

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Elecnor Belco Electric, Inc.

Case No. 23-0205-PWH

From a Notice of the Withholding of Contract Payments issued by:

Office of Contract Compliance for the City of Los Angeles

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected Subcontractor Elecnor Belco Electric, Inc. (Belco) requested review of a Notice of the Withholding of Contract Payments (Notice) issued by the City of Los Angeles (City), Office of Contract Compliance (OCC), dated June 26, 2023, with respect to work performed on the San Fernando Road Bike Path Phase 3 (Project) in Los Angeles County. The Notice indicated that \$469,312.49 in unpaid prevailing wages and training fund contributions and \$433,970.00 in statutory penalties were due.

A Hearing on the Merits occurred over five days—January 18, January 23, January 25, February 28 and March 1, 2024—before Hearing Officer Ann Wu. Felix LeBron and Joseph Persoff appeared as counsel for OCC. Jeffrey Hook appeared as counsel for Belco. Labor Compliance Officer Chris Jenson, as well as former Belco employees Andres Ramblaz, Sergio Huerta Balderas, Benjamin Tizcareno,¹ Sergio Pena, Jr., Ivan Ibarra and Daniel De Leon, testified in support of the Notice. Current Belco employees Joel Fernando Ochoa, Jaime Caldera and Eduardo Penalozza testified in opposition to the Notice.² The matter was submitted for decision on April 26, 2024.

¹ Also known as Benjamin Tizcareno Nuno.

² The Hearing Officer admitted into evidence OCC Exhibit Numbers 1, 2, 5, 6, 8 through 10, 12 through 18, 62, 75, 78, 101, 104, 120, 124 through 127 and 129, and Belco Exhibits A, B, F, G and I through N. The parties filed closing briefs on April 12, 2024. Belco submitted a reply brief on April 19, 2024, and another reply brief on April 26, 2024. OCC submitted its reply brief on April 26, 2024.

Prior to the hearing, the parties stipulated to the following:

- The work subject to the Notice of the Withholding of Contract Payments required the payment of prevailing wages and employment of apprentices.
- The Notice of the Withholding of Contract Payments was timely issued.
- The Request for Review was timely filed.
- Belco did not pay back wages and did not make a deposit of the full amount of the Notice of the Withholding of Contract Payments with the Department of Industrial Relations.

The issues for decision are as follows:

- Whether Belco underpaid prevailing wages to workers on the project.
- Whether Belco failed to keep accurate payroll records.
- Whether the workers on the project worked additional straight time hours not accounted for in the payroll records.
- Whether the workers on the project are entitled to prevailing wages for travel time, and if so, at what rate.
- Whether Belco is liable for liquidated damages, and if so, to whom.
- Whether OCC used the proper prevailing wage rates for each applicable classification based on the bid advertisement date for the project.
- Whether OCC calculated correctly the underpayment of prevailing wages attributed to each worker in the Notice.
- Whether OCC is permitted to receive fringe benefits found due and owing to union(s).
- Whether OCC abused its discretion in assessing penalties.
- Whether OCC pyramided penalties assessed under Labor Code sections 1775 and 1813 improperly for the same alleged violation.

For the reasons set forth below, the Director of Industrial Relations finds that OCC did not carry its initial burden of presenting evidence that provided prima facie support for the majority of the Notice. (See Cal. Code Regs., tit. 8, § 17250, subd. (a).) Accordingly, the Director issues this decision modifying the Notice.

FACTS

The Project.

The Project involved work on a bike path for four to five miles near a railroad track along San Fernando Road, terminating by the Burbank Airport. (Hearing Transcript (T), 01/23/24, 278:2-13, 278:22-279:6 [Pena]; T, 02/28/24, 638:23-639:10, 664:9-15 [Ochoa].) The City of Los Angeles advertised the Project for bid on April 20, 2019. (T, 01/25/24, 593:14-18 [Jenson].) Sully-Miller Contracting Company (Sully-Miller) was the prime contractor on the Project and Belco was a subcontractor. (Belco Exhibit A, pp. A1, 3; T, 02/28/24, 715:6-13 [Caldera].) Belco performed traffic signal and street light work on the Project. (T, 01/18/24, 150:7-9, 151:11-152:8 [Jenson]; T, 01/23/24, 226:10-18 [Tizcareno], 268:8-269:9 [Pena], 341:6-342:3 [Ibarra].) Belco had workers on the Project from April 27, 2020, through November 3, 2023.³ (OCC Exhibit Number 120.)

The Investigation.

In 2021 or 2022, OCC initiated an investigation of Belco in response to worker complaints that Belco, along with other traffic signal and street lighting contractors, paid workers for eight hours per day regardless of whether the workers performed overtime work.⁴ (T, 01/18/24, 150:7-151:13 [Jenson].) Jenson, the Labor Compliance Officer for OCC, and his staff conducted the investigation of Belco. (*Id.*, 145:12-14; 147:5-15, 148:17-19, 149:2-21, 152:20-153:5 [Jenson]; T, 01/25/24, 526:2-4, 526:21-

³ The Notice was issued on June 26, 2023, when the Project was still in progress. (Belco Exhibit A; OCC Exhibit Number 120.) The parties did not submit evidence of whether the Project has been completed. If the Project was completed on or after November 3, 2023, then it appears that the limitations period under Labor Code section 1741, subdivision (a), has not yet expired. (Lab. Code, § 1741, subd. (a); Cal. Code Regs., tit. 8, § 16437, subd. (b).)

⁴ After OCC learned of the worker complaints, OCC held a meeting on January 19, 2022, with all 35 of the City's traffic signal and street lighting contractors, including Belco, and advised that it would not assess any penalties if the contractors self-reported violations and paid restitution to workers. (T, 01/18/24, 151:14-152:15 [Jenson]; OCC Exhibit No. 62, p. OCC_SF_000438.) None of the contractors responded. (T, 01/18/24, 152:6, 152:16-19 [Jenson].)

527:8 [Jenson].) Jenson has been the Labor Compliance Officer for the last eight or ten years, and he oversees staff in monitoring and enforcing the payment of prevailing wage on the City's public works construction projects. (T, 01/18/24, 147:16-24 [Jenson].)

During its investigation into Belco, OCC contacted and interviewed approximately 90 to 100 current and former Belco workers.⁵ (T, 01/18/24, 152:20-153:5, 160:24-161:3, 161:6-8 [Jenson].) Specifically pertaining to this Project, OCC interviewed 36 Belco workers; Jenson interviewed 32 workers, and other OCC staff interviewed the remaining four workers. (*Id.*, 165:2-166:11 [Jenson].) As part of the investigation, Jenson and other OCC staff completed Employee Interview Forms for the workers they interviewed.⁶ (*Id.*, 166:19-167:19, 170:10-178:24 (Ramblaz), 180:1-183:17 (Balderas), 183:21-187:1 and 187:5-192:9 (Tizcareno), 192:12-198:6 (Pena), 199:22-205:2 (Ibarra), 205:6-209:19 (Jacinto Aguilar) [Jenson]; OCC Exhibit Number 2, pp. OCC_SF_000392-395 (Pena); OCC Exhibit Number 5, pp. OCC_SF_000197-200 (Ramblaz); OCC Exhibit Number 6, pp. OCC_SF_000217-218 (Tizcareno); OCC Exhibit Number 8, OCC_SF_000271-272 (Ibarra); OCC Exhibit Number 9, pp. OCC_SF_000273-274 (Aguilar); OCC Exhibit Number 18, pp. OCC_SF_000388-389 (Balderas); OCC Exhibit Number 75, pp. OCC_SF_000215-220, OCC_SF_000626-627 (Tizcareno).) Based on the information received from the worker interviews, Jenson concluded that a number of Belco workers were working off-the-clock as early as 4 a.m. and as late as 6 p.m. or later, and that a number of workers were afraid of being blacklisted or blackballed for complaining. (T, 01/18/24, 163:8-165:1 [Jenson].)

⁵ Jenson interviewed about 75 Belco workers. (T, 01/18/24, 161:9-11 [Jenson].) The remaining Belco workers were interviewed by other City employees, including OCC investigator John Butler and Bureau of Contract Administration inspector Francis Doyle. (*Id.*, 161:12-24 [Jenson].) The interviewed workers raised issues with all nine Belco projects, including this Project. (*Id.*, 162:10-163:6 [Jenson].)

⁶ OCC's witnesses confirmed that they spoke with Jenson regarding their experiences on the Project. (T, 01/18/24, 22:17-23:16, 25:4-21, 26:5-24 [Ramblaz], 80:24-81:14 [Balderas]; T, 01/23/24, 246:16-247:21 [Tizcareno], 307:9-11, 307:14-308:6, 308:20-309:23 [Pena], 412:23-413:10 [De Leon].)

OCC reviewed Belco's Certified Payroll Records (CPRs) and determined that the hours reported were not correct based on the information provided by the interviewed workers. (T, 01/18/24, 153:6-10, 157:4-16 [Jenson]; T, 01/25/24, 526:2-4, 526:21-527:8 [Jenson].) OCC requested documents from Belco, such as timecards or time sheets that would show a worker's start, end, and break times, and truck records or vehicle logs that would show when vehicles were turned on and off and for how long the vehicle was driven. (T, 01/18/24, 157:17-159:15, 160:2-8 [Jenson]; T, 01/25/24, 525:8-25 [Jenson].) OCC was advised that Belco did not have such records. (T, 01/18/24, 157:4-159:10, 159:16-24, 160:9-13 [Jenson].)

Relying on the information obtained from the worker interviews and the CPRs, OCC prepared an audit that found Belco underreported hours and underpaid workers on the Project. (T, 01/25/24, 527:22-528:15, 563:23-564:20 [Jenson].) Jenson believed that the audit was reasonable based on the information available to OCC at the time. (*Id.*, 569:12-20 [Jenson].) According to Jenson, in the absence of accurate payroll records maintained by the contractor, it was appropriate for OCC staff to estimate the hours Belco's workers worked on the Project in accordance with the decision in United States Department of Labor Wage Appeals Board Case No. 80-15. (*Id.*, 570:23-571:6 [Jenson].) Specifically, Jenson directed OCC staff to assess three hours of unpaid overtime per day per worker for every eight-hour day recorded on the CPRs.⁷ (*Id.*, 563:23-564:20 [Jenson].) The audit was prepared under the assumption that every worker on the Project reported to work at the Chino Yard, as Jenson testified that OCC

⁷ It appears that workers who were recorded on the CPRs as having worked less than eight hours in a day were assessed one hour of unpaid straight time. (See OCC Exhibit 120, p. OCC_SF_001414 (Aguilar); Belco Exhibit B, p. B7.) It also appears that workers who were recorded on the CPRs as having worked more than eight hours in a day were assessed three hours of unpaid double time premiums. (See OCC Exhibit 120, p. OCC_SF_1534 (Tizcareno); Belco Exhibit B, p. B101.) The parties did not elicit testimony regarding the rationale behind OCC's methodology for the assessment of unpaid straight time or double time.

was not aware of the use of other Belco yards at that time.⁸ (*Id.*, 565:10-566:7, 611:18-25 [Jenson].)

The Audit.

On October 12, 2022, OCC provided its Summary of Assessment Wage Restitution and Penalty Log dated October 6, 2022 to Belco. (OCC Exhibit Number 129, pp. OCC_SF_002190-2194.) On May 2, 2023, OCC provided its Revised Summary of Assessment Wage Restitution and Penalty Log (Audit) of the same date to Belco.⁹ (OCC Exhibit Number 129, pp. OCC_SF_002197-2201; Belco Exhibit B.) The Audit attached Public Works Investigation Worksheets for each worker for whom OCC determined there was an underpayment of wages. (Belco Exhibit B; see T, 01/25/24, 615:8-616:9 [Jenson].)

Although the workers on this Project were classified into nine different crafts or trades,¹⁰ as the Audit only assessed underpayment of wages and penalties for those workers in three crafts or trades: (1) journey-level and apprentice Transportation

⁸ The Chino Yard is located at 8278 Schaefer Avenue in Ontario and is also referred to as Ontario Ranch or "the ranch." (T, 01/18/24, 88:12-16 [Balderas]; T, 01/23/24, 420:22-25, 433:2-434:11 [De Leon]; Belco Exhibit I, pp. OCC_SF_002102, OCC_SF_002104.)

⁹ It appears that the Revised Summary of Assessment Wage Restitution and Penalty Log dated May 2, 2023, removed the workers classified as Horizontal Directional Drilling that were included in the original Summary of Assessment Wage Restitution and Penalty Log dated October 6, 2022. The reason for this revision is unknown.

¹⁰ Journey-level and apprentice Transportation Systems Electrician, journey-level Transportation Systems Electrician (Cable Splicing, Welding and NETA Testing), journey-level Transportation Systems Technician, journey-level Inside Wireman/Radio Monitor Technician (Electrician), journey-level and apprentice Laborer, journey-level Horizontal Directional Drilling, journey-level Operating Engineer, journey-level Cranes, Pile Driver and Hoisting Equipment (Operating Engineer), and journey-level Cement Mason.

Systems Electrician; (2) journey-level Transportation Systems Technician; and (3) journey-level and apprentice Laborer.¹¹ (OCC Exhibit Number 120; Belco Exhibit B.)

The Audit was not calculated based on the prevailing wage rates in effect as of the bid advertisement date of the Project, April 20, 2019.¹² (T, 01/25/24, 571:14-572:4, 578:18-579:2, 593:3-594:2 [Jenson].) Instead, the Audit was calculated based on the actual wage rate listed on the CPRs, which were higher than the applicable prevailing wage rates.¹³ (*Id.*, 571:14-572:4, 579:3-18, 580:8-14, 580:21-24, 582:23-583:7, 593:3-594:2 [Jenson].) According to Jenson, if the actual wage rate was higher than the applicable prevailing wage rate, then OCC was entitled to enforce the actual wage rate for purposes of calculating unpaid overtime.¹⁴ (*Id.*, 580:25-581:25, 583:9-585:1, 585:9-591:13 [Jenson].) As a union contractor, Belco paid the union rate on this Project,

¹¹ The parties did not elicit testimony to explain why the Audit only included these classifications or why the other worker classifications were excluded.

¹² Contractors must pay at least the applicable prevailing rate in effect at the time the project is advertised for bid. (T, 01/25/24, 579:19-580:5, 593:21-25 [Jenson].) The applicable prevailing wage determinations (PWDs) at issue in this matter are those for Transportation Systems Electrician, LOS-2019-1, Transportation Systems Technician, LOS-2019-1, and Laborer, SC-23-102-2-2019-1. (T, 01/25/24, 593:14-20, 618:15-619:19 [Jenson]; Belco Exhibits J, L.) These crafts are apprenticeable. (Belco Exhibits J, L, M, N; see T, 01/25/24, 620:2-621:18 [Jenson].)

¹³ According to PWD LOS-2019-1, the basic hourly rate for Transportation Systems Electrician was \$45.25, the total hourly rate including fringe benefits was \$75.08, and the daily overtime rate was \$98.38. (T, 01/25/24, 596:7-597:18 [Jenson]; Belco Exhibit J.) For example, the Audit utilized the daily overtime rate of \$118.20 for Transportation Systems Electrician Horacio Julio, which is the sum of the overtime hourly rate of \$81.41 plus the fringe benefits hourly rate of \$36.79. (T, 01/25/24, 598:25-599:23 [Jenson]; Belco Exhibit B, p. B69.) Accordingly, the Audit utilized an overtime rate that was \$22 or \$23 higher than the daily overtime rate set forth in PWD LOS-2019-1 for Transportation Systems Electrician. (T, 01/25/24, 600:4-10 [Jenson].)

¹⁴ Jenson explained that Tom Fredericks, an attorney for the Labor Commissioner's Office, told him in 2012 or 2014 that OCC could enforce time-and-a-half of the rate actually paid to workers. (T, 01/25/24, 582:13-591:13 [Jenson]; see Office of the Labor Commissioner Public Works Manual (October 2023), p. 2.)

which was higher than the applicable prevailing wage rates. (*Id.*, 582:23-583:3 [Jenson].)

The Audit included unpaid training fund contributions. (T, 01/25/24, 571:10-13 [Jenson].) The Audit also included penalties under Labor Code section 1775 calculated at \$200 per day. (*Id.*, 572:4-14 [Jenson].) Jenson believed the \$200 per day penalty rate was appropriate because he had heard from International Brotherhood of Electrical Workers (IBEW) business agents that the practice of not paying overtime hours had been going on since 1965, and because multiple workers he interviewed for this Project said that they were afraid of retaliation. (*Id.*, 572:17-574:18 [Jenson].) The Audit also included penalties under Labor Code section 1813 calculated at \$25 per day as set forth in that statute. (*Id.*, 574:20-575:3 [Jenson].) Jenson believed that the penalties assessed were reasonable. (*Id.*, 575:7-9 [Jenson].)

The Notice.

On June 26, 2023, OCC issued the Notice of Withholding of Contract Payments (Notice) to Belco.¹⁵ (Belco Exhibit A, pp. A3-6.) Belco requested review of the Notice on August 9, 2023. (Belco Exhibit A, pp. A1-2.)

¹⁵ The copies of the Request for Approval of Forfeiture submitted by the parties reference a different project, the San Fernando Road Bike Path Phase 2 (not Phase 3), with an earlier bid advertisement date of January 27, 2012. (OCC Exhibit Number 129, p. OCC_SF_002171; Belco Exhibit G, p. G3; see T, 01/25/24, 613:13-614:1 [Jenson].) Chris Jenson testified that the Labor Commissioner's Office approved the imposition of Labor Code section 1775 penalties calculated at \$200 per day in this matter. (T, 01/25/24, 572:5-16 [Jenson].) It is therefore inferred that OCC submitted this matter to the Labor Commissioner's Office for approval of forfeiture of the unpaid wages, unpaid training fund contributions and penalties in accordance with California Code of Regulations, title 8, section 16432, and that the Labor Commissioner's Office approved the forfeiture. The parties' failure to submit OCC's Request for Approval of Forfeiture for this matter deprived the Hearing Officer of the ability to review OCC's required summary of the nature of Belco's violations and the basis upon which OCC made the determination of underpayment of wages.

The Subsequent Investigation.

OCC received Daily Activity Job Reports (Dailies) for the Project three to four weeks prior to the hearing.¹⁶ (T, 01/25/24, 536:14-24, 566:10-24 [Jenson]; see T, 01/23/24, 301:12-19 [Pena referred to the Daily Activity Job Reports, Belco Exhibit F, as “dailies”].) In comparing the CPRs with the Dailies and the Contractor Daily Field Reports, Jenson found discrepancies regarding the hours reported on the CPRs.¹⁷ (T,

¹⁶ The Dailies, which cursorily described the work every worker performed, the time each worker spent at each job site, as well as the equipment used that day, were completed by the field foreperson on the Project. (T, 01/23/24, 301:12-19 [Pena]; T, 02/28/24, 739:17-741:16, 766:21-767:11 [Caldera]; Belco Exhibit F.)

¹⁷ Contractor Daily Field Reports, which are certified by the contractor’s field foreperson, are required to be submitted to the City’s Bureau of Contract Administration inspectors on all federally funded projects. (T, 01/25/24, 530:11-531:6, 531:17-19, 532:5-9, 532:25-533:12 [Jenson]; OCC Exhibit Number 124.) Jenson reviewed almost all of the Contractor Daily Field Reports submitted for this Project. (T, 01/25/24, 536:7-10 [Jenson].) It is unclear whether Jenson reviewed the Contractor Daily Field Reports before or after OCC prepared the Audit. Where there were discrepancies, OCC relied on the workers and hours reported on the CPRs rather than what was reported on the Contractor Daily Field Reports. The Audit did not add any overtime hours for workers or hours not reported on the CPRs. (*Id.*, 561:23-562:20 [Jenson].)

For example, for June 5, 2020, the Daily and the Contractor Daily Field Report recorded eight hours for Roger Escareno, but the CPR for that week recorded no hours for Escareno on June 5, 2020. (T, 01/25/24, 537:11-539:10 [Jenson]; Belco Exhibit F, p. F42; OCC Exhibit Number 120, p. OCC_SF_001383; OCC Exhibit Number 124, p. OCC_SF_001739.) For July 10, 2020, the Daily recorded eight hours for Jeff Echeverri and four hours for Saul Estrella Gomez, while the Contractor Daily Field Report recorded eight hours for Echeverri and did not record Gomez for that day, and the CPR for that week recorded no hours for Echeverri on July 10, 2020 and did not list Gomez for that week. (T, 01/25/24, 541:7-22, 544:22-545:7; 547:1, 548:2 [Jenson]; Belco Exhibit F, p. F75; OCC Exhibit Number 120, pp. OCC_SF_001398-1401; OCC Exhibit Number 124, p. OCC_SF_001714.) Between July 20, 2020, and July 24, 2020, the Daily recorded hours worked each day for De Leon and Owen Ramos, but the CPR for that week was certified as a non-performance week. (T, 01/25/24, 548:5-552:20 [Jenson]; Belco Exhibit F, pp. F82, 84, 86, 88, 90; OCC Exhibit Number 120, p. OCC_SF_001405.) For November 5, 2020, the Daily recorded eight hours for Balderas, but the CPR for that week did not list Balderas. (T, 01/25/24, 552:23-553:3, 553:9-17 [Jenson]; Belco Exhibit F, p. F140; OCC Exhibit Number 120, p. OCC_SF_001420.)

01/25/24, 536:25-537:8 [Jenson].) Based on the discrepancies, Jenson determined that there were over 500 hours that were not accounted for on Belco's CPRs. (*Id.*, 561:23-562:20 [Jenson].) Had OCC been aware of these discrepancies at the time it completed its audit, the Audit would have assessed a higher amount of unpaid wages. (*Id.*, 564:23-565:5 [Jenson].)

Jenson admitted that the Audit amount was erroneous based on the information received subsequently. (T, 01/25/24, 577:4-21 [Jenson].) During the hearing, Jenson suggested that OCC "re do" the Audit.¹⁸ (*Id.*, 569:21-570:22, 577:4-21 [Jenson].) Jenson believed that a re-do of the Audit would adjust the unpaid amount owed upwards. (*Id.*, 577:22-578:1 [Jenson].)

The Witnesses (in Chronological Order on the Project).

Ochoa, a journey-level Transportation Systems Electrician, was a field foreperson responsible for directing and overseeing the work on the Project. (T, 02/28/24, 638:23-639:10, 639:19-22, 662:18-663:1 [Ochoa]; see OCC Exhibit Number 124, p. OCC_SF_001400.) He worked on the Project for 58 days between April 27, 2020, and

Ochoa also testified on cross-examination to discrepancies in the workers and hours recorded on the Daily Activity Job Reports, the Contractor Daily Field Reports, and the CPRs. (T, 02/28/24, 685:12-690:18, 691:4-697:25, 699:24-708:25 [Ochoa]; OCC Exhibit Number 120, pp. OCC_SF_001371, 1383, 1389-1391, 1398; OCC Exhibit Number 124, pp. OCC_SF_001709, 1714, 1729, 1732, 1739, 1743, 1746-1747, 1749-1750, 1755-1756, 1759; Belco Exhibit F, pp. F1, F13, F23, F30-31, F33-34, F38, F55, F75, F81.) Caldera did the same. (T, 02/28/24, 756:13-758:8, 758:25-778:14, 780:9-784:10 [Caldera]; OCC Exhibit Number 120, pp. OCC_SF_001459, 1494, 1503; OCC Exhibit Number 124, pp. OCC_SF_001778-1779, 1789-1792, 1813, 1818, 1820, 1832, 1928; Belco Exhibit F, pp. F240, 242, 249, 272-274.)

¹⁸ According to Jenson, two or three workers should be removed from the Audit: Ivan Ibarra (because he testified that he did not work any overtime on the Project), Victor Djeu and Ceasar Velazquez. (T, 01/25/24, 577:20-21, 606:9-610:18 [Jenson]; see Belco Exhibit B, pp. B3-B4.) However, Djeu, classified as an Operating Engineer, is not listed on the Audit. (See Belco Exhibit B, pp. B3-B4; OCC Exhibit Number 120, p. OCC_SF_001441.) OCC's Audit did not include any workers classified as Operating Engineers on the Project. (T, 01/25/24, 622:19-24 [Jenson].) The Audit recorded Velazquez as having worked four hours on one day on the Project. (Belco Exhibit B, p. B105; see OCC Exhibit Number 120, p. OCC_SF_001616.)

July of 2020.¹⁹ (*Id.*, 662:10-17 [Ochoa]; Belco Exhibit B, pp. B86-87; OCC Exhibit Number 120, pp. OCC_SF_001372-1404; OCC Exhibit Number 124, pp. OCC_SF_001709-1768; Belco Exhibit F, pp. F1-81.) Ochoa testified that he had different crews in different job locations each day, and he went from group to group to observe the work. (T, 02/28/24, 663:2-12, 663:25-665:1 [Ochoa]; see Belco Exhibit F, pp. F25, 29, 31, 34, 36, 38, 40-49, 54-80.) The majority of the work performed during Ochoa's time on the Project was the installation of conduit in the ground. (T, 02/28/24, 670:10-14 [Ochoa].) This involved open trenching with a mini-excavator and directional boring with the directional drill and vacuum trailer. (*Id.*, 670:15-23, 671:6-21 [Ochoa].)

De Leon was classified as journey-level Laborer on the Project. (Belco Exhibit B, pp. B40-41; OCC Exhibit Number 120, pp. OCC_SF_001370-1403.) He worked on the Project for 32 days between April 27, 2020, and July of 2020, concurrently with Ochoa. (T, 01/23/24, 356:12-21 [De Leon]; Belco Exhibit B, pp. B40-41; OCC Exhibit Number 120, pp. 1370-1403; OCC Exhibit Number 124, pp. OCC_SF_001712-1738, 1754-1768; Belco Exhibit F, pp. F2-25, 43-78.) De Leon drove a dump truck and a mini excavator on the Project. (T, 01/23/24, 356:17-21 [De Leon].) De Leon installed pipe and set boxes. (*Id.*, 358:25-359:8 [De Leon].)

Balderas was also classified as a journey-level Laborer on this Project. (Belco Exhibit B, p. B60; OCC Exhibit Number 120, p. OCC_SF_001431.) According to the CPRs, Balderas worked on the Project on two days—November 5, 2020, and December 1, 2020. (OCC Exhibit Number 120, pp. OCC_SF_001420, 1431; OCC Exhibit Number 124, p. OCC_SF_001698; Belco Exhibit F, pp. F140, 160.) However, OCC only assessed unpaid overtime for Balderas on December 1, 2020.²⁰ (Belco Exhibit B, p. B60.)

¹⁹ Ochoa also worked on the Project on three days in September of 2022. (Belco Exhibit B., p. B87; OCC Exhibit Number 120, pp. OCC_SF_001609, 1611; OCC Exhibit Number 124, pp. 2014-2105, 2019; Belco Exhibit F, pp. F608, 612-613.)

²⁰ On December 1, 2020, the work on the Project involved setting pole foundations using a utility dump trailer and an arrow board. (Belco Exhibit F, p. F160.) An arrow board is a traffic signal directive device that is used to move traffic away from

Meanwhile, Balderas testified that he worked on the Project for six days, but did not recall the exact dates.²¹ (T, 01/18/24, 77:15-23, 81:24-82:2 [Balderas].) According to Balderas, he operated a Ditch Witch directional drill on the first three days, and he reset boxes, pulled wires, and poured concrete on the other three days. (*Id.*, 77:24-78:21, 112:17-23 [Balderas].)

Ramblaz worked on the Project as an Electrician Transportation Systems Apprentice. (T, 01/18/24, 17:4-10, 17:15-17 [Ramblaz]; OCC Exhibit Number 124, pp. OCC_SF_001424, 1437, 1447, 1450, 1455, 1547; Belco Exhibit B, p. B97.)

Ramblaz worked on the Project for 14 days between November of 2020 and January 2021, and three days in December of 2021. (T, 01/18/24, 28:14-29:17, 44:15-46:11 [Ramblaz]; Belco Exhibit B, p. B97; OCC Exhibit Number 120, pp. OCC_SF_001424-1455, 1547; OCC Exhibit Number 124, pp. OCC_SF_001686-1687, 1706, 1837-1847; Belco Exhibit F, pp. F145, 171-201.) Ramblaz set pole boxes, dug trenches, installed underground conduit, and carried out rock. (T, 01/18/24, 17:11-14, 30:5-31:19 [Ramblaz].)

Tizcareno worked on the Project as an Electrician Transportation Systems Apprentice. (T, 01/23/24, 226:3-21, 259:5-10 [Tizcareno].) Tizcareno also worked on the Project beginning in November of 2020, and he worked for 111 days through April of 2022. (Belco Exhibit B, pp. B99-103; OCC Exhibit Number 120, pp. OCC_SF_001424-1579; OCC Exhibit Number 124, pp. OCC_SF_001689-1705, 1771-1780, 1813, 1844-1988, 2054; Belco Exhibit F, pp. F146-482, 506-525.) On the Project, he installed solar

the work area. (T, 01/23/24, 269:20-23 [Pena].) It does not appear that any drilling equipment was used on that day.

²¹ Balderas believed he also worked in October or November of 2021. (T, 01/18/24, 112:17-23, 114:25-115:16, 117:15-23, 140:3-20 [Balderas].) However, neither the CPRs, the Contractor Daily Field Reports, nor the Dailies recorded Balderas as having worked on the Project in October or November of 2021. (OCC Exhibit Number 120, pp. OCC_SF_001529-1542; OCC Exhibit Number 124, pp. OCC_SF_001861-1878; Belco Exhibit F, pp. F402-435.) It is possible that Balderas may have confused his time on this Project with his time on other Belco projects, such as San Fernando Road Bike Path Phase 2.

panels and batteries, luminaires for the bike path, street lighting and underground pipe work for the electrical wires required for the solar panels and luminaires. (T, 01/23/24, 226:3-21, 259:5-10 [Tizcareno].)

Ibarra worked for Belco from 2017 to 2022 as a journey-level Transportation Systems Electrician. (T, 01/23/24, 339:21-340:24 [Ibarra].) According to the CPRs and the Daily Activity Job Report, Ibarra worked on the Project on one day—January 22, 2021—for four hours.²² (OCC Exhibit Number 120, p. OCC_SF_001449; see also T, 01/23/24, 347:11-348:13, 349:3-5, 349:12-350:10 [Ibarra]; Belco Exhibit B, p. B65; Belco Exhibit F, p. F199.) However, Ibarra testified that he worked on the Project for two or three days.²³ (T, 01/23/24, 341:6-9, 342:4-23, 348:14-349:2, 350:8-15, 353:11-25 [Ibarra].) Ibarra testified that he set up foundations for traffic signals, which involved digging a hole with the backhoe, dropping in a cage, hanging the cage, drilling a hole to be able to stub off the pipes for the wiring up the pole, dropping anchor bolts, and pouring concrete. (*Id.*, 341:10-342:3 [Ibarra].)

Pena was classified as a journey-level Transportation Systems Electrician on this Project. (T, 01/23/24, 279:15-18, 333:11-17 [Pena].) Pena worked for Belco from the beginning of his apprenticeship in 2012 until February of 2021. (*Id.*, 267:23-268:7 [Pena].) Pena worked on the Project for 11 days in February of 2021, and this was the last project he worked on before he left Belco. (*Id.*, 268:8-18, 312:9-19, 314:16-315:8 [Pena]; Belco Exhibit B, p. B89; OCC Exhibit Number 120, pp. OCC_SF_001457-1467; OCC Exhibit Number 124, pp. OCC_SF_001823-1827, 1832-1836; Belco Exhibit F, pp. F206, 212-220, 231-236.) Pena was a foreperson on the Project for Belco. (See T, 01/23/24, 287:12-22 [Pena].) He installed conduit, pole boxes, street lighting, foundations, and traffic signal gears and conductors. (*Id.*, 268:19-269:9 [Pena].) Pena

²² OCC assessed one hour of unpaid straight time for Ibarra for January 22, 2021. (Belco Exhibit B, p. B65.) The rationale for this is unclear.

²³ Like Balderas, it is possible that Ibarra may have confused his time on this Project with his time on other Belco projects, such as San Fernando Road Bike Path Phase 2.

described his work at the job site as setting up lane closures, installing conduit, setting cages to reinforce the concrete for pole foundations, installing pole boxes, breaking out concrete, and potholing. (*Id.*, 281:18-282:5 [Pena].)

Caldera was classified as a journey-level Transportation Systems Electrician on this Project. (OCC Exhibit Number 120, p. OCC_SF_1459; Belco Exhibit B, pp. B21-22.) Caldera has worked for Belco since they opened over ten years ago. (T, 02/28/24, 754:1-4 [Caldera].) Caldera worked on the Project for 53 days between February and June of 2021, and he became the foreperson a few weeks after he started on the Project. (T, 02/28/24, 714:19-717:8, 718:19-719:9, 721:23-724:19, 725:20-732:7 [Caldera]; Belco Exhibit B, pp. B21-22; OCC Exhibit Number 120, pp. OCC_SF_001459; OCC Exhibit Number 124, pp. OCC_SF_001771-1821, 1832, 1928-1936; Belco Exhibit F, pp. 212-310.) During Caldera's time on the Project, the workers poured foundations for the solar panels and performed intersection work to relocate pole boxes and work on traffic signals. (T, 02/28/24, 738:19-9:16 [Caldera].)

Penaloza worked on the Project as a journey-level Transportation Systems Electrician. (T, 03/01/24, 798:10-799:3 [Penaloza]; see OCC Exhibit 120, p. OCC_SF_001533.) Penaloza has worked for Belco for seven years. (T, 03/01/24, 804:8-9, 809:18-21 [Penaloza].) Penaloza worked on the Project for 53 days between July of 2021 and March of 2022, and in October of 2022. (Belco Exhibit B, pp. B90-92; OCC Exhibit Number 120, pp. OCC_SF_001511-1573, 1618; OCC Exhibit Number 124, pp. OCC_SF_001863-1916, 1949-1998; Belco Exhibit F, pp. F324-503, 629-633.) Penaloza pulled and spliced wire, trenched pipes, and set pole boxes. (T, 03/01/24, 805:25-806:6 [Penaloza].) Penaloza drove a work truck, and he was responsible for transporting the arrow boards between the Sully-Miller Yard and the job locations. (*Id.*, 806:7-807:1, 808:8-10, 818:9-14 [Penaloza].)

The Contractor Daily Field Reports.

Belco's on-site field foreperson on the Project was responsible for completing the Contractor Daily Field Reports.²⁴ (See T, 01/23/24, 290:24-291:25 [Pena]; T, 02/28/24, 639:18-22, 642:6-20, 709:24-710:4 [Ochoa], 715:16-717:8, 754:21-755:10 [Caldera]; OCC Exhibit Number 124.) The forepersons certified the Contractor Daily Field Reports under penalty of perjury that the information reported was true and correct.²⁵ (OCC Exhibit Number 124.) The Contractor Daily Field Reports completed by the various forepersons on the Project generally recorded a total of eight hours worked per worker per day; regardless of whether the daily start and end times were recorded as 6:30 a.m. to 2:30 p.m., 6:30 a.m. to 3:00 p.m., 7:00 a.m. to 3:00 p.m., or 7:00 a.m. to 3:30 p.m. (*Ibid.*)

There was some variation in the number of hours and range of hours recorded on the Contractor Daily Field Reports. Specifically, there were some days that deviated

²⁴ Luis Trevino was the general foreperson on the Project, and he was on site once or twice a week to check on materials and scheduling. (T, 01/23/24, 237:9-23 [Tizcareno], 295:12-296:3 [Pena]; T, 01/18/24, 18:18-19:5 [Ramblaz]; T, 02/28/24, 764:2-7 [Caldera]; Belco Exhibit F, p. F4.)

²⁵ The forepersons on this Project were Joel Ochoa, Horacio Julio, Kevin Ferguson, Roger Escareno, Sergio Pena, Jr., Jaime Caldera, and Nicholas Cunico. Each foreperson signed the following Contractor Daily Field Reports: Ochoa from April 20 through July 17, 2020 (OCC Exhibit Number 124, pp. OCC_SF_001709-1770); Julio from November 9 through December 18, 2020 (pp. OCC_SF_001685-1708), January 4 through January 26, 2021 (pp. OCC_SF_001837-1852) except that Ferguson signed on January 8 and 15, 2021 (pp. OCC_SF_001843, 1848), and February 25 and 26, 2021 (pp. OCC_SF_001823-1824); Escareno from December 21 through December 23, 2020 (pp. OCC_SF_001682-1684), and January 12, 2021 (p. OCC_SF_001848); Pena from February 8 through February 22, 2021 (pp. OCC_SF_001827-1836); Caldera on February 23 and February 24, 2021 (pp. OCC_SF_001825-1826), and March 1 through June 4, 2021 (pp. OCC_SF_001771-1822, 1928-1936); and Cunico from June 7, 2021 through August 11, 2023 (pp. OCC_SF_001853-1927, 1937-1988, 1989-2091) except Escareno signed on November 1, 2021 (p. OCC_SF_001872).

from the eight-hour pattern.²⁶ For example, on April 20 and 22, 2020, the Contractor Daily Field Reports recorded one worker as having worked from 7:00 a.m. to 3:30 p.m., and two workers as having worked from 7:30 a.m. to 11:30 a.m. (T, 02/28/24, 656:25-658:6 [Ochoa]; OCC Exhibit Number 124, pp. OCC_SF_001769-1770.) On May 18, 2020, one worker was recorded as having worked from 6:30 a.m. to 3:00 p.m., and the other worker was recorded as having worked from 6:30 a.m. to 8:30 a.m. (T, 02/28/24, 654:21-655:4 [Ochoa]; OCC Exhibit Number 124, p. OCC_SF_001753.) On May 19, 2020, six workers were recorded as having worked from 6:30 a.m. to 3:00 p.m., and four workers were recorded as having worked from 7:30 a.m. to 11:30 a.m. (T, 02/28/24, 653:15-654:20 [Ochoa]; OCC Exhibit Number 124, p. OCC_SF_001752.) On August 3, 2021, the start and end times were recorded as 9:30 a.m. to 11:30 a.m. (OCC Exhibit Number 124, p. OCC_SF_001899.) In contrast, on October 21 and 22, 2021, the start time was recorded as 6:00 a.m. but the end times varied between the workers and ranged from 2:00 p.m. to 9:00 p.m. (*Id.*, p. OCC_SF_001874-1875.)

The foreperson witness testimony regarding the accuracy of the Contractor Daily Field Reports conflicted. Ochoa, testifying for Belco, testified that the hours worked he recorded on the Contractor Daily Field Reports were accurate. (T, 02/28/24, 642:6-643:5, 646:9-647:18, 648:16-658:25, 679:25-680:8, 681:8-11 [Ochoa]; OCC Exhibit Number 124, pp. OCC_SF_001709-1770.) Caldera, for Belco, also testified that the start and end times he recorded on the Contractor Daily Field Reports were accurate.²⁷ [T, 02/28/24, 721:19-22, 780:19-25 [Caldera].)

Pena, testifying for OCC, admitted that the start and end times he recorded on the Contractor Daily Field Reports for Belco—that he signed under penalty of perjury—

²⁶ On certain days the workers worked less than eight hours a day, which could have been due to rain, the job shutting down for a safety issue, or if a worker had to leave early. (T, 02/28/24, 724:19-727:10, 729:21-24 [Caldera].)

²⁷ This Project was the second project where Caldera completed Contractor Daily Field Reports. (T, 02/28/24, 754:10-20 [Caldera].) As the foreperson, he was responsible for identifying all the workers on the Project each day. (T, 02/28/24, 754:21-755:10 [Caldera].)

were not accurate.²⁸ (T, 01/23/24, 324:1-325:13 [Pena].) Pena testified that he recorded eight hours of work each day, from 7:00 a.m. to 3:30 p.m., and that he did not record any work done before 7:00 a.m. or after 3:30 p.m. (*Id.*, 287:23-288:11 [Pena].) Specifically, Pena did not include the time spent in the morning attending safety meetings or loading trucks, or the time spent in the afternoon cleaning up and returning equipment to the yard. (*Id.*, 292:17-293:15, 294:15-23 [Pena].)

Workers De Leon and Ramblaz disputed the accuracy of the hours recorded for them on the Contractor Daily Field Reports. De Leon disputed the accuracy of the Contractor Daily Field Reports and the CPRs for this Project, which recorded him as having worked 8 hours of work each day. (T, 01/23/24, 359:19-408:03, 415:10-416:14, 418:5-24, 419:25-522:22 [De Leon]; OCC Exhibit Number 120, pp. OCC_SF_001370, 1371, 1373, 1386, 1389, 1392, 1395, 1399, 1403; OCC Exhibit Number 124, pp. OCC_SF_001712-1713, 1715-1718, 1720-1723, 1725-1727, 1729-1731, 1737-1738, 1754, 1762-1766; Belco Exhibit I, pp. OCC_SF_002102-2170.) Ramblaz also disputed the accuracy of the Contractor Daily Field Reports for the Project, which recorded him as working from 7 a.m. to 3:30 p.m. every day he worked on the Project. (T, 01/18/24, 61:11-69:18 [Ramblaz]; OCC Exhibit Number 124, pp. OCC_SF_001686-1687, OCC_SF_001843-1846.)

The Pre-Project Site Activities.

The testimony varied widely as to what the workers did in the mornings before they went to the Project site locations to perform the day's work. Some workers testified that they loaded materials before the safety meetings, and others testified that

²⁸ Pena understood the purpose of the Contractor Daily Field Reports as to record the workers who worked on the Project that day. (T, 01/23/24, 291:18-25 [Pena].) This Project was the first time Pena completed the Contractor Daily Field Reports, and he did not receive any formal training on how to complete the reports. (*Id.*, 292:1-7 [Pena].) Pena's informal training consisted of writing down the workers that were present each day, along with their classifications. (*Id.*, 292:8-16 [Pena].) Pena did not recall whether anyone at Belco told him not to record the time spent loading materials or returning equipment, or how he was supposed to record time. (T, 01/23/24, 294:24-295:5, 296:18-21 [Pena].)

materials were loaded after the safety meetings. Some workers testified that they attended RailPros safety meeting, and others testified that they did not.²⁹ Some workers testified that they started their workday at the Sully-Miller Yard, but others testified that they started their workday at other Belco yards such as the Chino Yard or the Hawthorne Yard.³⁰

Belco's witnesses testified that a typical workday on the Project began with a safety meeting (either by Belco and/or RailPros) at the Sully-Miller Yard, after which the workers loaded material and equipment at the Sully-Miller Yard, before the workers went to the job location. Ochoa testified that a workday on the Project started with a safety meeting, after which the workers would get their material and go to the job location to begin work. (T, 02/28/24, 660:7-24 [Ochoa].) If the workers were working close to the train tracks, which was a majority of the time, the workers would attend another safety meeting with RailPros and sign in with RailPros. (*Ibid.*)

²⁹ When work was to be performed next to the train tracks, RailPros employees provided daily safety meetings, checked Belco workers' safety equipment, and remained on site to keep the railroad tracks clear when trains approached. (T, 01/23/24, 271:24-273:19 [Pena].) The RailPros employee had a radio to communicate with the Metrolink train, and an airhorn that they would use to signal when Belco workers had to stop and resume work depending on the proximity of any passing trains. (*Id.*, 343:17-344:8 [Ibarra].) Workers were required to sign in and out with RailPros. (T, 02/28/24, 643:14-644:11, 660:18-24 [Ochoa], 718:1-3 [Caldera].) RailPros designated the location the workers required to meet for the RailPros safety meeting. (*Id.*, 717:11-718:1, 743:9-744:20, 746:3-6 [Caldera].) It is unclear whether RailPros conducted their safety meetings at the Sully-Miller Yard or at the job site locations. The parties did not submit any RailPros records for the hearing, and the evidence is not clear as to the days RailPros was on site to monitor the Project, or as to how many job sites RailPros monitored on any given day.

³⁰ The Sully-Miller Yard refers to two locations, one at San Fernando Road and Sheldon Street and the other at San Fernando Road and Branford Street; these locations were less than a quarter mile from each other, and about a quarter mile or a half mile from the northeast corner of the Project. (T, 01/18/24, 213:23-214:7 [Jenson]; T, 02/28/24, 665:2-666:12, 668:6-670:9 [Ochoa].) The Hawthorne Yard is also referred to as the El Segundo Yard or Doty Yard. (T, 01/23/24, 248:20-25 [Tizcareno]; T, 01/25/24, 466:19-25 [De Leon].)

Caldera testified that after the RailPros safety meeting, he gave the workers their tasks for the day, the workers picked up material and equipment from the yard on site and then went to work at the job location.³¹ (T, 02/28/24, 718:3-6, 733:8-734:23, 739:17-25 [Caldera].) If there were multiple job locations, there was a RailPros employee at every job location. (*Id.*, 733:16-19 [Caldera].) Caldera testified that the workers did not load materials prior to the RailPros safety meeting. (*Id.*, 745:12-746:2 [Caldera].)

Penaloza testified that he started work at either 6:30 a.m. or 7 a.m. with a safety meeting, got materials from the Sully-Miller Yard for the tasks that day, and then went to the job site. (T, 03/01/24, 799:13-800:1, 808:4-7 [Penaloza].) During Penaloza's time on the Project, most of the materials were stored at the Sully-Miller Yard. (*Id.*, 809:6-13 [Penaloza].)

Meanwhile, some OCC witnesses testified that they attended RailPros safety meetings or that they recalled seeing RailPros employees on site, but others testified that they neither attended RailPros safety meetings nor saw RailPros employees on site. Neither Balderas nor Ramblaz recalled seeing RailPros on site. Balderas did not recall anyone from RailPros being present on the days that he worked on the Project, and he did not attend any RailPros safety meetings. (T, 01/18/24, 109:21-110:4 [testimony of Balderas].) Ramblaz was never instructed to attend any morning safety meetings conducted by RailPros, and he did not see anyone attend such meetings. (*Id.*, 53:19-58:13 [Ramblaz].)

Tizcareno attended the 6:30 a.m. daily safety meetings with RailPros for 15 to 30 minutes. (T, 01/23/24, 227:24-228:14, 231:25-232:4 [Tizcareno].) He explained that the workers were not allowed to sign in with RailPros until after the safety meeting. (*Id.*, 234:9-17 [Tizcareno].) Tizcareno signed out with RailPros at the end of the day,

³¹ According to Caldera, some workers arrived before 6:30 a.m., but they did not start work until the 6:30 a.m. safety meeting with RailPros; while waiting, some workers stayed in their cars and drank their coffee. (T, 02/28/24, 787:24-788:21 [Caldera].)

either at the Sully-Miller Yard three to four times a week, or at the job site if he left directly from the job site. (*Id.*, 233:3-10, 234:18-25 [Tizcareno].)

Ibarra did not recall attending any safety meetings on this Project. (T, 01/23/24, 342:24-343:10 [Ibarra].) However, he did recall having to sign in with a RailPros employee for this Project. (*Id.*, 343:11-344:8 [Ibarra].)

For this Project, Pena reported to the Sully-Miller Yard at 6 a.m. to attend the daily safety meeting with RailPros at 6:15 a.m. for 15 to 20 minutes.³² (T, 01/23/24, 269:10-274:15, 285:24-286:2, 328:8-24, 329:8-12 [Pena].) Pena testified that he and the other workers loaded materials, such as pole boxes, crushed rock, conduit and foundation cages, as well as equipment such as arrow boards and cones, after the safety meetings. (*Id.*, 269:10-271:19, 276:15-21, 277:6-9, 286:3-5, 289:7-14, 290:6-10 [Pena].) According to Pena, the crews arrived at their respective job sites between 7:00 a.m. and 7:15 a.m. (*Id.*, 277:10-278:1, 281:13-17 [Pena].)

Tizcareno typically arrived at the Sully-Miller Yard, at 6 a.m. or 6:30 a.m. (T, 01/23/24, 226:25-227:23 [Tizcareno].) Tizcareno generally loaded materials, such as solar panels, pipe, wire, luminaries, light posts, after the morning safety meeting, but sometimes he loaded materials before the safety meeting. (*Id.*, 227:24-228:25 [Tizcareno].) It took a group of workers between 30 to 40 minutes to load the materials. (*Id.*, 229:3-24 [Tizcareno].)

Ramblaz typically began work at 6 a.m. at the Sully-Miller Yard, loading up materials such as pipe, boxes, rock, and foundations, into the trucks before heading out to the job location.³³ (T, 01/18/24, 17:18-18:4; 19:15-17; 31:20-39:10, 51:1-24, 52:13-53:9 [Ramblaz].) It took Ramblaz and the other apprentices about an hour to load the materials in the yard, because there were only four or five apprentices including

³² Twice a week, usually on Mondays and Fridays after the RailPros safety meeting, Belco also held a morning safety for about 10 or 15 minutes at the Sully-Miller Yard. (T, 01/23/24, 274:16-276:14, 276:24-277:5, 328:25-329:7 [Pena].)

³³ Ramblaz testified that he was told by the general foreperson, Trevino, to load the trucks early so that they could get going as soon as possible. (T, 01/18/24, 18:18-19:5 [Ramblaz].) It is unclear whether Ramblaz attended any Belco safety meetings.

himself, and one journeyperson who arrived at 6 a.m. to open the locked gate for them, and another journeyperson who arrived at 6:30 a.m. to help. (*Id.*, 18:5-17; 39:20-42:2, 50:11-53:9 [Ramblaz].) Ramblaz did not remember the names of the other apprentices, but he identified the journeymen as Escareno and Anderson. (*Id.*, 19:6-14 [Ramblaz]; see Belco Exhibit B, p. B3.) Escareno unlocked the gate in the mornings, no later than 6:10 a.m. (T, 01/18/24, 42:15-22, 50:11-25 [Ramblaz].) Ramblaz parked his personal vehicle near the Sully-Miller Yard, then walked into the yard once the gate was unlocked. (*Id.*, 39:11-41:9 [Ramblaz].)

For this Project, Ibarra did not have to pick up equipment or materials, nor did he have to return any equipment. (T, 01/23/24, 344:11-345:5 [Ibarra].)

The Post-Project Site Activities.

The testimony also differed as to what the workers did after leaving the job site at the end of the workday. On some days, the workers left for home directly from the job site. On some days, the workers returned to the Sully-Miller Yard before leaving for home. On some days, the workers drove to other Belco yards before they went home for the day.

Ochoa testified that workers had the choice of either leaving directly from the job site to go home or returning to the Sully-Miller Yard to drop off equipment before going home. (T, 02/28/24, 644:12-645:2, 645:15-19 [Ochoa].) They would leave the job site as soon as they signed out with RailPros, around 2:30 p.m., to be back at the yard by 3:00 p.m. to drop off and secure equipment. (*Id.*, 645:3-14, 784:18-785:19 [Ochoa].) Ochoa testified that many apprentices drove their personal vehicles to the job site, so that they could leave directly from the job site instead of returning to the Sully-Miller Yard in the work truck driven by their assigned journeyperson. (*Id.*, 645:20-646:7, 647:19-648:15 [Ochoa].)

According to Caldera, the workday ended at 3:00 p.m. (T, 02/28/24, 719:23-720:3 [Caldera].) The workers started cleaning up around 2:15 p.m. or 2:20 p.m., because they had to meet with RailPros to sign out before they could leave. (*Id.*, 720:4-17 [Caldera].) In addition, lane closures could only be in effect during specified times,

such as 7:00 a.m. to 3:00 p.m., without incurring penalties. (*Id.*, 736:1-9, [Caldera].) Workers who did not have to unload equipment or return to the yard could leave directly from the job location if they had driven their personal vehicles to the job location. (*Id.*, 736:11-737:4, 752:7-753:3 [Caldera].) As the foreperson, Caldera was the last to leave because he was responsible for making sure that everything was picked up and secured. (*Id.*, 720:18-25, 752:3-6 [Caldera].) Caldera did not want to miss his son's baseball games at 3:15 p.m., so they usually left the job site by 2:45 p.m. (*Id.*, 721:1-18, 753:4-25 [Caldera].)

Penaloza testified that he stopped working at 3:00 p.m. or 3:30 p.m. (T, 03/01/24, 803:16-18 [Penaloza].)

Pena testified that the work at the job site continued until 3:30 p.m., at which time the workers cleaned up and removed the lane closures and returned to the Sully-Miller yard at 4:00 or 4:30 p.m. to secure the equipment. (T, 01/23/24, 283:18-284:16, 285:23-286:13, 290:11-18; 329:25-331:23 [Pena].) It took about 30 minutes to return and secure the equipment, after which the workers could leave. (*Id.*, 284:17-22, 331:24-332:22 [Pena].)

Ramblaz testified that on this Project, he stopped working at 3:30 p.m. two out of five days, and that he stopped working as late as 4:30 p.m. three out of five days. (T, 01/18/24, 19:18-23; 62:11, 64:1, 72:16-23 [Ramblaz].) During this time, Ramblaz and other workers loaded up equipment and materials on the trucks to head back to the Sully-Miller Yard. (*Id.*, 19:24-20:10 [Ramblaz].)

Similarly, Tizcareno testified that he was scheduled to end work at 3:30 p.m. each day. (T, 01/23/24, 232:5-9 [Tizcareno].) However, three or four times a week, he and the other workers worked until 4:30 p.m. (*Id.*, 232:10-15. 255:20-257:1 [Tizcareno].) Tizcareno explained that they had to continue working until their tasks were completed or considered safe for the public, as they could not leave safety hazards at the job site at the end of the workday. (*Id.*, 232:16-233:2 [Tizcareno].)

Ibarra testified that on this Project, he left the job site on time at 3:25 p.m., but he recalled seeing other workers still working. (T, 01/23/24, 345:6-346:5, 352:4-18

[Ibarra].) Ibarra recalled that it was common to work more than eight hours a day at Belco, as workers had to go to the yard to pick up a truck and material, go to the job site and work eight hours, and then sometimes workers had to return to the yard to drop off equipment. (*Id.*, 350:16-351:8 [Ibarra].) Ibarra testified that sometimes he took the trailer home because he “didn’t feel like going back to the yard.” (*Ibid.*)

The Other Belco Yards.

On certain days, certain workers picked up equipment or materials from distant Belco yards (not the Sully-Miller Yard) before arriving at the Project sites in San Fernando in the morning and/or dropped off equipment at other Belco yards after leaving San Fernando in the afternoons. According to Ochoa, workers generally did not have to pick up equipment or material outside of the Sully-Miller Yard. (T, 02/28/24, 666:17-20 Ochoa].) If a worker had to pick up a directional drill from the Chino Yard in the morning, there was no specified time for the worker to be at the job site. (*Id.*, 676:11-677:10 [Ochoa].) Ochoa testified that it was his practice to record the worker’s start time as 6:30 a.m. or 7:00 a.m. on the Contractor Daily Field Report, as he believed that is when the worker arrived at the Chino Yard in the morning. (*Id.*, 678:17-679:23 [Ochoa].) Ochoa testified that the drill was stored at the job site on a daily basis and was only returned to Chino Yard upon completion of drilling. (*Id.*, 666:21-667:10, 667:22-668:1 [Ochoa].) The mini excavator was kept on a trailer and left at the job site. (*Id.*, 670:22-671:5 [Ochoa].)

Caldera testified that he picked up solar panels from the Chino Yard, and he did not recall any other workers picking up materials or equipment from the Chino Yard during his time on the Project. (T, 02/28/24, 746:7-748:7 [Caldera].)

Tizcareno testified that he occasionally went to the Hawthorne Yard to pick up equipment or materials. Specifically, Tizcareno testified that on four or five occasions on this Project, he went to the Hawthorne Yard to pick up special equipment or materials needed for the job, such as wire, pipe, lights, or a bucket truck. (T, 01/23/24, 230:20-231:19, 248:9-25 [Tizcareno].) On these days, Tizcareno typically arrived at the Hawthorne Yard by 5:00 a.m., because he still had to be at the Sully-Miller Yard in time

for the safety meeting. (*Id.*, 231:20-232:4, 249:1-251:7 [Tizcareno].) It took between 15 and 20 minutes to load up at the Hawthorne Yard. (*Id.*, 252:8-14 [Tizcareno].) Then it took maybe 75 or 90 minutes for Tizcareno to drive from the Hawthorne Yard to the Project. (*Id.*, 251:10-252:6 [Tizcareno].)

On the days where he started at the Hawthorne Yard, Tizcareno had to return at the end of the day to return equipment and unload materials, and to retrieve his personal vehicle. (T, 01/23/24, 233:11-20, 233:21-234:8, 252:15-19 [Tizcareno].) Tizcareno usually arrived at the Hawthorne Yard around 4:00 p.m. or 4:30 p.m., sometimes 5:00 p.m., depending on traffic. (*Id.*, 252:20-253:3 [Tizcareno].) It took about 15 to 20 minutes to open the gate, return equipment and unload materials, and to lock up. (*Ibid.*) Although Tizcareno was told that the goal was for him to leave the job site earlier to offset his start time on the days he had to start at the Hawthorne Yard, this usually did not happen due to the tasks that needed to be completed or the equipment that was required to be on site for the task to be completed. (*Id.*, 253:4-254:25 [Tizcareno].)

Balderas and De Leon, both classified as Laborers, testified that they routinely went to the Chino Yard to pick up equipment before going to the Project site and to drop off equipment after leaving the Project site. Balderas testified that on the three days that he operated the directional drill on this Project, he drove his personal vehicle to the Chino Yard at 4:00 a.m. or sometimes 4:30 a.m., left the Chino Yard by 5:00 a.m. with the dump truck and drill, and arrived at the job site by 7:00 a.m.³⁴ (T, 01/18/24, 78:22-79:12, 85:11-86:9, 96:21-25, 97:13-99:14 [Balderas].) Balderas picked

³⁴ The drill was towed on a trailer behind a Ford F-750 truck stored at the Chino Yard. (T, 01/18/24, 85:16-24 [Balderas]; see also T, 01/23/24, 283:4-16 [Pena], 421:1-422:20, 434:16-20 [De Leon].) Due to morning traffic, Balderas could only drive 35 or 40 miles per hour. (T, 01/18/24, 99:2-14 [Balderas].) Balderas testified that he went directly from the Chino Yard to the job site with the truck and drill; he did not stop at the Sully-Miller Yard before going to the job site. (*Id.*, 94:9-96:20 [Balderas].)

up the drill with “Johnny,” who was the locator for the drill.³⁵ (*Id.*, 79:13-25, 113:3-15, 113:3-10 [Balderas].) At the end of the workday, Balderas and “Johnny” took the drill back to the Chino Yard. (*Id.*, 80:1-5 [Balderas].) They left the job site around 3:30 p.m. or 4:00 p.m., and it normally took three hours to go to Chino depending on traffic. (*Id.*, 80:6-13, 99:15-100:20, 105:3-7 [Balderas].) Back at the Chino Yard, they parked the truck and unloaded the equipment which would be reloaded the next morning. (*Id.*, 105:9-16 [Balderas].)

Balderas testified that on the other three days he worked on the Project, he went to the Hawthorne Yard at 6:00 a.m. to pick up materials and a dump truck or a flatbed truck, so that he could arrive to the job site around 7:00 a.m. (T, 01/18/24, 119:23-123:20 [Balderas].) On these three days, Balderas left the Project site at 3:30 p.m. or 4:00 p.m. and drove the work truck for about an hour to return it back to the Hawthorne Yard. (*Id.*, 124:3-126:11, 126:18-127:1 [Balderas].) After Balderas returned the work truck back to the Hawthorne Yard, he drove home in his personal vehicle. (*Id.*, 127:2-4 [Balderas].)

Balderas believed that he worked in December of 2020, as well as in October or November of 2021.³⁶ (T, 01/18/24, 114:25-115:16, 117:15-23 [Balderas].) However, OCC only assessed unpaid overtime for Balderas on one day—December 1, 2020.³⁷ For

³⁵ Balderas started drilling as soon as they unloaded at the job site, between 7:00 a.m. and 7:30 a.m. (T, 01/18/24, 100:21-101:5 [Balderas].) The process of “shooting a pour” involved digging a starting bore pit, locating the depth, drilling horizontally to the other side, and then hooking and pulling back the pipes. (*Id.*, 101:6-103:25 [Balderas]; see also T, 01/23/24, 282:12-283:6 [Pena].) After drilling, they backfilled the holes, cut the pipes, and cleaned and reloaded the drilling machine. (*Id.*, 104:1-12 [Balderas].)

³⁶ The exhibits do not record Balderas as having worked in October or November of 2021. (OCC Exhibit Number 120, pp. OCC_SF_001524-1542; Belco Exhibit F, pp. F402-435.)

³⁷ The CPRs and the Dailies reported Balderas as having worked eight hours on November 5, 2020. (OCC Exhibit Number 120, p. OCC_SF_001420; Belco Exhibit F, p. F140.) However, this date was not included in the Audit. (Belco Exhibit B, p. B60.) The reason is unknown.

that day, there was no worker by the name of "Johnny" listed on the Audit, the Contractor Daily Field Report, or the Daily Activity Job Report.³⁸ (Belco Exhibit B, pp. B3-4; OCC Exhibit Number 124, p. OCC_SF_001698; Belco Exhibit F, p. F160.)

Unlike the other witnesses, De Leon had cell phone records which showed the exact times he arrived at and left the various Belco yards and job sites on the Project between April 28, 2020 and July 14, 2020.³⁹ (T, 01/23/24, 359:19-408:03, 415:10-416:14, 418:5-24, 419:25-522:22 [De Leon]; OCC Exhibit Number 120, pp. OCC_SF_001370, 1371, 1373, 1386, 1389, 1392, 1395, 1399, 1403; OCC Exhibit Number 124, pp. OCC_SF_001712-1713, 1715-1718, 1720-1723, 1725-1727, 1729-1731, 1737-1738, 1754, 1762-1766; Belco Exhibit I, pp. OCC_SF_002102-2170.) The cell phone records, however, are no panacea for the lack of documentation of all start and end times for work on the Project. De Leon's cell phone records and his testimony regarding his cell phone records do not reveal any discernible patterns regarding when or why he went to the Chino Yard before arriving at, or after leaving, the Project.

De Leon testified that on some mornings before he arrived at the Project sites in San Fernando, he started his day at the Chino Yard to pick up a dump truck towing a vacuum or other equipment. (T, 01/23/24, 361:24-362:22 [April 29, 2020], 365:10-21 [April 30, 2020], 369:9-20 [May 4, 2020], 371:8-17 [May 5, 2020]; T, 01/23/24,

³⁸ Page 2 of the CPR for that week is missing, so it is unknown whether any worker by the name of "Johnny" worked that week. (See OCC Exhibit Number 120, pp. 1431-1432.) However, Johnny Sanchez, classified as Horizontal Directional Drilling, was reported on the CPRs for weeks ending March 6, June 26, September 11 and September 18, 2022. (OCC Exhibit Number 120, pp. OCC_SF_001570, 1595, 1609, 1612.) But there is no record that Balderas worked on the Project during these weeks. (*Ibid.*; see also OCC Exhibit Number 124, pp. OCC_SF_001952-1956, 2019-2022, 2014-2018, 2026-2029; Belco Exhibit F, pp. F496-500, 564-568, 604-613.)

³⁹ De Leon also provided cell phone records for July 17, 2020, but the CPRs for that week do not show that he worked on the Project that day, and that day was not included in the Audit. (OCC Exhibit Number 120, p. OCC_SF_001403; Belco Exhibit B, p. B41.)

419:25-427:19 [April 29, 2020], 432:22-435:11 [April 30, 2020]; T, 01/25/24, 456:17-457:18 [May 1, 2020], 460:7-17 [May 4, 2020]; 461:23-462:17 [May 5, 2020]; Belco Exhibit I, pp. OCC_SF_002168-2169 [April 28, 2020], 2102 [April 29, 2020]; 2104-2105 [April 30, 2020], 2106 [May 1, 2020], 2108 [May 4, 2020], 2111 [May 5, 2020].) His cell phone records show that on the days that he started at the Chino Yard, he did not always return to the Chino Yard at the end of the workday.⁴⁰ (Belco Exhibit I.)

For example, from April 28 through May 1, 2020, the evidence showed that De Leon started his workdays at the Chino Yard. At the end of each workday, he went directly home from San Fernando, except that he dropped off the work truck at the Chino Yard on Friday afternoon that week to avoid driving it home. (T, 01/25/24, 459:21-25 [De Leon].) De Leon testified that he had the ability to keep the work truck at home to save him time, but he did not always want the work truck there at his house. (*Id.*, 460:1-4, 465:2-6 [De Leon].) This suggests that De Leon was not required to return the work truck at the end of the workday and raises the question of why De Leon went to the Chino Yard in the morning if he did not return the work truck the prior evening.

Similarly, De Leon worked two days the following week, on May 4 and 5, 2020. (OCC Exhibit Number 120, p. OCC_SF_001371.) Like the prior week, the evidence showed that De Leon started his workdays at the Chino Yard. (T, 01/23/24, 369:17-21, 371:11-19 [De Leon]; T, 01/25/24, 460:5-23, 461:23-462:17 [De Leon]; Belco Exhibit I, pp. OCC_SF_002108, 2111.) At the end of the workday on Monday, May 4, 2020, De Leon left directly for home. (T, 01/23/24, 369:17-21 [De Leon]; T, 01/25/24, 461:3-18

⁴⁰ There was conflicting testimony about whether vehicles and equipment used on the Project were stored overnight at the Sully-Miller Yard or at the Chino Yard. Balderas testified that the drill had to be transported from the Chino Yard every day because it could not be stored at the Sully-Miller Yard due to safety concerns. (T, 01/18/24, 78:22-79:5, 89:23-91:11 [Balderas].) However, Ochoa testified that once the vehicle or equipment was brought out from the Chino Yard, it was stored at the Sully-Miller Yard until it was no longer needed. (T, 02/28/24, 666:17-668:5 [Ochoa]). Ochoa also testified that he was not aware of any safety concerns with storing equipment at the Sully-Miller Yard. (*Id.*, 668:2-5 [Ochoa].) De Leon's testimony is more consistent with Ochoa's testimony.

[De Leon]; Belco Exhibit I, p. OCC_SF_002110.) However, on Tuesday, May 5, 2020, De Leon went to the Chino Yard before going home. (T, 01/25/24, 463:23-464:6 [De Leon]; Belco Exhibit I, p. OCC_SF_002112.) There was no testimony to explain what De Leon did at the Chino Yard on this day, but presumably he went back to the Chino Yard to drop off the work truck since he did not work on the Project for the rest of this week.

De Leon's cell phone records do not support his testimony that he typically arrived in San Fernando between 5:45 and 6:00 a.m. to load up material and attend safety meeting at 6:15 or 6:30 a.m., or that he typically left the job site around 3:00 p.m. to return to the yard at 3:30, 4:00 or 4:30 p.m. (See T, 01/23/24, 356:25-358:19 [De Leon].) De Leon's cell phone records showed that most days he started and ended his workday in San Fernando. On these days, he arrived in San Fernando between 5:48 and 6:58 a.m.,⁴¹ and left San Fernando for home between 1:49 and 4:40 p.m.⁴²

⁴¹ The cell phone records only indicate De Leon's arrival time in San Fernando. They do not indicate what time De Leon started performing work in the mornings.

⁴² On June 10, 2020, De Leon arrived at 6:17 a.m. and left for home at 2:12 p.m. (T, 01/25/24, 475:20-477:10 [De Leon], Belco Exhibit I, pp. OCC_SF_002124-2125.)

On June 15, 2020, De Leon arrived at 6:58 a.m. and left for home at 2:44 p.m. (T, 01/25/24, 484:4-20 [De Leon], Belco Exhibit I, pp. OCC_SF_002128-2129.) On June 16, 2020, De Leon arrived at 6:36 a.m. and left for home at 2:38 p.m. (T, 01/25/24, 485:2-9, 486:8-12 [De Leon], Belco Exhibit I, pp. OCC_SF_002130-2131.) On June 18, 2020, De Leon arrived at 6:08 a.m. and left for home at 2:50 p.m. (T, 01/25/24, 488:15-21, 489:11-16 [De Leon], Belco Exhibit I, pp. OCC_SF_002134-2135.)

On June 22, 2020, De Leon arrived at 6:45 a.m. and left for home at 2:58 p.m. (T, 01/25/24, 490:17-491:6 [De Leon], Belco Exhibit I, pp. OCC_SF_002138-2139.) On June 24, 2020, De Leon arrived at 6:02 a.m. and left for home at 2:40 p.m. (T, 01/25/24, 493:2-11, 494:10-12 [De Leon], Belco Exhibit I, pp. OCC_SF_002142-2143.) On June 25, 2020, De Leon arrived at 6:18 a.m. and left for home at 2:09 p.m. (T, 01/25/24, 494:15-20, 496:2-5 [De Leon], Belco Exhibit I, pp. OCC_SF_002144-2145.)

On June 29, 2020, De Leon arrived at 5:49 a.m. and left for home at 2:57 p.m. (T, 01/25/24, 496:9-18 [De Leon], Belco Exhibit I, pp. OCC_SF_002146-2147.) On June

On the days that De Leon started at the Chino Yard, he arrived in San Fernando between 6:44 and 7:21 a.m.⁴³ On the days he ended at the Chino Yard, De Leon's cell phone records show a wide range of time of when he left San Fernando, when he arrived at the Chino Yard, and when left the Chino Yard for home. For instance, on June 8, 2020, De Leon left San Fernando at an unknown time, arrived at the Chino Yard at 1:14 p.m. and left for home at 1:38 p.m. (Belco Exhibit I, p. OCC_SF_002121), but on July 1, 2020, he left San Fernando at 3:39 p.m., arrived at the Chino Yard at 5:25 p.m. and left for home at 5:31 p.m. (p. 2151).⁴⁴

30, 2020, De Leon arrived at 5:51 a.m. and left for home at 2:46 p.m. (T, 01/25/24, 496:19-497:3 [De Leon], Belco Exhibit I, pp. OCC_SF_002148-2149.) On July 2, 2020, De Leon arrived at 6:13 a.m. and left for home at 2:15 p.m. (T, 01/25/24, 498:8-20 [De Leon], Belco Exhibit I, pp. OCC_SF_002152-2153.)

On July 6, 2020, De Leon arrived at 5:48 a.m. and left for home at 2:19 p.m. (T, 01/25/24, 498:21-499:1, 299:9-14 [De Leon], Belco Exhibit I, pp. OCC_SF_002154-2155.) On July 8, 2020, De Leon arrived at 5:57 a.m. and left for home at 4:40 p.m. (T, 01/25/24, 500:13-22 [De Leon], Belco Exhibit I, pp. OCC_SF_002158-2159.) On July 9, 2020, De Leon arrived at 5:58 a.m. and left for home at 2:40 p.m. (T, 01/25/24, 500:23-501:8 [De Leon], Belco Exhibit I, pp. OCC_SF_002160-2161.)

On July 13, 2020, De Leon arrived at 5:55 a.m. and left for home at 3:43 p.m. (T, 01/25/24, 501:9-17 [De Leon], Belco Exhibit I, pp. OCC_SF_002162-2163.) On July 14, 2020, De Leon arrived at 6:00 a.m. and left for home at 1:49 p.m. (T, 01/25/24, 501:18-22, 503:2-5 [De Leon], Belco Exhibit I, pp. OCC_SF_002164-2165.)

⁴³ De Leon arrived in San Fernando at 6:50 a.m. on April 28, 2020 (Belco Exhibit I, p. OCC_SF_002168), at 7:12 a.m. on April 29, 2020 (p. 2102), at 7:06 a.m. on April 30, 2020 (p. 2104), at 7:03 a.m. on May 1, 2020 (p. 2106), at 6:44 a.m. on May 4, 2020 (p. 2108), at 7:19 a.m. on May 5, 2020 (p. 2111), at 6:49 a.m. on June 8, 2020 (p. 2119), at 7:21 a.m. on June 9, 2020 (pp. 2122-2123), and at 7:17 a.m. on June 17, 2020 (p. 2132).

⁴⁴ On the other days, De Leon left San Fernando at 3:13 p.m. on May 1, 2020, arrived at the Chino Yard at 4:26 p.m. and left for home at 4:52 p.m. (Belco Exhibit I, p. OCC_SF_002107), he left San Fernando at 2:45 p.m. on May 5, 2020, arrived at the Chino Yard at 3:51 p.m. and left for home at 4:14 p.m. (p. 2112), he left San Fernando at 1:48 p.m. on May 15, 2020, arrived at the Chino Yard at 2:52 p.m. and left for home at 3:08 p.m. (p. 2118), he left San Fernando at 1:13 p.m. on June 12, 2020, arrived at the Chino Yard at 2:18 p.m. and left for home at 2:24 p.m. (p. 2127), he left San

The Alleged Unpaid Overtime Hours.

Belco's witnesses denied any unpaid overtime hours on the Project. Ochoa denied that he or the workers on the Project worked overtime hours on the Project when he was the foreperson. (T, 02/28/24, 690:19-691:1 [Ochoa].) Caldera also denied that the workers worked any overtime hours on the Project during the time that he was the foreperson. (*Id.*, 737:5-12 [Caldera].) Penaloza testified that he generally worked eight hours per day on this Project, but that he worked overtime on at least one day. (T, 03/01/24, 799:4-12, 800:10-801:13, 803:8-15, 817:4-7 [Penaloza].) However, Penaloza does not believe he is owed any unpaid wages on this Project. (*Id.*, 817:8-18 [Penaloza]; Belco Exhibit B, p. B4.)

Except for Ibarra, OCC's witnesses consistently testified that they were not paid overtime on the Project. De Leon testified that he was not paid for all hours he worked on the Project. (T, 01/23/24, 409:6-8 [De Leon].) This has had a negative financial impact on him, because De Leon is currently one month short of the five-year vesting requirement for his union pension plan. (*Id.*, 409:9-18 [De Leon].) De Leon never complained about unpaid overtime because he was afraid of being laid off or terminated. (*Id.*, 412:9-22 [De Leon]; T, 01/25/24, 453:13-23 [De Leon].) Balderas testified that he was not paid overtime on the Project. (T, 01/18/24, 80:14-16 [Balderas].) Ramblaz testified that he was paid 40 hours per week on this Project, and he was not paid for all the hours he actually worked. (*Id.*, 20:11-17 [Ramblaz].) Tizcareno testified that he worked eight hours on some days. (T, 01/23/24, 255:4-19 [Tizcareno].) But on the days that he worked outside of his scheduled eight-hour shift on this Project, Tizcareno was not paid overtime. (*Id.*, 235:7-16, 258:13-16 [Tizcareno].) Pena testified that he did not receive payment for the time he worked before 7 a.m. or after 3:30 p.m. on the Project. (*Id.*, 286:6-14, 287:3-11, 296:22-25, 298:4-9, 298:19-24 [Pena].)

Fernando at 1:55 p.m. on June 19, 2020, arrived at the Chino Yard at 3:29 p.m. and left for home at 3:45 p.m. (p. 2137), and he left San Fernando at 3:00 p.m. on June 23, 2020, arrived at the Chino Yard at 4:08 p.m. and left for home at 4:16 p.m. (p. 2141).

The Alleged Unpaid Rest and Meal Breaks.

The testimony also varied as to whether workers received rest and meal break periods on the Project. Ochoa testified that on this Project, he told his workers to take lunch at 12 p.m., but the workers sometimes took lunch at 11:30 a.m. (T, 02/28/24, 659:6-11 [Ochoa].) The lunch break was usually 30 minutes, but sometimes it was 45 minutes if the weather was hot or if a worker needed to go buy lunch. (*Id.*, 659:12-660:6 [Ochoa].) Caldera testified that as the foreperson, he made sure the workers took their meal breaks. (*Id.*, 734:25-735:6 [Caldera].) Caldera explained that the workers normally stacked their rest break with their meal break, so they would have a 45-minute lunch. (*Id.*, 735:7-25 [Caldera].) Neither Ochoa nor Caldera kept records of when workers took rest or meal breaks. (*Id.*, 709:24-710:12 [Ochoa], 741:17-24, [Caldera].) Caldera testified that he drove around to the different job locations to ensure that workers took breaks. (*Id.*, 741:25-743:6, 755:11-756:4 [Caldera].)

Meanwhile, some OCC witnesses testified that they did not receive 10-minute rest breaks or 30-minute meal breaks. Other OCC witnesses testified that they sometimes received meal breaks, and one OCC witness that he always received meal breaks. Balderas testified that he did not receive rest or meal breaks on the Project. (T, 01/18/24, 80:17-23, 128:21-24 [Balderas].) Balderas explained that he ate his breakfast on the drive to the job site, and his lunch on the drive from the job site after 3:30 p.m. (*Id.*, 127:5-128:2 [Balderas].) The foreperson, Julio, told Balderas and "Johnny" that they had to get the job done in eight hours so they could not take lunch. (*Id.*, 128:10-130:9 [Balderas]; see Belco Exhibit B, p. B4.)

Ramblaz testified that he did not receive 10-minute rest breaks on the Project, and that he received 30-minute meal breaks three days out of the week. (T, 01/18/24, 20:18-25 [Ramblaz].) Similarly, Tizcareno and De Leon testified that they did not receive 10-minute rest breaks on this Project, but they received 30-minute meal breaks once or twice a week. (T, 01/23/24, 235:17-236:2, 263:9-265:17 [Tizcareno], 411:24-412:5 [De Leon].) Neither Ramblaz nor Tizcareno received any extra hour of pay from Belco for missed rest or meal breaks. (T, 01/18/24, 21:1-7 [Ramblaz].; T, 01/23/24,

236:3-10 [Tizcareno].) However, Pena testified that he did not take any 10-minute rest breaks on the Project, but that he took longer meal breaks of 30 or 45 minutes every day. (T, 01/23/24, 288:12-289:6 [Pena].)

DISCUSSION

The California Prevailing Wage Law (CPWL), set forth at Labor Code section 1720 et seq., requires the payment of prevailing wages to workers employed on public works construction projects.⁴⁵ 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.) OCC 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.)

Section 1775, subdivision (a), requires that contractors and subcontractors pay the difference to workers paid less than the prevailing rate and prescribes penalties for failing to pay the prevailing rate. Section 1742.1, subdivision (a), provides for the imposition of liquidated damages (essentially a doubling of the unpaid wages) if the unpaid wages are not paid within 60 days following service of a notice of withholding of contract payments under section 1741.

⁴⁵ All further references are to the Labor Code.

When a labor compliance program such as OCC determines under section 1771.5 that a violation of the prevailing wage laws has occurred, it may issue a notice of the withholding of contract payments pursuant to section 1771.6. An affected contractor or subcontractor may appeal the notice by filing a request for review under section 1742. The request for review is transmitted to the Director of Industrial Relations, who assigns an impartial hearing officer to conduct a hearing in the matter as necessary. (§ 1742, subd. (b).) OCC 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, Belco 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 process, the Director issues a written decision affirming, modifying or dismissing the notice. (§ 1742, subd. (b).)

OCC Presented Prima Facie Evidence that Some Workers Performed Overtime for which They were not Compensated Properly But Not Nearly What was Assessed.

The single prevailing rate of pay for a given “craft, classification, or type of work” is determined by the Director of Industrial Relations in accordance with the standards set forth in section 1773. (*Sheet Metal Workers Intern. Ass’n, Local Union No. 104 v. Rea* (2007) 153 Cal.App.4th 1071, 1082.) The Director determines the rate for each locality in which public work is performed (as defined in section 1724) and publishes a general prevailing wage determination for a craft, such as [insert applicable classifications at issue in the case], to inform all interested parties and the public of the applicable prevailing wage rates. (§ 1773.) Contractors and subcontractors are deemed to have constructive notice of the applicable prevailing wage rates. (*Division of Labor Standards Enforcement v. Ericsson Information Systems* (1990) 221 Cal.App.3d 114, 125.)

Ultimately, the Director’s PWDs determine the proper pay classification for a type of work. The nature of the work actually performed, not the title or classification of the worker, is determinative of the rate that must be paid. The Department publishes an advisory scope of work for each craft or worker classification for which it issues a PWD.

The decision about which craft or classification is appropriate for the type of work requires comparison of the scope of work contained in the PWD with the actual work duties performed. Here, there is no dispute as to whether the workers were appropriately classified by Belco on this Project.

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).)

Where the employer fails to maintain accurate payroll records, the employee may demonstrate his hours by producing sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. (*Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 727.) Based on OCC’s interviews of Belco workers on this Project and other Belco projects, and on OCC’s review of Belco’s CPRs on this project, OCC concluded that Belco had a pattern and practice of not paying its workers for overtime hours worked. OCC prepared an Audit predicated on the assumption that

every worker identified in the Audit worked an additional three hours for each day the CPR recorded the worker as working eight hours. OCC assessed three hours of overtime for each worker based on the assumption that each worker was required to report to the Chino Yard in the morning before reporting to the Project site and in the afternoon after work was completed.⁴⁶ Further, although OCC elicited testimony at hearing and submitted Employee Interview Forms to show that Belco workers did not always receive rest and meal periods on this Project, the record is unclear whether such missed break periods were included in the three hours of unpaid overtime calculated for the workers listed in the Audit.

Based on the evidence available to OCC at the time it completed the Notice, it was not reasonable to assess three hours of overtime for each worker identified in the Audit for each eight-hour day recorded on the CPRs. Some workers denied working

⁴⁶ To the extent that OCC framed the unpaid overtime hours as travel time, OCC did not establish the compensability of such travel time. The Supreme Court recognized in *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575 that travel time may be compensable depending on the level of control exerted by the employer over its employees. In *Morillion*, agricultural workers were required to meet at specified assembly areas to be transported by buses provided and paid for by the employer, to and from the fields where the workers worked. (*Morillion*, 22 Cal.4th at p. 579.) “[B]y requiring employees to take certain transportation to a work site, employers thereby subject those employees to its control by determining when, where, and how they are to travel.” (*Id.*, at p. 588.) More recently, in *Huerta v. CSI Electrical Contractors, Inc.* (2024) 15 Cal.5th 908, the Supreme Court noted that *Morillion* did not assess whether the employee’s time was compensable as “employer-mandated travel,” which turns on whether the employer mandates travel to a second location “after the first location where the employee’s presence is required.” (*Huerta*, 15 Cal.5th at p. 924.) In *Huerta*, the court held that an employee’s presence at a location is “required by the employer” within the meaning of IWC Wage Order No. 16-2001 “when it is required for an employment-related reason other than the practical necessity of reaching the worksite,” and that “[e]xamples include situations where the employee’s presence at an initial location is required to pick up work supplies, receive work orders or other directives, or perform work before traveling to a second jobsite.” (*Id.*, at pp. 924-925.) OCC did not elicit testimony establishing that the workers who started or ended their workday at the Chino Yard or the Hawthorne Yard were required to do so by Belco. Rather, both Ibarra and De Leon testified that they had the choice of returning the work vehicle to a Belco yard or driving it home. (T, 01/23/24, 350:16-351:8 [Ibarra]; T, 01/25/24, 459:21-460:4, 465:2-6 [De Leon].)

unpaid overtime hours in their interviews with OCC. (See OCC Exhibit Number 1, p. OCC_SF_000267 [Julio stated on March 25, 2023 that he occasionally worked overtime but was paid; he was not working for Belco at the time of his interview]; OCC Exhibit Number 16, pp. OCC_SF_000380-381 [Escareno stated on November 18, 2022 that he reported to the project site at 7:00 a.m. on various Belco projects, that he rarely worked overtime, and he went to the yard once a week in his work truck and trailer to pick up materials]; see Belco Exhibit B, pp. B3-4 [OCC included both Julio and Escareno in the Audit].) Other interviewed workers specifically indicated that they reported to yards other than the Chino Yard. (See OCC Exhibit Number 2, p. OCC_SF_000394 [Pena stated on December 27, 2021 that he reported to the Hawthorne Yard and other yards every day for various Belco projects]; OCC Exhibit Number 8, p. OCC_SF_000271 [Ivan Ibarra stated on July 7, 2022 that he reported to the Chino Yard at 5:30 a.m. or the Hawthorne Yard at 6:30 a.m. for various Belco projects]; OCC Exhibit Number 9, p. OCC_SF_000273 [Aguilar stated on November 14, 2022 that he reported to the Hawthorne Yard at 6:30 a.m. and a few times to Lancaster at 5 a.m. on unspecified Belco projects]; OCC Exhibit Number 10, p. OCC_SF_000277 [Jesus Ibarra stated on November 14, 2022 that he reported to the Hawthorne Yard at 5 a.m. on various Belco projects].) Accordingly, it was unreasonable for OCC to assess three hours of overtime for each worker based on the assumption that each worker was required to report to the Chino Yard before and after their workday on this Project.⁴⁷

⁴⁷ The record does not show that OCC attempted to investigate any correlation between whether and where Belco workers may have been required to report before and after the eight-hour workday based on their classifications, assigned work tasks or assigned work locations. The evidence presented at hearing, as summarized in this decision, showed that even between the nine workers that testified, there was significant variation as to each worker's experience regarding when and where they reported for and left work, and as to the work they performed, if any, off-the-clock. This further evidences the unreasonableness of OCC's methodology of assessing three hours of unpaid overtime for each day a worker worked eight hours. To bolster OCC's justification for assessing three hours of unpaid for each Electrician and Laborer on the Project, Jenson reviewed De Leon's cell phone records and determined that, averaged over the 34 days he worked on the Project, De Leon was not paid for 2.91 hours per day. (T, 01/25/24, 567:20-569:10 [testimony of Jenson].) However, there were certain

Belco paid its workers the applicable union rates, which were higher than the required prevailing wage rates in the applicable PWDs. To calculate the unpaid overtime premium amounts owed for each worker, OCC utilized the actual basic hourly rate Belco paid its workers rather than the applicable PWD rates. OCC's reliance on the higher wage rates that Belco paid its workers was misplaced. Although OCC is correct that section 510 requires hours worked in excess of eight hours in a workday be paid at one and one-half times the workers' regular rate of pay, the enforcement of section 510 is outside the scope of OCC's authority in issuing a notice of withholding of contract payments under section 1771.6. Pursuant to section 1771.6, subdivision (a), OCC may enforce the provisions of "this chapter," referring to the CPWL at sections 1720 through 1861 found in Part 7 of Division 2 of the Labor Code. (See Cal. Code Regs., tit. 8, section 16434 ["A Labor Compliance Program shall have a duty to the Director to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and these regulations in a manner consistent with the practice of the Labor Commissioner."].) Section 510 is found in Part 2 Division 2 of the Labor Code. Therefore, a violation of section 510 is outside the purview of a notice issued under section 1771.6.

These flaws in OCC's methodology render the Audit woefully deficient. OCC did not draw a reasonable inference about the amount of unpaid overtime hours allegedly worked by the workers on the Project. In addition, OCC did not utilize the required prevailing wage overtime premium rates set forth in the applicable PWDs to calculate the amount of unpaid overtime on this Project. For these reasons, OCC generally failed to carry its burden of proving that the evidence provided prima facie support for the

days that De Leon did not work more than eight hours according to his cell phone records: June 10, 2020 (T, 01/25/24, 475:20-477:10 [De Leon]; Belco Exhibit I, pp. OCC_SF_002124-2125); June 12, 2020 (T, 01/25/24, 477:16-23, 482:8-11 [De Leon]; Belco Exhibit I, pp. OCC_SF_002126-2127); June 15, 2020 (T, 01/25/24, 484:4-10, 484:18-20 [De Leon]; Belco Exhibit I, pp. OCC_SF_002128-2129); June 25, 2020 (T, 01/25/24, 494:15-20, 496:2-5 [De Leon]; Belco Exhibit I, pp. OCC_SF_002144-2145); July 14, 2020 (T, 1/25/24, 501:18-25, 503:2-5 [De Leon]; Belco Exhibit I, pp. OCC_SF_002164-2165).

extent of the underpayment of overtime assessed, while still proffering evidence that some workers performed work for which they were not compensated properly, as later acknowledged by Belco. (Cal. Code Regs., tit. 8, § 17250, subd. (a).)

Belco Acknowledged Some Unpaid Overtime.

Although OCC did not prove the entirety of its Notice, Belco acknowledged in its post-hearing briefs that, if the testimony of some of the workers was to be believed, those testifying appeared to be owed unpaid overtime for certain days on the Project. These witnesses testified credibly at the hearing, and any discrepancies in their testimony can be attributed to the fact that their work on this Project began more than four-and-a-half years ago, they likely worked on different Belco projects at the same time, RailPros was not present every day work was performed on the Project, the scope of work for the Project involved various tasks in different locations, and the workers in each classification likely performed different scopes of work.

While Belco purportedly calculated the unpaid overtime it believed it owed to Tizcareno, Ramblaz, Balderas, Pena and De Leon, Belco's calculations were not correct. For example, for Tizcareno, Belco stated in its Reply Brief dated April 26, 2024, at page 4, lines 17-19: "\$71.93/hour for 24 hours (PWR Apprentice Step 5 \$64.25/hour) resulting in an hourly over assessment of \$7.68 per overtime hour totaling \$184.32." This calculation is problematic. First, Belco did not pay \$71.93/hour to Tizcareno. \$71.93/hour is the overtime rate that OCC used in its Audit for the eight hours Tizcareno worked on November 13, 2020 as an Electrician Transportation Systems Apprentice Step 5. OCC obtained the rate of \$71.93/hour by adding the overtime base rate of \$44.46/hour (which is 1.5 times \$29.64/hour, the hourly rate Belco paid) with the total fringe benefit rate of \$27.47/hour (which is what OCC calculated to be the total fringe benefit rate Belco paid). (Belco Exhibit B, p. B99.) Second, Belco did not pay \$64.25/hour to Tizcareno. \$64.25/hour is the overtime rate set forth in the applicable PWD. (Belco Exhibit M.) The overtime base hourly rate is \$40.725/hour (which is 1.5 times the base hourly rate of \$27.15/hour), plus the total fringe benefit rate of \$22.76/hour, and plus the training fund contribution of \$0.76/hour (*Ibid.*) Because no

overtime was paid, this differential between \$71.93/hour (which is the rate OCC used in its Audit) and \$64.25/hour (which is the overtime rate per the applicable PWD) is a meaningless number.

Instead, the proper way to calculate the unpaid overtime amount owed would be as follows: (1) determine the actual amount Belco paid to the worker per workweek based on the CPRs; (2) determine the total required PWD rate per the applicable PWD (taking the base hourly rate and adding the total fringe benefit rate and any predetermined increases); (3) determine the total required PWD amount by multiplying the total required PWD rate with the total number of straight time hours worked; (4) determine any credit to Belco by subtracting the total required PWD from the actual amount Belco paid; (5) determine the required total overtime rate per the applicable PWD (taking base hourly rate and multiplying it by the 1.5 overtime premium, then adding the total fringe benefit rate (not including training fund contributions)); (6) determine the required total unpaid overtime amount based on the total overtime rate and the alleged number of unpaid overtime hours worked per workweek; (7) determine the amount of unpaid overtime owed to the worker per workweek by subtracting the actual amount Belco paid from the required total overtime amount; and, (8) repeat this methodology for each workweek that the worker worked unpaid overtime to determine the total required overtime amount for the worker for the Project.

Belco acknowledged in its post-hearing briefs that Tizcareno worked an average of eight hours of unpaid overtime each week, which is about 1.75 hours per day rounded up to the next quarter-hour. (Belco's Closing Brief dated April 12, 2024, 4:15-3.) Applying the above methodology to the 1.75 hours of unpaid overtime Tizcareno allegedly worked on November 13, 2020: (1) Belco paid Tizcareno \$197.60 in straight time hours and \$219.57 in fringe benefits for a total of \$456.69 (OCC Exhibit 120, p. OCC_SF_001424); (2) the total required PWD rate is the base hourly rate of \$27.15/hour plus \$22.76/hour in fringe benefit rate which equals \$49.91/hour (Belco Exhibit M); (3) the total required PWD amount is \$49.91/hour multiplied by eight

straight time hours worked that workweek which equals \$399.28 (OCC Exhibit 120, p. OCC_SF_001424); (4) the credit to Belco is \$456.69 minus \$399.28 which equals \$57.41; (5) the required total overtime rate according is the base hourly overtime rate of \$40.73/hour (which is the base hourly rate \$27.15/hour multiplied by 1.5) plus \$22.76/hour (which is the total fringe benefit rate) equals \$63.49/hour (Belco Exhibit M); (6) the required total unpaid overtime amount is \$63.49/hour multiplied by 1.75 hours of unpaid overtime worked which equals \$111.10 (Belco Exhibit B, p. B99); (7) the amount of unpaid overtime is \$111.10 less credit for \$57.41 which equals \$53.69; and, (8) repeating these calculations for every workweek listed on the Audit results in a total amount of unpaid overtime of \$5,135.16 to Tizcareno (Belco Exhibit B, pp. B99-103).

Application of the same methodology resulted in the following total amounts of unpaid overtime for the workers who testified:

- \$1,551.78 to Ramblaz based on his testimony that he worked an average of 10.5 hours of unpaid overtime each week, which is about 2.25 hours per day rounded up to the next quarter-hour (Belco Exhibit B, p. B97; Belco's Closing Brief dated April 12, 2024, 6:21-7:5).
- \$220.95 to Balderas, assuming that Balderas worked three hours of overtime on the single date he is listed in the Audit (Belco Exhibit B, p. B60).
- \$789.54 to Pena based on his testimony that he worked an average of two hours of unpaid overtime each day (Belco Exhibit B, p. B89; Belco's Closing Brief dated April 12, 2024, 8:8-9:4).
- \$2,108.18 to De Leon based on his testimony and cell phone records as to unpaid overtime each day rounded up to the next quarter-hour (Belco Exhibit B, pp. B40-41; Belco Exhibit I; Belco's Closing Brief dated April 12, 2024, 9:13-12:9).⁴⁸

⁴⁸ To the extent that Belco contends that De Leon is not entitled to the payment of overtime because he failed to report it, any such requirement under wage and hour

Belco Is Liable for Unpaid Training Fund Contributions.

Section 1777.5, subdivision (m)(1), requires contractors on public works projects who employ journeypersons or apprentices in any apprenticeable craft to pay training fund contributions to the California Apprenticeship Council or to an apprenticeship committee approved by the Division of Apprenticeship Standards (DAS). For the same reason that Tizcareno, Ramblaz, Balderas, Pena and De Leon were underpaid overtime, Belco failed to pay training fund contributions on behalf of these workers for those hours. Accordingly, Belco is liable for unpaid training fund contributions in the following amounts:

- \$146.30 on behalf of Tizcareno for 192.5 hours of unpaid overtime at \$0.76/hour as an Electrician Transportation Systems Apprentice (Belco Exhibit B, pp. B99-103; Belco's Closing Brief dated April 12, 2024, 4:15-3.).
- \$30.59 on behalf of Ramblaz for 40.25 hours of unpaid overtime at \$0.76/hour as an Electrician Transportation Systems Apprentice (Belco Exhibit B, p. 97; Belco's Closing Brief dated April 12, 2024, 6:21-7:5).
- \$2.10 on behalf of Balderas for 3 hours of unpaid overtime at \$0.70/hour as a journey-level Laborer (Belco Exhibit B, p. B60).
- \$14.20 on behalf of Pena for 20 hours of unpaid overtime at \$0.71/hour as a journey-level Electrician Transportation Systems (Belco Exhibit B, p. B89; Belco's Closing Brief dated April 12, 2024, 8:8-9:4).
- \$24.60 on behalf of De Leon for 25 hours of unpaid overtime at \$0.69/hour and 10.5 hours of unpaid overtime at \$0.70/hr. as a journey-level Laborer (Belco Exhibit B, pp. B40-41; Belco Exhibit I; Belco's Closing Brief dated April 12, 2024, 9:13-12:9).⁴⁹

law does not apply to the CPWL. In any case, it seems unlikely that Belco was unaware its workers were working off-the-clock.

⁴⁹ The training fund contribution rate increased by one cent due to a predetermined increase.

Belco Is Liable for 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.

. . .

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

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

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

OCC assessed section 1775 penalties at the maximum rate of \$200.00. Jenson explained that OCC utilized the maximum penalty rate of \$200 per day per worker because he heard from IBEW that the failure to pay overtime was a longstanding practice, and because many interviewed workers indicated that they were afraid of retaliation from Belco. At hearing, OCC established that Belco did not promptly or voluntarily pay restitution to workers for unpaid overtime after OCC met with all of its traffic signal and street lighting contractors and asked the contractors to self-report violations and pay restitution. (§ 1175, subd. (a)(2)(A)(i).) However, OCC did not establish that Belco had a prior record of failing to meet its prevailing wage obligations under section 1775, subdivision (a)(2)(A)(ii). Assuming that the Labor Commissioner approved OCC's request for approval of forfeiture for the reasons stated above, it appears that the Labor Commissioner did abuse her discretion in determining the amount of the penalty.

Under section 1775, subdivision (a)(2)(B), the minimum penalty rate is \$40.00 for each calendar day for each worker paid less than the prevailing wage rate. Accordingly, the assessment of section 1775 penalties in the Notice is modified to

\$40.00 per violation, and the total number of violations must be reduced to 164 violations.⁵⁰ Therefore, Belco is liable for section 1775 penalties in the amount of \$6,560.00.

Belco Is Liable for Penalties Under Section 1813.

Section 1815 states:

[w]ork 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 at not less than 1½ times the basic rate of pay.

Section 1813 states:

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) 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 1813 prescribes a penalty of \$25.00 per calendar day for each worker found to have worked overtime without having been paid at the applicable hourly overtime wage rate. As discussed above, the evidence established 164 such violations by Belco.

Accordingly, Belco is liable for \$4,100.00 in penalties assessed under section 1813.

Belco Is Liable for Liquidated Damages.

Section 1742.1, subdivision (a), provides for the imposition of liquidated damages, as follows:

After 60 days following the service of a...notice of withholding under subdivision (a) of section 1771.6, 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 is subsequently overturned or modified after administrative or judicial

⁵⁰ Tizcareno worked unpaid overtime on 110 days, Ramblaz on 17 days, Balderas on one day, Pena on 10 days, and De Leon on 26 days. (OCC Exhibit Number 120; Belco Exhibit B and Belco Exhibit I [De Leon did not work overtime on May 14, June 10, 12, 15, 25 or July 14, 2020].)

review, liquidated damages shall be payable only on the wages found to be due and unpaid.

At the time the Notice issued, the statutory scheme regarding liquidated damages provided contractors two alternative means to avert liability for liquidated damages (in addition to prevailing on the case or settling the case with 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 amount of wages so paid. 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 of Industrial Relations the full amount of the assessed unpaid wages, including all statutory penalties.

In this case, Belco did not pay wages due, nor did it deposit with the Department the full amount of the assessed wages and statutory penalties. Accordingly, Belco is liable for liquidated damages under section 1742.1 for the unpaid prevailing wages found in this Decision in the amount of \$9,805.61.⁵¹

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

FINDINGS AND ORDER

1. The work subject to the Notice of the Withholding of Contract Payments was performed on a public work and required the employment of apprentices and the payment of prevailing wages under the California Prevailing Wage Law, Labor Code sections 1720 through 1861.
2. City of Los Angeles, Office of Contract Compliance served the Notice of the Withholding of Contract Payments timely.
3. Elecnor Belco Electric, Inc. filed the Request for Review timely.

⁵¹ Liquidated damages are paid to the workers. (§ 1742.1, subd. (a).)

4. No back wages have been paid and no deposit made with the Department of Industrial Relations as a result of the Notice of the Withholding of Contract Payments.
5. City of Los Angeles, Office of Contract Compliance did not meet its burden to provide prima facie support for the Notice of the Withholding of Contract Payments in its entirety because it did not draw a reasonable inference with regard to its calculation of the alleged hours of unpaid overtime and because it failed to utilize the proper prevailing wage rates for each applicable classification based on the bid advertisement date for the Project.
6. Elecnor Belco Electric, Inc. underpaid the following workers in the following amounts:
 - Benjamin Tizcareno in the amount of \$5,135.16.
 - Andres Ramblaz in the amount of \$1,551.78.
 - Sergio Huerta Balderas in the amount of \$220.95.
 - Sergio Pena, Jr. in the amount of \$789.54.
 - Daniel De Leon in the amount of \$2,108.18.
7. Elecnor Belco Electric, Inc. is liable for unpaid training fund contributions for the following workers in the following amounts:
 - Benjamin Tizcareno in the amount of \$146.30.
 - Andres Ramblaz in the amount of \$30.59.
 - Sergio Huerta Balderas in the amount of \$2.10.
 - Sergio Pena, Jr. in the amount of \$14.20.
 - Daniel De Leon in the amount of \$24.60.
8. Elecnor Belco Electric, Inc. is liable for penalties assessed pursuant to section 1775 in the amount of \$6,560.00.
9. Elecnor Belco Electric, Inc. is liable for penalties assessed pursuant to section 1813 in the amount of \$4,100.00.

10. Elecnor Belco Electric, Inc. is liable for liquidated damages on wages found due and owing.
11. All other issues are moot.

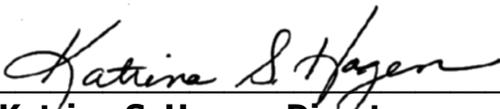
The amounts found due under the Notice, as modified by this Decision, are as follows:

Basis of the Notice	Amount
Wages Due:	\$ 9,805.61
Training Fund Contributions Due:	\$ 217.79
Penalties under section 1775:	\$ 6,560.00
Penalties under section 1813:	\$ 4,100.00
Liquidated damages:	\$ 9,805.61
TOTAL:	\$30,489.01

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

The Notice of the Withholding of Contract Payments is modified 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: 11/21/24



Katrina S. Hagen, Director
 California Department of Industrial Relations