

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request(s) for Review of:

California Granite & Flooring, Inc.

Case No.: **21-0085-PWH**

[Request For Review of
LAUSD Case No: 2019-1094]

From a Notice of Withholding of Contract Payments issued by:

Los Angeles Unified School District

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected subcontractor, California Granite & Flooring, Inc., a California corporation dba Surface Solutions Co. (CG&F) requested review of a Notice of Withholding of Contract Payments (Notice) issued by the Los Angeles Unified School District (District or Enforcing Agency) on November 14, 2020, with respect to tiling work at Los Angeles High School (Project) in Los Angeles County.¹ The Notice determined that Cal Granite owed \$36,570.93 in unpaid prevailing wages and training fund contributions, and \$23,160 in statutory penalties.

On July 25, 2023, Hearing Officer Mirna Solís held a Hearing on the Merits. Jaqueline Orozco appeared as counsel for District. Ajoke Onanuga, the District's Labor Compliance Officer (LAUSD Investigator), testified in support of the Notice. CG&F failed to appear. The Hearing Officer admitted into evidence the District's Exhibits 1–46.² At the conclusion of the hearing, the Hearing Officer submitted the matter for decision.

The issues for decision are as follows:

- Whether the District served the Notice timely.
- Whether CG&F filed the Request for Review timely.
- Whether the District made its investigative file available to the CG&F timely.

¹ The prime contractor, Willkom, Inc. did not file a request for review.

² Exhibits 47–55 were documents issued by the Department of Industrial Relations, Office of the Director - Legal Unit. These exhibits were duplicative and excluded as they already comprised part of the record.

- Whether CG&F reported all its workers in its Certified Payroll Records (CPRs).
- Whether CG&F reported all workers' dates and hours in its CPRs.
- Whether CG&F misclassified workers.
- Whether CG&F paid its employees the correct prevailing wage rates for all hours worked.
- Whether CG&F is liable for penalties assessed pursuant to Labor Code sections 1775.³
- Whether the Labor Commissioner abused her discretion in assessing penalties pursuant to section 1775.

During a September 27, 2021, Prehearing Conference, CG&F and the District stipulated to the following:

- The work subject to the Notice required the payment of prevailing wages and employment of apprenticeship.
- No back wages were paid or deposited with the Department of Industrial Relations (Department) as a result of the Notice.

For the reasons set forth below, the Director of Industrial Relations finds that the District carried its initial burden of presenting evidence that provided prima facie support for the Notice, and CG&F failed to carry its burden of proving the bases for the Notice was incorrect. (See Cal. Code Regs., tit. 8, § 17250, subds. (a), (b).)

Accordingly, the Director issues this decision affirming the Notice.

FACTS

Failure to Appear at the Hearing on the Merits.

The law firm of Atkinson, Andelson, Loya, Ruud & Romo represented CG&F until October 6, 2021, when it withdrew its representation. Thereafter, CG&F's owner, Carlos Arizmendi, appeared in pro per at Prehearing Conferences. Arizmendi failed to appear

³All subsequent section references are to the California Labor Code, unless otherwise specified.

at the Prehearing Conference held June 13, 2022. The Prehearing Conference was continued to July 11, 2022. The Minutes of the Prehearing Conference (MOPHC) were mailed and emailed to the same mailing address and email address at which Arizmendi received prior Minutes.⁴ The June 13, 2022, MOPHC notified CG&F that pursuant to Rule 46 [Cal. Code Regs., tit. 8, § 17246, subd. (a)], the matter could proceed despite its absence and its rights could be adversely affected by its failure to appear to contest the matter.⁵

CG&F failed to appear at the Prehearing Conference held July 11, 2022. The matter was continued to August 15, 2022, as the District intended to retain outside counsel for a Hearing on the Merits. CG&F did not appear at the Prehearing Conference held August 15, 2022. The matter was initially scheduled for a November 16, 2022, Hearing on the Merits, but due to the Hearing Officer's unavailability the matter was continued to May 24, 2023, and subsequently to July 24, 2023. On or about March 8, 2023, the Department updated CG&F's address to 14017 Twin Peaks Rd. Poway, California 92064 (Poway address). The Notice for the July 24, 2023, Hearing on the Merits was emailed to Arizmendi and sent by regular mail to the Poway address.

CG&F failed to appear at the Hearing on the Merits held July 24, 2023. The Hearing Officer proceeded with the duly noticed Hearing on the Merits to formulate a recommended decision as warranted by the evidence.

The Project.

On November 9, 2017, the District published a bid advertisement describing the public works project as "Corwin Theater Repair & Path of Travel. . . at the Los Angeles

⁴ Arizmendi's email address is californiagraniteandflooring@gmail.com. The business address for California Granite & Flooring, Inc. was 2399 Pine Valley Glen, Escondido, California 92026.

⁵ California Code of Regulations, title 8, section 17246, subdivision (a) states: "[u]pon the failure of any Party to appear at a duly noticed hearing, the Hearing Officer may proceed in that Party's absence and may recommend whatever decision is warranted by the available evidence, including any lawful inferences that can be drawn from an absence of proof by the non-appearing Party."

High School.” (Exhibit 7.) The bid advertisement also notified contractors to register with the Department and that contractors could obtain copies of prevailing wage rates at the District’s office. (*Ibid.*) Willkom, Inc., the prime contractor, then subcontracted with CG&F to provide and install quarry and ceramic tiles for the Project. (Exhibit 30, pp. 203–389.) The subcontract required adherence to the “[P]roject’s prevailing wage determination.” (Exhibit 30, p. 205.) On February 21, 2019, CG&F’s owner, Carlos Arizmendi, acknowledged having been informed and aware of prevailing wage requirements, when he signed a “Checklist of Labor Law Requirements to Review at Pre-Job Conference.” (Exhibit 11.)

The School District’s Procurement Services Division issued a Notice of Contract Completion and Acceptance (Acceptance Notice), dated June 21, 2019. It stated that for administrative purposes, the School District accepted the Project completed on June 21, 2019.

Prevailing Wage Determinations.

The applicable prevailing wage determination (PWD) was LOS 2017-2 General PWD for Tile Layers (TL PWD) and Tile Finishers (TF PWD). The total hourly rate of pay under the TL PWD was \$54.50, which included \$37.76 as a basic hourly rate, \$9.25 for health and welfare, \$6.14 for pension, \$0.98 for training fund contribution, and \$0.37 for other payments. (Exhibit 21.) Effective June 1, 2018, the TL PWD had a predetermined increase of \$2.15 and effective June 1, 2019, another predetermined increase of \$2.15. (Exhibit 22.)

The total hourly rate of pay under the TF PWD was \$37.49, which included \$25.98 as a basic hourly rate, \$8.43 for health and welfare, \$2.00 for pension, \$0.80 for training fund contribution, and \$0.28 for other payments. (Exhibit 21.) Effective June 1, 2018, the TF PWD had a predetermined increase of \$1.85 and effective June 1, 2019, another predetermined increase of \$1.85. (Exhibit 22.)

The Investigation.

On April 15, 2019, the LAUSD Investigator conducted a site visit. (Exhibit 1.) She observed workers laying tiles, took pictures of the job site, and documented her

observations in an "Observation Form." (*Ibid.*) She also reviewed the sign-in and sign-out sheet (SIS) and took a picture of it. (*Ibid.*) She testified that later, she reviewed CG&F's April 15, 2019, CPR and determined that not all of the workers she observed that day were reported on CG&F's CPRs. Thereafter, the LAUSD Investigator testified that the District commenced its investigation.

As part of its investigation, on September 4, 2019, the District requested documents from CG&F. In response, CG&F's provided CPRs and mitigating evidence piecemeal on 17 different occasions—with the first submission on October 14, 2019, and the last on June 29, 2020. Among the documents submitted were cancelled checks, payroll journals and payroll detail reports (both of which are similar to an itemized wage statement), untitled documents that appear to be a type of fringe benefit report, worker declarations, payment confirmation receipts, and certificates of registered apprentices. In addition to the documents submitted by CG&F, the District also reviewed "Inspector of Record" reports (IOR), also known as project "Inspector Daily Report." (Exhibit 27.) The IOR reports identify the contractors on the job site on any given date and the number of workers for each contractor as well as describe the nature of the work performed that day.

The District also reviewed SIS and the prime contractor's Daily Construction Reports (DCRs). The DCRs identify the subcontractors performing work on any given date, as well as the work performed, and the number of workers for each contractor. (Exhibit 28.) The SIS records the name, trade, date and the time each worker signed-in at the job site and the time they signed-out. (Exhibit 29.)

The LAUSD Investigator testified she used the CPRs to determine what CG&F paid its workers. She compared CG&F's rate of pay to the applicable PWD. She also reviewed IORs and SISs to determine how many CG&F workers were on the job on any given day and whether they were reported on the CPRs and if so, whether they were properly classified. She also cross-referenced the DCRs with the CPRs to confirm that CG&F reported all its workers. Having reviewed all the documentation and after providing the appropriate credit, the LAUSD Investigator determined that CG&F possibly

violated prevailing wage requirements. Thereafter, the District sent Carlos Arizmendi an email informing him and CG&F of possible violations and that a "Prevailing Wage Violation Pre-Withholding Meeting" (Pre-Withholding Meeting) was scheduled for January 17, 2020, to discuss the District's investigation and audit. (Exhibit 4.) During the January 17, 2020 Pre-Withholding meeting, the District explained the audit and provided CG&F until January 27, 2020, to submit additional mitigating evidence. (Exhibit 6.)

The Notice.

The LAUSD Investigator testified that an audit found underpayment of fringe benefits, underpayment of the basic hourly rates, misclassification of workers, and unidentified workers. She described the following examples of prevailing wage violations:

Failure to pay fringe benefits. The CPR for April 1 to April 7, 2019 showed Elmer Obin worked 32 hours. (Exhibit 25, p. 53.) As part of CG&F's mitigating evidence, it submitted an untitled document listing all workers, the hours worked per week and the alleged fringe benefit payment for those hours. (Exhibit 34.) The document showed that for the week ending April 7, 2019, CG&F only paid fringe benefits for 16 hours, despite the CPR showing Obin worked 32 hours that week. Based on this inconsistently, the LAUSD Investigator testified the District concluded that Obin's fringe benefits were underpaid by 16 hours.

Underpayment of basic hourly rate. The CPR for the week ending November 11, 2018, showed CG&F paid Alexis Robles \$789.41 in net wages. However, three other documents submitted as mitigating evidence for this week showed different payment amounts to Robles: a cancelled check for the week ending November 11, 2018, showed \$594.40 in net wages paid (Exhibit 30, p. 229); a document showing payments made indicated \$567.65 in net wages paid to Robles (Exhibit 44, p. 47); and a third document (payroll journal) showed no payment to Robles for the week (Exhibit 43 p. 14). It was not possible to ascertain what CG&F actually paid Robles in wages for the pay period. The District determined that Robles was owed basic hourly wages for the week, but

gave a credit of \$531.60 for fringe benefits paid. (Exhibit 34, p. 3.) The amount owed to Robles for this pay period was \$1,042.

Misclassification. For the week of February 4, 2019, to February 10, 2019, Alexander Rojas was classified as a tile finisher apprentice. (Exhibit 25, pp. 30-31.) However, Rojas was not certified as an apprentice until February 18, 2019, therefore, the District concluded that he was not a registered apprenticed during the week of February 4, 2019 to February 10, 2019, and reclassified him to as a journeyman. CG&F also misclassified three tile finishers on the CPRs for the period December 12, 2018 through December 16, 2018. (Exhibit 25, pp. 19-20.) According to the IOR for December 13, 2018, the work described was "continue installation of exterior tiles at hallway wall 113 and 114." (Exhibit 27, p. 82.) The DCRs for this date also confirmed the work as "[c]ontinue wall tile installation at hallway 113 and 114." (Exhibit 28, p. 215.) Based on the Department's scope of work, that type work was not within the tile finisher's scope of work, but instead tile layer work. (Exhibit 24, p. 4.) Therefore, the District reclassified all three workers to tile layers, resulting in wages owed.

Unidentified workers. CG&F did not submit a CPR for the week ending March 24, 2019. However, on the SIS for March 18, 2019, workers signed-in as tile layers. (Exhibit 29, p. 56) Cross-referencing other on-site contractors' CPRs, the LAUSD Investigator confirmed that the tile layers that signed-in March 18, 2019, were not other contractors' employees. Also, on March 18, 2019, James Young signed-in at 12:00 p.m. and signed-out at 8:30 p.m. and noted he was a tile finisher. The LAUSD Investigator reviewed CG&F's "Payroll Reporting Form" that was submitted to the Department for the period March 18, 2018 to March 24, 2019. (Exhibit 30, p. 36.) On the form, CG&F failed to list James Young among its six listed workers for the week ending March 24, 2019. (*Ibid.*) The District determined that James Young was not reported on the CRPs. The District used this same process of reviewing SIS, CPRs and CG&F's "Payroll Reporting Forms" to find other unidentified workers.

The LAUSD Investigator testified that she also found other unidentified workers by reviewing the IOR and DCRs, which included head counts per contractor/type of

work performed on any given day. As an example, the LAUSD Investigator testified that she reviewed the CPR for the week ending March 10, 2019. (Exhibit 25, pp. 41-43.) On March 7, 2019, CG&F only reported two workers, but the IOR report showed that on that day CG&F had four workers on site to “continue installation of wall ceramic tiles at the dressing room, restrooms, and lobby restrooms.” (Exhibit 27, p. 195.) The DCR also indicated that on March 7, 2019, four CG&F workers were on the job to continue bathroom wall tile installation. (Exhibit 28, p. 9.)

Section 1775 Penalties.

The District recommended that the Division of Labor Standards Enforcement approve a penalty rate of \$120 per violation for section 1775 penalties. In determining what penalty rate to recommend, the District considered whether CG&F’s violations were good faith mistakes. Although the Request for Approval of Forfeitures & Penalties does not mention CG&F’s history of violations, the District determined that CG&F was aware of the prevailing wage requirements on the Project and therefore the violations were not caused by mistake, inadvertence, or neglect. According to the Request for Approval of Forfeitures & Penalties, there were 193 violations—one for each day CG&F failed to pay prevailing wages to a worker. The Notice stated a total of \$23,160.00 was owed in section 1775 penalties.

Request for Review.

Subsequently, on November 14, 2020, the District served the Notice. Thereafter, on February 17, 2021, the District received CG&F’s Request for Review, dated February 11, 2021. (Exhibit 17.) On February 24, 2021, the District served CG&F’s then-counsel with a “Notice of Opportunity to Review Evidence pursuant to Labor Code Section 1742, subdivision (b)” which advised CG&F of its right to obtain a copy of the District’s enforcement file/investigative file. (Exhibit 18, p. 28.)

DISCUSSION

The California Prevailing Wage Law (CPWL), set forth at Labor Code sections 1720 et seq., requires the payment of prevailing wages to workers employed on public

works projects. 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 (*Lusardi*)). A labor compliance program, such as the District, 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; and see § 1771.5, authorizing enforcement by labor compliance programs.)

Section 1775, subdivision (a), requires that contractors and subcontractors pay the prevailing rate and also prescribes penalties for failing to pay the prevailing rate. The prevailing rate of per diem wage includes travel pay, subsistence pay, and training fund contributions pursuant to section 1773.1. Section 1775, subdivision (a)(2), grants the Labor Commissioner the discretion to mitigate the statutory maximum penalty per day in light of prescribed factors. Section 1813 provides additional penalties for failure to pay the correct overtime 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 60 days following service of a notice of withholding of contract payments under section 1741.

When the District determines that a violation of the prevailing wage laws has occurred, a written notice of withholding of contract payments is issued pursuant to section 1771.6. An affected contractor or subcontractor may appeal the notice of withholding of contract payments by filing a request for review under section 1742. The

request for review is transmitted to the Director of the Department of Industrial Relations, who assigns an impartial hearing officer to conduct a hearing in the matter as necessary. (§ 1742, subd. (b).) At the hearing, the District has the burden of producing evidence that “provides prima facie support for the [notice of withholding of contract payments]” (Cal. Code Regs., tit. 8, § 17250, subd. (a).) When that initial burden is met, the contractor or subcontractor “shall have the burden of proving that the basis for the [notice of withholding of contract payments].” (Cal. Code Regs., tit. 8, § 17250, subd. (a); accord, § 1742, subd. (b).) At the conclusion of the hearing process, the Director issues a written decision affirming, modifying or dismissing the Notice of Withholding. (§ 1742, subd. (b).)

The District Served the Notice Timely.

Pursuant to section 1741, subdivision (a), the District must serve the Notice “no[] later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last.” The District did not provide a filed Notice of Completion, but formally accepted the Project as complete on June 21, 2019. The District’s deadline to serve the Notice was December 22, 2020. Since the Notice was served on December 14, 2020, which was 17 months and 23 days after accepting the completed Project, the District served the Notice timely.

The District Made Available to CG&F Its Investigative File Timely.

Section 1742, subdivision (b) provides in pertinent part: “The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the [the Enforcing Agency] at the hearing within 20 days of the receipt of a written request for a hearing.” California Code of Regulations, title 8, section 17224 provides in pertinent part:

- (a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the Affected Contractor or Subcontractor of its opportunity and the

procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing on the Request for Review.

- (b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the Affected Contractor or Subcontractor the option, at the Affected Contractor or Subcontractor's own expense, to either (A) obtain copies of all such evidence through a commercial copying service or (B) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the Affected Contractor or Subcontractor.

On February 17, 2021, the District received the Request for Review, dated February 11, 2021. On February 24, 2021, seven days later, the District served CG&F's then-counsel with a "Notice of Opportunity to Review Evidence pursuant to Labor Code Section 1742, subdivision (b)." Accordingly, in the absence of any evidence to the contrary, it must be concluded that the District satisfied its obligations under section 1742.

The District Provided Prima Facie Evidence that CG&F Failed to Pay Wages.

Every employer in the on-site construction industry, whether the project is a public work or not, must keep accurate information with respect to each employee. Industrial Welfare Commission (IWC) Wage Order No. 16-2001, which applies to on-site occupations in the construction industry, provides as follows:

Every employer who has control over wages, hours, or working conditions, must keep accurate information with respect to each employee including . . . name, home address, occupation, and social security number . . . [t]ime records showing when the employee begins and ends each work period . . . [t]otal wages paid each payroll period . . . [and] [t]otal hours worked during the payroll period and applicable rates of pay . . .

(Cal. Code Regs., tit. 8, § 11160, subd. (6)(A).) Also, the employer must furnish each employee with an itemized statement in writing showing all deductions from wages at the time of each payment of wages. (Cal. Code Regs., tit. 8, § 11160, subd. (6)(B); see also Lab. Code, § 226.) Employers on public works have the additional requirement to keep accurate certified payroll records. (§ 1776; Cal. Code Regs., tit. 8, § 11160, subd.

(6)(D).) Those records must reflect, among other information, “the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journey[person], apprentice, worker, or other employee employed by him or her in connection with the public work.” (§ 1776, subd. (a).) Here, CG&F failed to keep accurate records for workers on the Project.

Moreover, the District provided prima facie evidence—as described above—that CG&F failed to pay the correct prevailing wage rate, did not report all hours worked, and misclassified workers, all of which resulted in underpayments to workers. CG&F failed to appear and present contrary evidence. Accordingly, CG&F did not carry its burden of proving that the bases for the Notice were incorrect. (Cal. Code Regs. tit. 8, § 17250, subd. (b).) CG&F is liable for \$36,114.27 in unpaid prevailing wages.

CG&F is Liable for Liquidated Damages for Unpaid Wages.

Section 1742.1, subdivision (a) provides in part:

After 60 days following the service of a [notice] 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 [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.

The statutory scheme regarding liquidated damages, as applicable to this case, provides contractors two means to avert liability for liquidated damages (in addition to prevailing on the case, or settling with the Enforcing Agency agreeing to waive liquidated damages). Under section 1742.1, subdivision (a), the contractor has 60 days to decide whether to pay the workers all or a portion of the wages assessed in the notice, and thereby avoid liability for liquidated damages on the unpaid wages. Under section 1742.1, subdivision (b), a contractor may entirely avert liability for liquidated damages if, within 60 days from issuance of the notice, the contractor deposits with the Department the full amount of the assessment of unpaid wages, including all statutory penalties.

In this case, the District and CG&F's then-counsel stipulated on September 27, 2021, that CG&F did not pay back wages or make a deposit with the Department as a result of the Notice. Accordingly, CG&F is liable for liquidated damages in the amount of the unpaid prevailing wages, totaling \$36,114.27.

CG&F is Liable for Training Fund Contributions.

Section 1777.5, subdivision (m)(1) requires contractors who employ journeypersons or apprentices in any apprenticeable craft to contribute to the California Apprenticeship Council the amount reflected as the hourly "training" rate that appears on the Director's PWD for each hour worked. The contractor is entitled to take credit for such contributions made to a DAS-approved apprenticeship program that can supply apprentices to the site of the public work.

The Notice stated CG&F owed \$456.66 in training funds. The training fund amount owed stems from either unreported hours or reclassifications from tile finishers to tile layers, which resulted in a training fund contribution increase of 10 cents per hour. CG&F did not appear to present evidence to the contrary. Accordingly, CG&F did not carry its burden of proving the basis of the Notice was incorrect with respect to the \$456.66 in training funds owed.

CG&F Failed to Prove the Labor Commissioner Abused their 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. [6]

. . .

- (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 is established if the "agency's non adjudicatory 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.)

⁶ The reference in section 1775, subdivision (a)(2)(B)(iii) to section 1777.1, subdivision (c), is mistaken. The correct reference is to section 1777.1, subdivision (e). According to that subdivision, a willful violation is defined 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."

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).)

The District recommended, and DLSE approved, a penalty rate of \$120 per day per worker for CG&F's failure to pay correct prevailing wages. Section 1775, subdivision (a)2(B)iii states " [t]he 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 777.1." While the Request for Approval of Forfeiture Amounts fails to list any prior violations, it was undisputed that CG&F knew the Project was a public work requiring the payment of prevailing wages. First, the bid advertisement unambiguously stated prevailing wage determinations could be obtained at the District's office. Second, Arizmendi signed a "Checklist of Labor Law Requirements to Review at Pre-Job Conference," dated February 21, 2019, wherein he acknowledged having been informed and was aware of prevailing wage law requirements. (Exhibit 11.) Third, CG&F's subcontract with Willkom required adherence to the "[P]roject's prevailing wage determination." (Exhibit 30, p. 205.) Despite this knowledge, CG&F willfully failed to pay prevailing wages on 193 days. CG&F failed to appear to present any contrary evidence or argument and, therefore, failed to carry its burden to establish abuse of discretion by the Labor Commissioner in setting the penalty rate at \$120 per day per worker. The 193 violations at \$120 per violation amounts to \$23,160. This Decision affirms the Notice's section 1775 penalties amounting to \$23,160.

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

FINDINGS AND ORDER

1. The work subject to the Notice was performed on a public work and required the payment of prevailing wages and the employment of

apprentices under the California Prevailing Wage Law, Labor Code sections 1720 through 1861.

2. The District served the Notice timely.
3. California Granite & Flooring, Inc. filed the Request for Review timely.
4. The District produced its enforcement/investigative file in a timely fashion.
5. California Granite & Flooring, Inc. did not pay back wages nor make a deposit with the Department of Industrial Relations as a result of the Notice.
6. California Granite & Flooring, Inc. did not pay the correct prevailing wages for all hours worked on the Project.
7. California Granite & Flooring, Inc. failed to report all hours and days worked for all its workers on its CPRs.
8. California Granite & Flooring, Inc. misclassified Tile Layers as Tile Finishers.
9. As a result of finding numbers 6, 7, and 8, California Granite & Flooring, Inc. underpaid prevailing wages in the sum of \$36,114.27.
10. California Granite & Flooring, Inc. failed to pay \$456.66 in training fund contributions.
11. The Labor Commissioner did not abuse their discretion in assessing penalties pursuant to section 1775.
12. California Granite & Flooring, Inc. is liable for penalties assessed pursuant to section 1775 in the sum of \$23,160.
13. California Granite & Flooring, Inc. is liable for liquidated damages on wages found due and owing in the amount of \$36,114.27.

The amount found due under the Notice is as follows:

Basis of the Assessment	Amount
Wages Due:	\$ 36,114.27
Training Fund Contributions Due:	\$ 456.66
Penalties under section 1775:	\$ 23,160.00
Liquidated damages:	\$ 36,114.27
TOTAL:	\$ 95,845.20

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

The Notice is affirmed as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings that shall be served with this Decision on the parties.

Dated: 3/16/26



Jennifer Osborn, Director
California Department of Industrial Relations