 1775 penalties for that time period were properly assessed for the failure to provide an adequate daily lunch break resulting in Maldonado's entitlement to overtime pay for an additional one-half hour per day. Therefore the penalty assessment under section 1775 is reduced by three violations to a total of 167.

Overtime Penalties Are Due For The Underpayment Of Overtime Hours Maldonado Worked On The Project.

Section 1813 states, in pertinent part, 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." ...

Section 1815 states in full as follows:

"Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by

⁷ For the reasons stated in footnote 5, DLSE is not entitled to increased penalties under section 1775 or 1813 that resulted from DLSE's omission of penalties for the remaining days noted in its post hearing submission.

employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day and not less than 1½ times the basic rate of pay.”

The record establishes that GUPF violated section 1815 by paying less than the required prevailing overtime wage rate for time Maldonado worked in excess of eight hours, including missed lunch breaks, on 160 days. Unlike section 1775 above, section 1813 does not give DLSE any discretion to reduce the amount of the penalty, nor does it give the Acting Director any authority to limit or waive the penalty. Accordingly, the assessment of penalties under section 1813, as modified, is affirmed in the amount of \$4,000.00 for 160 violations.

GUPF Is Liable For Liquidated Damages For Non-Payment Of Overtime Wages Only.

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

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

Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment or notice with respect to a portion of the unpaid wages covered by the assessment or notice, the director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages. Any liquidated damages shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

Absent waiver by the Acting Director, GUPF is liable for liquidated damages in an amount equal to any wages that remained unpaid sixty days following service of the Assessment. Entitlement to a waiver of liquidated damages in this case is partially tied to GUPF’s position on the merits and specifically whether, within the 60 day period after service of the Assessment, it had “substantial grounds for appealing the assessment . . . with respect to a portion of the unpaid wages covered by the assessment.”

GUFP's position at the hearing regarding the overtime assessment was to simply deny the claim without introducing substantiating evidence. GUFP did not inquire into the particular accuracies or inaccuracies of the Assessment, including the errors highlighted by the hearing officer for January 19, April 1, 2, July 1 and 2, 2010. The records upon which GUFP relied to challenge the assessment were: 1) Maldonado's written calendar and statements to DLSE and copies of GUFP's pay stub records for Maldonado, and 2) GUFP's own "time cards," which were not authenticated. No witness was provided who had personal knowledge of Maldonado's actual work hours on the Project. Nor was any agreement with the City restricting work hours produced. For these reasons, GUFP is liable for liquidated damages for the unpaid wages as originally assessed. Because the assessed back wages for overtime work remained due more than sixty days after service of the Assessment, GUFP is liable for liquidated damages in an amount equal to the unpaid wages as originally assessed.

However, GUFP also appealed the assessment for non-payment of the predetermined rate increase because Hernandez told GUFP's Distrola not to pay the increase when the failure was first brought to GUFP's attention. The Acting Director therefore exercises her discretion not to impose liquidated damages for this failure in the amount of \$92.80.

Findings

1. Affected contractor GUFP filed a timely Request for Review of the Civil Wage and Penalty Assessment issued by DLSE with respect to the Project.
2. GUFP underpaid Maldonado for overtime in the amount of 431 hours as originally assessed for a total of \$12,119.94.
3. GUFP failed to pay Maldonado at least the prevailing wage for the disputed work according to the predetermined increase for Sewer and Storm Drain Tradesman for three weeks from July 1, 2010, to July 17, 2010, in the aggregate amount of \$92.80.

4. In light of Findings 2 and 3, above, GUPP underpaid its employee, Maldonado, on the Project in the aggregate amount of \$12,119.94.

5. DLSE did not abuse its discretion in setting section 1775, subdivision (a) penalties at the rate of \$30.00 per violation. As originally assessed, GUPP had 170 violations, but by post hearing briefing DLSE admitted incorrect assessments for April 1 and April 2, 2010, so the deduction of penalties for those days reduces the assessment by \$60.00. DLSE also incorrectly assessed a penalty for January 19, 2010, even though there was no evident violation; then DLSE alleged more hours on January 19, July 1 and July 2, 2010, resulting in three additional violations. GUPP's failures to pay Maldonado prevailing wage for all of his work, primarily for overtime, are affirmed except that DLSE's post hearing submission that alleged three additional violations for January 19, July 1, and July 2 is not a proper amendment. Therefore the original total penalty of \$5,100.00 for 170 violations is reduced to 167 violations which reduces the total by \$90.00 to \$5,010.00.

6. Penalties under section 1813 at the rate of \$25.00 per violation are due for 160 violations (reduced by elimination of 1813 penalties on April 1 and April 20, 2010) on the Project, for a total of \$4,000.00.

7. The unpaid wages found due in Finding No. 5, minus \$92.80 representing unpaid predetermined increase wages, which are not subject to liquidated damages, leaves the total amount of \$ 12,027.14 in unpaid prevailing wages left due and owing more than 60 days after service of the Assessment. GUPP is therefore liable for an additional award of liquidated damages under section 1742.1 in the amount of \$12,027.14, and has not established 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:	\$12,119.94
Penalties under section 1775, subdivision (a):	\$5,010.00
Penalties under section 1813:	\$4,000.00

Liquidated Damages: \$12,027.14

TOTAL: \$33,157.08

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

Order

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

Dated: 12/05/2011



Christine Baker
Acting Director of Industrial Relations