STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

F.E. Services, Inc. Case No. 11-0064-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE ACTING DIRECTOR OF INDUSTRIAL RELATIONS

Affected subcontractor F.E. Services, Inc. (F.E.) 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 217-225 Bicknell Ave. 13 Units Acquisition & Rehabilitation (FHTF Program) (Project) in Los Angeles County. The Assessment determined that $4,780.17 in unpaid prevailing wages and statutory penalties was due. A Hearing on the Merits was conducted on July 18, 2011, in Los Angeles, California, before Hearing Officer Douglas Elliott. Fernando Estrada appeared for F.E., and David L. Bell appeared for DLSE. The matter was submitted for decision on August 1, 2011, following the filing of a revised audit and post-hearing briefs. On August 24, 2011, the Hearing Officer ordered the submission vacated and the hearing re-opened to address apparent discrepancies in the revised audit. Neither party responded to this order, and the matter stood re-submitted on September 19, 2011.

The issues for decision are:

- Whether the Assessment correctly found that F.E. had failed to report and pay the required prevailing wages for all hours worked on the Project by the affected workers.
- Whether DLSE abused its discretion in assessing penalties under Labor Code

section 1775[1] at the maximum rate of $50.00 per violation.

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

The Acting Director finds that F.E. has proved that the basis of part of the Assessment was incorrect but has failed to carry its burden with regard to the balance of the Assessment. F.E. has also established that DLSE abused its discretion in setting the penalty amount under section 1775, subdivision (a) at the maximum rate of $50.00 per violation. For the reasons stated below, section 1813 penalties are affirmed in the modified total amount of $50.00. F.E. has established grounds for a partial waiver of liquidated damages under section 1742.1, subdivision (a). Therefore, the Acting Director issues this Decision affirming and modifying the Assessment and remanding it for the redetermination of penalties under section 1775, subdivision (a).

FACTS

General Contractor Ruiz Brothers Construction Company (Ruiz) entered into a Contract with the City of Santa Monica (City) for the rehabilitation of 13 housing units. Ruiz subcontracted with F.E. on August 27, 2010, to perform asbestos and lead abatement on the Project, consisting of the removal of asbestos-containing flooring and other materials, and the removal of lead-based paint. F.E.'s employees worked on the Project from mid-August 2010 through mid-October 2010.

Applicable Prevailing Wage Determination (PWD): The following applicable PWD and scope of work were in effect on the date of the subcontract:

Asbestos Laborer for Southern California (SC-102-882-2010-1): This is the rate used in the Assessment for all work performed by F.E. employees. Throughout the relevant time period, the prevailing hourly wage due under the Asbestos Laborer PWD was $40.47 comprised of a base rate of $26.15, fringe benefits and other payments

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

totaling $13.68 and a training fund contribution of $0.64. Daily overtime and Saturday work required time and one-half and Sunday and holiday work required double time.

The Assessment found two types of violations by F.E.: failure to report or pay three workers for daily overtime hours worked on the Project on three specific days and failure to pay the same three workers for Saturday overtime work on one specific day. F.E. admitted at the Hearing that it had made an "honest mistake" in paying straight time for Saturday work, but denied that any worker ever worked more than eight hours a day.

Ignacio Huerta testified that in the final days of his work on the Project he worked ten hours per day on Thursday, Friday, Saturday and Monday. The Assessment determined the dates in question to be October 7, 8, 9 and 11, 2010. DLSE introduced sign-in sheets required by Ruiz for all workers on the Project showing that Huerta, Juan Ibarra and Ernesto Roldan signed in at 8:00 and out at 4:30 on October 8 and October 11. The sign-in sheet for October 7 shows all three workers signing in at 8:00 a.m. but does not show sign-out times for any of the three. No sign-in sheet was introduced for October 9. Huerta testified that he would just write down all the hours he had worked and did not write down hours he did not work. Huerta admitted he was told at the beginning of the Project that the City prohibited them from working past 4:30 p.m., but testified that he worked until 5:00 or 6:00 p.m. on occasion. Huerta testified that his supervisor asked the workers to work late as a favor because they were running behind and needed to get the job done, and that the workers complied with this request.

Estrada admitted to an "honest mistake" in paying the workers straight time for Saturday, October 9, but denied that anyone worked more than eight hours that day. Estrada maintained that subcontractors could not be on the jobsite without a Ruiz superintendent or project manager present, and that a City ordinance prohibited work after 4:30 p.m. He was given an opportunity to submit a copy of the ordinance after the hearing, but instead submitted a copy of a City "Required Construction Sign." This sign stated in part:

ATTENTION – All employees & subcontractors: construction/demolition work times in Santa Monica are:

MON-FRI	8 AM – 6 PM
SATURDAY	9 AM – 5 PM
SUNDAYS & HOLIDAYS	NO WORK PERMITTED

The Assessment found that F.E. failed to pay the prevailing Saturday overtime prevailing wage rate for Asbestos Laborers for work performed on one Saturday by Huerta, Ibarra, and Roldan; failed to pay any wages to the same three workers for two hours of overtime worked on each of four days; and failed to make training fund payments for all hours worked. The Assessment found a total of $3,080.17 in underpaid prevailing wages, including $140.80 in unpaid training fund contributions.[2] Penalties were assessed under section 1775 in the amount of $50.00 per violation for 28 violations, totaling $1,400.00. Deputy Labor Commissioner Yoon-mi Jo testified that DLSE determined that the maximum penalty should be assessed because F.E.'s time records had been "changed" and because the Saturday rate and overtime were not paid. This testimony conflicts with DLSE's Penalty Review form, which appears to indicate a finding that the maximum penalty was justified because F.E.'s failure to pay the correct wage to two apprentices was not a good faith mistake and/or F.E. failed to promptly and voluntarily correct the error when brought to its attention, notwithstanding F.E.'s lack of a prior record of failing to meet its prevailing wage obligations. In addition, penalties were assessed under section 1813 for 12 overtime violations, at the statutory rate of $25.00 per violation, totaling $300.00.

Following the Hearing, at the direction of the Hearing Officer, DLSE submitted a revised audit worksheet, with a cover letter stating in pertinent part:[3]

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[2] No evidence was introduced by DLSE to show how its file supported the Assessment's determination that F.E. failed to pay training fund contributions for work other the completely uncompensated overtime hours assessed.

[3] While DLSE did not formally move to amend the Assessment under California Code of Regulations, title 8, section 17226, the Acting Director will treat the revised audit as a requested amendment and substitute it for the original audit.

> The revised audit removes the bulk of the claims for workers Ernesto Roldan, Juan Ibarra, and Art Bailey. Mr. Bailey could not be located to testify at trial. Ernesto Roldan and Juan Ibarra—both of whom still work for the [*sic*] F.E. Services, Inc.—withdrew their claims prior to the hearing on the merits and indicated that they did not wish to testify.
>
> By deleting the bulk of their claims from the audit, the DLSE is not making any representation that these workers were paid the correct prevailing wage. In fact, it appears from the testimony at the hearing on the merits that they were not paid correctly. Nonetheless, since they have indicated their unwillingness to testify at the hearing, their claims have been withdrawn for purposes of this civil wage and penalty assessment.
>
> F.E. Services admitted at the hearing that none of the workers were paid the correct rate for Saturday, October 9, 2010. F.E. Services admitted at the hearing that the workers were paid straight time for those Saturday hours—not time and a half as required by law. Accordingly, those claims for those workers remain in the audit.

Consistent with these assertions, the revised audit finds no unpaid wages for Bailey except for $11.70 in training funds and shows that Roldan and Ibarra each worked eight hours of overtime. The Amended Assessment determines three violations of section 1775 penalties for Roldan, six violations for Ibarra, and seven violations for Huerta. The Amended Assessment assesses $100.00 in overtime penalties under section 1813, reflecting four violations for Huerta only. The Amended Assessment assesses $89.28 in unpaid wages each due Roldan and Ibarra, and $777.44 in unpaid wages due Huerta. The Amended Assessment shows $40.96 due for training fund underpayments for Jesus Perez.[4] The Amended Assessment shows a total amount of wages, penalties and training fund payments due for all workers of $4,780.17. However, the column totals show $956.00 in wages, $900.00 in penalties and $125.44 in unpaid training funds, which adds up to a grand total of $1,981.44. In the Order Vacating Submission, the Hearing Officer directed DLSE to file corrections or clarifications to the Amended Assessment, but DLSE failed to respond.

[4] There having been no evidentiary support for the training fund assessment as to Bailey and Perez, these assessments are dismissed under California Code of Regulation, title 8, section 17250.

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."

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

Employers on public works must keep accurate payroll records, recording, among other things, the work classification, straight time and overtime hours worked and actual per diem wages paid for each employee. (§ 1776, subd. (a).) This is consistent with the requirements for construction employers in general, who are required to keep accurate records of the hours employees work and the pay they receive. (Cal. Code Regs., tit. 8, § 11160, subd. (6).) When an employer fails to maintain accurate time records, a claim for unpaid wages may be based on credible estimates from other sources sufficient to allow the decision maker to determine the amount by a just and reasonable from the evidence as a whole. In such cases, the employer has the burden to come forward with evidence of the precise amount of work performed to rebut the reasonable estimate. (*Anderson v. Mt. Clemens Pottery Co.* (1945) 328 U.S. 680, 687-688 [rule for estimate-based overtime claims under the federal Fair Labor Standards Act, 29 U.S.C. §§201 et seq.]; *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 726-727 [applying same rule to state overtime wage claims]; and *In re Gooden Construction Corp.* (USDOL Wage Appeals Board 1986) 28 WH Cases 45 [applying same rule to prevailing wage claims under the federal Davis-Bacon Act, 40 U.S.C. §§3141 et seq.],) This burden is consistent with an affected contractor's burden under section 1742 to prove that the basis for an Assessment is incorrect.

In this case, F.E. did not introduce evidence of any time records, leaving the Acting Director to reach a determination of the hours worked by a just and reasonable inference based on all the evidence. The testimony of Huerta and the Ruiz sign-in sheets are the only direct evidence of hours worked. While Estrada maintained that a City ordinance prohibited work after 4:30 p.m., he failed to provide a copy of any such ordinance. The copy of the sign he produced contradicts his contention, as it allows work until 6:00 p.m. on weekdays and 5:00 p.m. on Saturdays. Paradoxically, the sign adds credibility to the sign-in sheets, since it eliminates a possible motive for F.E. to have workers sign out at 4:30 even though they actually worked later.

Moreover, the Ruiz sign-in sheets are incomplete, making it necessary to analyze the Amended Assessment on a day-by-day basis. The sign-in sheets for Friday, October 8, and Monday, October 11, show Huerta, Ibarra and Roldan signing in at 8:00 and signing out at 4:30. Given Huerta's testimony that he wrote down the hours he worked, F.E. has met its burden of proving by a preponderance of the evidence that Huerta worked only eight hours on those two dates.

The sign-in sheet for Thursday, October 7, does not show the "time out" for any of the F.E. employees listed, but shows 5:30 as the "time out" for two employees of another subcontractor. No sign-in sheet has been introduced for Saturday, October 9. Thus, for these dates, the *only* direct evidence of hours worked is the testimony of Huerta. That testimony is corroborated by Jo's testimony that Roldan reported working the same hours. Accordingly, it must be concluded that F.E. has not met its burden of proving that Huerta worked less than ten hours on these dates.

With regard to the Saturday overtime issue, it is undisputed that Huerta, Roldan and Ibarra were each erroneously paid straight time for eight hours of work on Saturday, October 9. Roldan and Ibarra are entitled to the Saturday overtime rate for eight hours. For the reasons stated above, Huerta is entitled to the Saturday overtime rate for ten hours.[5]

DLSE's Penalty Assessment Under Section 1775 Constitutes An Abuse Of Discretion.

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

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

[5] It must be noted that Ibarra and Roldan would likely have received the same award but for the fact that the Amended Audit eliminated their claims except for the eight hours of Saturday work.

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

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

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

(B)(i) The penalty may not be less than ten dollars ($10) . . . unless the failure of the . . . 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]

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

[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."

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)].)

The Amended Assessment found 16 violations. However the Amended Assessment only determined four violations for Huerta and one each for Ibarra and Roldan. Thus, the Amended Assessment without any explanation overcharged F.E. for ten penalties, which are dismissed.

As to the $50.00 per violation penalty amount, F.E.'s burden to establish abuse of discretion is met by DLSE's own contradictory evidence. Jo testified that the bases for assessing the maximum penalty were that F.E.'s time records had been "changed" in some manner she did not explain and that the Saturday rate and overtime were not paid. Yet, the section of the DLSE Penalty Review form headed "Contractor's Response" contains the following instruction: "*State the employer's response to each issue and analyze all of the evidence the contractor has submitted to refute your conclusions.*" The only information provided in response to this instruction pertains to a discussion with Estrada on February 23, 2011, regarding wage rates for two workers classified as apprentices. There is no indication that ten-hour days or Saturday overtime were ever discussed with Estrada prior to the Assessment, suggesting inadequate consideration of whether F.E. made good-faith mistakes, and that F.E. was given no opportunity to correct such mistakes prior to the Assessment. All of this evidence must be given more weight than the checked boxes on the Penalty Review form. This conclusion is bolstered by the acknowledgement in the Penalty Review form that F.E. "does not have a prior record of failing to meet its prevailing wage obligations." This evidence is substantial evidence that the required statutory factors were not considered.

Section 1775, subdivision (a)(2) grants the Labor Commissioner the discretion to mitigate the statutory maximum penalty per day in light of prescribed factors, but it neither mandates mitigation in all cases nor requires mitigation in a specific amount when the Labor Commissioner determines that mitigation is appropriate. F.E. has shown that DLSE abused its discretion by relying on improper factors to assess penalties under section 1775 at the maximum rate. Because the discretion to set penalties under that

section is committed to the Labor Commissioner, this part of the Assessment must be vacated and remanded for redetermination of the penalties in light of the appropriate factors and the other findings in this Decision.

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

Section 1813 states, in pertinent part, as follows:

> "The contractor or 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 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 Amended Assessment only assesses section 1813 penalties for Huerta's unpaid overtime work.[7] The record establishes that F.E. failed to pay proper overtime wages on two days for Huerta (October 7 and 9) and for one day each for Ibarra and Roldan (October 9). Because DLSE did not assess penalties for Ibarra and Roldan, no penalty can be affirmed. Accordingly, the assessment of penalties under section 1813, as modified, is affirmed in the amount of $50.00 for two violations.

F.E. Has Established Grounds For A Partial Waiver Of Liquidated Damages.

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

> After 60 days following the service of a civil wage and penalty assessment under Section 1741 . . . the affected contractor, subcontractor, and surety

[7] There is no explanation why DLSE did not similarly assess section 1813 penalties for Ibarra or Roldan for the Saturday work in spite of the hearing officer's request for clarification.

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

Absent waiver by the Acting Director, F.E. 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 F.E.'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."

The Assessment found that F.E. had failed to pay overtime to Huerta, Ibarra, and Roldan for three week days in which they worked ten hours. F.E. successfully appealed this aspect of the Assessment except for one day worked by Huerta. Thus, it must be concluded that F.E. had substantial grounds for appealing with respect to that issue. As to the Saturday overtime payment, F.E. admitted to making a mistake in failing to pay the three workers Saturday overtime for October 9. Thus, it did not have substantial grounds for appealing that aspect of the Assessment.

Because the assessed back wages for Saturday overtime remained for due more than sixty days after service of the Assessment, and F.E. has not demonstrated grounds for waiver, F.E. is also liable for liquidated damages in an amount equal to the unpaid Saturday overtime wages. Because F.E. has demonstrated substantial grounds for appealing the remainder of the Assessment, its liability for liquidated damages is waived as to the remaining portion of the unpaid wages.

FINDINGS

1. Affected subcontractor F.E. Services, Inc. filed a timely Request for Review of the Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement with respect to the Project.

2. F.E. failed to pay Ignacio Huerta, Juan Ibarra, and Ernesto Roldan the applicable overtime prevailing wage for work on October 9, 2010, less credit for the documented payment of straight time prevailing wages for those hours. In addition, F.E. failed to pay Huerta for two additional hours of overtime for that day. The total unpaid wages for the failure to pay all the wages due on October 9, 2010, is $373.66.

3. F.E. failed to pay Igancio Huerta for overtime work on October 7, 2010, in the amount of $105.82.

4. No evidence was presented that F.E. failed to make any required training fund contributions, except for the four hours of overtime for which Huerta was not paid. The required training fund payment is $0.64 per hour. Accordingly, F.E. owes $2.56 in unpaid training fund payments to the California Apprenticeship Council.

5. In light of the above, F.E. failed to pay the proper prevailing wage on four occasions. However, the amount of the penalty was an abuse of discretion. The amount of the penalty is therefore remanded to DLSE for a redetermination persuant to the Order, below.

6. In light of DLSE's Amended Assessment's elimination of penalties, the Acting Director can only award two violations of penalties under section 1813. Therefore, section 1813 penalties are awarded for two violations in the total amount of $50.00.

7. The unpaid wages found due for Saturday work in Finding No. 2 remained due and owing more than sixty days following issuance of the Assessment. F.E. is therefore liable for an additional award of liquidated damages under section 1742.1 in the amount of $267.84, and there are insufficient grounds to waive payment of these damages. F.E. has demonstrated that it had substantial grounds for appealing the Assessment with respect to the ten-hour day issue, thereby entitling it to a partial waiver of liquidated damages under section 1742.1, subdivision (a).

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

Wages Due:	$ 479.48
Training Fund Contributions Due:	$ 2.64
Penalties under section 1775, subdivision (a):	Remanded
Penalties under section 1813:	$ 50.00
Liquidated Damages:	$ 267.84
TOTAL:	**$ 799.96**

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

As to all issues decided here, the Decision is final. With respect to the remanded portion of this Decision only, DLSE shall have 60 days from the date of service of this Decision to issue a new penalty assessment under section 1775, subdivision (a). Should DLSE issue a new penalty assessment, F.E. shall have the right to request review in

accordance with section 1742, and may request such review directly with the Hearing Officer, who shall retain jurisdiction for that purpose.

Dated: 12/05/2011

Christine Baker

Christine Baker
Acting Director of Industrial Relations