

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Short Load Concrete, Inc.

Case No.: 23-0184-PWH

From a Notice of Withholding of Contract Payments issued by:

California Department of Transportation

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected Contractor Short Load Concrete, Inc. (Short Load) requested review of a Notice of the Withholding of Contract Payments (Notice) issued by the California Department of Transportation (Caltrans) on July 18, 2023, with respect to work performed on the lane replacement project (Project) in San Bernardino and Riverside counties. The Notice indicated that \$33,000.00 in statutory penalties were due.

The parties jointly requested that the case be decided on stipulated facts and issues in lieu of a hearing. The assigned Hearing Officer set a schedule for the parties to submit briefs and stipulated facts and issues. The sole legal issue for determination was whether Short Load was subject to Labor Code section 1776 subdivision (h) penalties for failing to comply with Caltrans' request for the records on which the certified payroll records (CPRs) were based, such as timecards and cancelled checks, also known as "source documents." The Hearing Officer submitted the matter for decision on June 3, 2024.

For the reasons set forth below, the Director of Industrial Relations finds that Caltrans did not carry its initial burden of presenting evidence that provided prima facie support for the Notice and Short Load carried its burden of proving that the basis for the Notice was incorrect. (See Cal. Code Regs., tit. 8, § 17250, subds. (a), (b).) Accordingly, the Director issues this decision dismissing the Notice.

FACTS

The parties stipulated to the following facts:

1. On April 17, 2019, Caltrans awarded the contract for the Project to McLoughlin Engineering Co. Inc., as the prime contractor. Short Load was a subcontractor on the Project.
2. On June 6, 2022, Caltrans accepted the contract for the Project.
3. During the Project, Short Load provided Caltrans with CPRs timely.
4. On October 18, 2022, Caltrans initiated a source document audit under which it requested from Short Load payroll records as defined in section 16000 of the applicable regulations (see Cal. Code Regs., tit. 8, § 16000), including timecards, copies of cancelled checks (front and back) with corresponding check registers, and proof of training fund payments to the California Apprenticeship Council or state-approved apprenticeship program.
5. On July 18, 2023, Caltrans served Short Load the Notice in the amount of \$33,000.00 for daily penalties pursuant to Labor Code section 1776 subdivision (h), based on Short Load's failure to produce the source documents Caltrans requested.
6. The work subject to the Notice was performed on a public work and required the payment of prevailing wages under the California Prevailing Wage Law, Labor Code sections 1720 through 1861.
7. Caltrans served the Notice timely.
8. Short Load filed the Request for Review timely.
9. Caltrans produced the enforcement file timely.
10. The Requesting Party did not pay or deposit with the Department the amount of the penalties assessed.

DISCUSSION

The California Prevailing Wage Law (CPWL), set forth at Labor Code section 1720 et seq.,¹ requires the payment of prevailing wages to workers employed on public works construction 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.)

Section 1776 contains detailed requirements for public works contractors regarding maintaining, certifying, and producing payroll records. It also sets forth penalties should a contractor fail to comply with those requirements.

When an awarding body enforcing prevailing wage laws such as Caltrans determines that a violation of the prevailing wage laws occurred, it issues a notice of the withholding of contract payments pursuant to section 1771.6. An affected contractor or subcontractor may appeal the assessment by filing a request for review under section 1742. The request for review is transmitted to the Director of Industrial Relations, who assigns an impartial hearing officer to conduct a hearing as necessary. (§ 1742, subd. (b).) Caltrans has the initial burden of presenting evidence that “provides prima facie support for the Notice . . .” (Cal. Code Regs., tit. 8, § 17250, subd. (a).) When that burden is met, “the Affected Contractor or Subcontractor has the burden of proving that the basis for the Notice . . . is incorrect.” (Cal. Code Regs., tit. 8, § 17250, subd. (b); accord, § 1742, subd. (b).) At the conclusion of the hearing

¹ All further statutory references are to the Labor Code.

process, the Director issues a written decision affirming, modifying or dismissing the notice. (§ 1742, subd. (b).)

Caltrans Did Not Provide Prima Facie Support for Imposing Penalties Under Section 1776, subdivision (h).

This case turns on whether the term “payroll records” in section 1776 subdivision (a) is limited to CPRs, as Short Load contends, or whether it includes source documents such as timecards and cancelled checks as Caltrans contends. Caltrans made the following three arguments in support of its contention that it imposed penalties against Short Load properly under section 1776, subdivision (h), for failure to produce source documents: (1) the definition of payroll records in the regulations (Cal. Code Regs., tit. 8, § 16000) includes source documents; (2) later enacted legislation regulates maintenance and production of CPRs and therefore section 1776 would be redundant if it were limited to CPRs; and, (3) public policy supports the conclusion that the term payroll records in section 1776 includes source documents. For the reasons set forth below, Caltrans’ arguments are unavailing.

1. A plain reading of section 1776 leads to the conclusion that the term payroll records in the statute refers to CPRs.

In the San Diego Superior Court case, *Hobbs Construction v. Department of Industrial Relations* (2019) Case No. 37-2017-00036419-Cu-MC-CT (hereafter *Hobbs*),² the Court addressed many of the same issues presented here. In *Hobbs*, the enforcing agency--the Division of Labor Standards Enforcement (DLSE)—issued an assessment

² On April 19, 2024, and May 10, 2024, Short Load filed and served Requests for Judicial Notice, requesting that the Director take judicial notice of the following: (1) the January 8, 2018, Minute Order in *Hobbs Construction v. Department of Industrial Relations* Case No. 37-2017-00036419-Cu-MC-CT [the “Minute Order”], (2) the Register of Actions for the Superior Court of California, County of San Diego in *Hobbs Construction v. Department of Industrial Relations* Case No. 37-2017-00036419-Cu-MC-CT, and (3) the opinion in *Hobbs Construction v. Department of Industrial Relations*, California Court of Appeal, Fourth District, Division 1, Case no. D074385, 2019 WL 6258860 (November 22, 2019). As these are the type of records contemplated for Judicial Notice in Evidence Code section 452 *et. seq.*, and there being no objection, the requests for Judicial Notice are granted.

against the contractor for section 1776 subdivision (h) penalties on the grounds that the contractor refused to produce source records for its CPRs, namely, timecards. The contractor filed a request for review with the Department of Industrial Relations, arguing that it complied with section 1776 by producing its CPRs. The enforcing agency argued that, in construing section 1776, the Director should rely on the definition of payroll records found in the regulations, which is not limited to CPRs, but instead includes timecards and other source materials. The Director affirmed the assessment, and the contractor filed a petition for writ of mandate. The trial court issued the writ, finding that the Director did not proceed in the manner required by law when the Director affirmed the assessment because a plain reading of the statute makes clear that section 1776 subdivision (h) applied to CPRs only, and to the extent the regulation was inconsistent with the statute the regulation was invalid. The trial court's minute order stated:

The penalty assessed under Labor Code 1776 subdivision (h) is for "records enumerated in subdivision a." Subdivision (a) refers vaguely to "payroll records." However, subdivision (a) cannot be read in a vacuum. Under subdivision (b), payroll records enumerated in subdivision (a) are to be "certified" Subdivision (c) states that the certified payroll records are to be on forms provided by the DLSE. Thus, it appears, when reading Labor Code 1776 as a whole, payroll records are "certified payroll records."

...

To the extent that the regulations expand the definition of payroll records for purposes of the penalty, it would be inconsistent with Labor Code section 1776. No regulation adopted is valid or effective unless consistent and not in conflict with the statute. (Govt Code § 11342.2.)

DLSE did not appeal the trial court's finding that the term "payroll records" in section 1776 subdivisions (a) and (h) referred to CPRs. For the reasons articulated by the trial court in *Hobbs*, the Director of Industrial Relations finds that section 1776 refers to CPRs only, and an enforcing agency may assess penalties under subdivision (h) only for failure to provide CPRs..

2. The plain language of the statutes belies Caltrans's argument that section 1771.4 would render section 1776 redundant, unless section 1776 were read to apply to all payroll records.

Caltrans argued that the Court's reasoning in *Hobbs* should not be adopted here, because Caltrans raised an issue that was not raised in *Hobbs*. Namely, Caltrans argued that section 1771.4 subdivision (a)(3) imposes a daily penalty for failure to produce CPRs and therefore section 1776 subdivision (h) would be redundant were it not read to encompass payroll records beyond CPRs. However, a review of sections 1776 and 1771.4 does not support that argument.

Section 1776 subdivision (a) requires that contractors on public works projects maintain payroll records that contain specified categories of information and are verified under penalty of perjury. Subdivision (b) requires that copies of CPRs be provided to awarding bodies upon request. Subdivision (h) states that a penalty will be issued if a contractor or a subcontractor fails to provide "the records enumerated in subdivision (a)." Section 1771.4 places *additional* reporting requirements on contractors on public works projects, including submitting "the records specified in section 1776" on a monthly basis in an electronic format prescribed by the Labor Commissioner. It also provides for penalties for contractors who do not comply with the procedures for submitting records. As the requirements of section 1771.4 and 1776 are different, contrary to Caltrans' argument, there is no redundancy in enforcing both as written.

3. Caltrans's argument that public policy requires a finding that the term payroll records in section 1776 includes source documents is misdirected.

Caltrans argued that, the "only way to properly audit the information contained on those standardized forms is to request the source or backup documents such as time cards, cancelled checks, and similar items."³ And that it "makes no sense . . . that section 1776 (h) penalties should not be read as an enforcement mechanism for Caltrans to ensure compliance with its requests for source 'payroll records' for an

³ Caltrans Opening Brief, 6:24-25.

audit.”⁴ In short, Caltrans argued that the law as written impairs its ability to perform its regulatory function and simply does not make sense. This argument is misdirected because the Director is charged with enforcing the law as it is written.⁵

Based on the foregoing, the Director finds that the Requesting Party complied with the law, therefore, the penalty assessed under section 1776, subdivision (h) was unwarranted.⁶

FINDINGS

1. The work subject to the Notice of the Withholding of Contract Payments was performed on a public work and required the payment of prevailing wages under the California Prevailing Wage Law, Labor Code sections 1720 through 1861.
2. Caltrans served the Notice of the Withholding of Contract Payments timely.
3. Short Load filed the Request for Review timely.
4. Caltrans produced its enforcement file timely.

⁴ Id., 6:26-27.

⁵ In August 2024, the Legislature passed Assembly Bill 2182 which would have added new section 1776.2 to the Labor Code, and which included a provision providing that “the term ‘payroll records’ shall have the same meaning as Section 16000 of Title 8 of the California Code of Regulations.” The new section also included a provision that provided, “a contractor or subcontractor shall make available for inspection by the Labor Commissioner any payroll records requested, or portion thereof, by the Labor Commissioner to verify the accuracy or completeness of certified payroll records required to be produced pursuant to Section 1776[;]” and, providing for the assessment of penalties under section 1776, subdivision (h) for failure to comply. The Governor vetoed the bill.

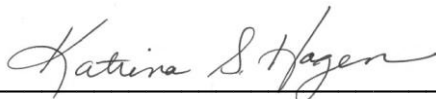
⁶ Page 2 of the Court’s January 8, 2018, Minute Order, which is Exhibit 1 to the Requesting Party’s April 19, 2024, Request for Judicial Notice in Support of Opening Brief.

5. No back wages were paid and no deposit made with the Department of Industrial Relations as a result of the Notice of the Withholding of Contract Payments.
6. Caltrans did not meet its burden to prove that Short Load owed section 1776, subdivision (h) penalties.

ORDER

The Notice of the Withholding of Contract Payments is dismissed 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: 4/22/25



Katrina S. Hagen, Director
California Department of Industrial Relations