STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Requests for Review of

Brown Construction, Inc. and
Weber Construction

Case Nos. 11-0218-PWH and 11-0219-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected prime contractor Brown Construction, Inc. (Brown) and affected subcontractor Fred Leonard Weber dba Weber Construction (Weber) submitted timely requests for review of the Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to the New Student Housing (College Creek Apartments) at Humboldt State University (Project) in the County of Humboldt. On July 6, 2011, DLSE issued the Assessment for work performed by Weber, determining that $311,260.33 in unpaid wages was due. The Assessment further determined that $143,500.00 in unpaid statutory penalties was due, $111,800 in Labor Code section 1775[1] penalties and $31,700.00 in section 1813 penalties. The requests for review were consolidated and matter was assigned to Hearing Officer A. Roger Jeanson. On December 10, 2012, DLSE moved to amend the Assessment downward as follows: wages of $148,108.03; training fund contributions of $5,167.36; section 1775 penalties of $55,700.00; and section 1813 penalties of $12,825.00, for a total amount due and owing of $221,800.39. On December 27, 2012, DLSE moved to further amend the Assessment downward as follows: wages of $40,980.25; training fund contributions of $2,175.84; section 1775 penalties of $21,850.00; and section 1813 penalties of $7,425.00, for a total amount due and owing of $72,431.09.

Pursuant to notice, the Hearing on the Merits was convened on January 7, 2013.

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

David D. Cross appeared for DLSE and Carrie E. Bushman appeared for Brown. There was no appearance for Weber. The Hearing Officer announced that Weber had telephoned him and asked if he needed to be present. The Hearing Officer advised him that his attendance was not required, but that he was welcome. The Hearing Officer announced that in off the record discussions, all issues had been resolved except penalties under sections 1775 and 1813. The parties stipulated that:

- The wage issues were resolved and are no longer at issue. DLSE will not seek wages against Weber.
- DLSE will not seek section 1775 penalties against Brown, or against the payment bond.
- The only issue as to Brown is liability for section 1813 penalties.

Following the Hearing on the Merits, Brown requested that the Hearing Officer take official notice pursuant to California Evidence Code sections 451 to 454 of legislative history materials regarding sections 1743, 1775, and 1813.[2] On March 22, 2013, the Hearing Officer advised the parties that he proposed to take official notice pursuant to Rule 45 (Cal. Code Regs., tit. 8, § 17245) of the legislative materials submitted by Brown and additional legislative materials served on the parties that date. The Hearing Officer gave the parties to April 2, 2013, to show whether and the extent to which official notice should or should not be taken. (Rule 45(b); Cal. Code Regs., tit. 8, § 17245, subd. (b).) The parties did not respond.[3]

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[2] Rule 45 (Cal. Code Regs., tit. 8, sec. 17245, subd. (a) (3)) provides in relevant part that a Hearing Officer may take official notice of "any fact which either must or may be judicially noticed by the courts of this state under Evidence Code sections 451 and 452."

[3] Official notice has been taken of the following matters: Senate Committee on Industrial Relations, Analysis of Senate Bill (SB) 1328 (1997-1998 Reg. Sess.) as amended April 23, 1997; Senate Floor Analysis of SB 1328 (1997-1998 Reg. Sess.) as amended September 5, 1997, dated September 11, 1997; Legislative Counsel's Digest, SB 1328 (1997-1998 Reg. Sess.), 1997 Cal. Legis. Serv. chapter 757 (SB 1328) (West); Assembly Committee on Labor and Employment, Analysis of Assembly Bill (AB) 1448 (2001-2002 Reg. Sess.) as introduced February 23, 2001, dated April 25, 2001; Legislative Counsel's Digest, AB 1448, chapter 28 (filed with Secretary of State April 23, 2002); Legislative Counsel's Digest, AB 1646 (1999-2000 Reg. Sess.), chapter 954 (filed with Secretary of State September 30, 2000); and Senate Committee on Judiciary, Analysis of AB 1646 (1999-2000 Reg. Sess.) as amended August 16, 1999, dated August 24, 1999.

While Weber's liability for section 1775 penalties is at issue, the only contested issue to be decided is whether a prime contractor is liable for section 1813 penalties for overtime violations committed by its subcontractor.

The Director finds that Weber is liable for the section 1775 penalties and the section 1813 penalties. The Director also finds that as prime contractor, Brown is not jointly or severally liable under section 1813 for overtime violations committed by its subcontractor, Weber. Accordingly, to the extent that the Assessment purports to assess 1813 penalties directly against Brown, Brown has met its burden of proving that this basis for the Assessment is not correct. The Director further finds that the penalties assessed under section 1813 were properly withheld from the retention held by the awarding body, Humboldt State University, pursuant to the Assessment issued by DLSE. Therefore, the Director of Industrial Relations issues this Decision affirming and modifying the Assessment.

FACTS

At the Hearing on the Merits, DLSE Exhibits 1 through 25 were admitted without objection. DLSE's last amended audit and worksheets were identified as Exhibit 25. Brown offered no exhibits.

Deputy Labor Commissioner Christopher Kim testified that he issued the original Assessment. The penalties therein were determined by Senior Deputy Labor Commissioner Lola Beavers. Beavers identified the Penalty Review, Exhibit 9. She testified that she considered the statutory factors in determining the section 1775 penalties. While Weber did not have a history of prior violations, she determined the violations in the Assessment to be willful and not based on a good faith mistake. She testified that the overtime violations were the result of Weber's workers working a "four tens" schedule at the beginning of the Project and not being paid overtime for the hours in excess of eight hours per day.

Deputy Labor Commissioner Ying Wu testified that after the case was re-assigned to her, she prepared several revised audits. Exhibit 25 is the final revision. That revision reduced the total section 1775 penalties to $21,850.00 for 437 violations at $50.00 for each violation and section 1813 penalties to $7,425.00. Weber discontinued the "four tens" schedule after the first few weeks.

DISCUSSION

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

> The overall purpose of the prevailing wage law ... is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees.

(*Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 987 [*citations omitted*] (*Lusardi*).) DLSE enforces prevailing wage requirements not only for the benefit of workers but also "to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards." (§ 90.5, subd. (a), and *Lusardi, supra*, at p. 985.)

Section 1775, subdivision (a) requires, among other things, that contractors and subcontractors pay the difference to workers who were paid less than the prevailing rate, and also prescribes penalties for failing to pay the prevailing rate.

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

1. DLSE Did Not Abuse Its Discretion by Assessing Penalties Under Section 1775.

Section 1775, subdivision (a)(2) grants the Labor Commissioner the discretion to reduce the statutory maximum penalty per day in light of prescribed factors, but it does not mandate mitigation in all cases. The Director's review of DLSE's determination is limited to an inquiry into whether the action was "arbitrary, capricious or entirely lacking in evidentiary

support ...." (*City of Arcadia v. State Water Resources Control Bd.* (2010) 191 Cal.App.4th 156, 170.) In reviewing for abuse of discretion, however, the Director is not free to substitute her own judgment "because in [her] own evaluation of the circumstances the punishment appears to be too harsh." (*Pegues v. Civil Service Commission* (1998) 67 Cal.App.4th 95, 107.) Weber did not argue that the Labor Commissioner abused her discretion in setting the penalty rate at $50.00. Hence, Weber has not shown an abuse of discretion and, accordingly, the assessment of penalties at the rate of $50.00 is affirmed.

2. Weber Owes Overtime Penalties For Weber Workers Who Were Underpaid For Overtime Hours Worked On The Project.

Section 1813 states in full as follows:

> The contractor or any subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25.00) for each worker employed in the execution of the contract by the respective contractor or subcontractor 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. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

Section 1815 states in full as follows:

> Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day and not less than 1½ times the basic rate of pay.

The record establishes that Weber violated section 1815 by paying less than the required prevailing overtime wage rate for 297 violations. Unlike section 1775, section 1813 does not give DLSE any discretion to reduce the amount of the penalty, nor does it give the Director any authority to limit or waive the penalty. Accordingly, the assessment of penalties under section 1813 is affirmed against Weber in the amount of $7,425.00 for 297 violations.

3. Brown Is Neither Jointly Nor Severally Liable For The Penalties Assessed Against Weber Under Section 1813.

Brown argues that it cannot be assessed penalties under section 1813 for Weber's failure to properly pay overtime to its workers employed in the execution of the contract. It argues that the plain meaning of the statute and legislative history relating to its adoption demonstrate a legislative intent to relieve prime contractors of any such penalties assessed against the subcontractor.

DLSE argues that prime contractors are jointly and severally liable for section 1813 penalties incurred by the subcontractor under section 1743, subdivision (a), which provides, in relevant part, that "The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon."[4] DLSE adds that it is the "long-held" position of the Director to hold prime contractors liable under section 1813 for overtime violations by their subcontractors.

As seen from the arguments of the parties, to answer the issue raised by Brown involves more than interpreting and applying section 1813 alone; it involves interpreting and applying that section within the statutory scheme of which it is a part.

> Judicial interpretation is not accomplished by examining bits and pieces of a statute, but only after a consideration of all of its parts in order to effectuate the Legislature's intent. [Citations.] 'In the rare case, widening the analytical aperture brings additional difficulties: "Statutory language which seems clear when considered in isolation may in fact be ambiguous or uncertain when considered in context." [Citation.]'

(*Azusa Land Partners v. Department of Indus. Relations* (2010) 191 Cal.App.4th 1, 16.)

> The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law.... In determining that intent, we first examine the words of the statute itself....Under the so-called 'plain meaning' rule, courts seek to give the words employed by the Legislature their usual and ordinary meaning....If the language of the statute is clear and unambiguous, there is no need for construction.... However, the 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose.... If the terms of the statute provide no definitive answer, then courts may resort to extrinsic sources,

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[4] The "final order" referenced is the order issued by the Director after hearing under section 1742, subdivision (b), as part of her decision, notice of findings, and findings.

> including the ostensible objects to be achieved and the legislative history.... We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences. ...The legislative purpose will not be sacrificed to a literal construction of any part of the statute.

(*Maryland Cas. Co. v. Andreini & Co. of Southern California* (2000) 81 Cal.App.4th 1413, 1419-1420, citing *Bodell Construction Co. v. Trustees of Cal. State University* (1998) 62 Cal.App.4th 1508, 1515-1516, citations omitted in original, internal quotation marks omitted.)

It is reasonable to conclude, as Brown does, that the plain meaning of section 1813 is that prime contractors are not liable for overtime penalties assessed against their subcontractors. The Legislature has made a given "contractor *or* subcontractor" liable for violations "*for each worker employed by the respective* contractor and subcontractor...." (§ 1813, italics added.) Nevertheless, the section is not without ambiguity, and, as DLSE points out, the Department in prior Decisions has found joint and several liability for overtime penalties assessed against subcontractors. Prior Decisions of the Director, however, give no indication that the joint and several issue was expressly raised or decided. In any event, as DLSE also acknowledges, these Decisions do not have precedential effect.

Even if the language of section 1813 is clear in isolation, its application is uncertain in the context of section 1743 and the statutory provisions that permit withholding of funds due the prime contractor where the purpose of the withholding is to enforce section 1813 penalties against the subcontractor. Thus, to determine the legislative intent, it is appropriate to look to the legislative history of the statutory scheme of which the statute is a part. (See, e.g., *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387 ["The words of [a] statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible"].) Therefore, the Director will

take official notice under Rule 45 of the legislative history materials submitted by Brown and those served by the Hearing Officer on the parties.[5]

The full legislative history of section 1813 (stats 1997, ch. 757, § 6 (SB 1328) and stats 2002, ch. 28, § 3 (AB 1448)) shows that the Legislature intended to relieve prime contractors of liability for penalties imposed against subcontractors for their failure to pay prevailing overtime rates to their workers.

Prior to the enactment of SB 1328 in 1997, existing law imposed on the prime contractor a $50.00 penalty per calendar day for each worker employed on a public works project that was paid less than the prevailing wage rate for work performed for the contractor or for the subcontractor (§ 1775) and a $25.00 penalty for each worker employed in the execution of a public work by the contractor or subcontractor that was not paid prevailing overtime rates. (§ 1813.) The prime contractor was also liable for a penalty of $25.00 per day per worker for failure to comply with specified requirements to maintain payroll records and to make them available for inspection. (§ 1776.) SB 1328 made each of these penalties applicable to subcontractors.

The Senate Committee on Industrial Relations noted that the purpose of SB 1328 was "[t]o limit the amount of penalty assessments against prime contractors for sub-contractor violations for failure to pay prevailing wages on public works projects," and, after noting that existing law imposes penalties for the failure to pay the proper wages and fringe benefits or for the non-compliance with maintenance and production of certified payroll records, the Committee analysis concludes that the bill "would relieve the prime contractor of *any* penalties assessed against the sub-contractor. [P]rime contractors would still be liable for any and all wages and benefits due." (Senate Committee on Industrial Relations Bill Analysis of SB 1328 (1997-1998 Reg. Sess.) as amended April 23, 1997; italics added.) Similarly, the Senate Floor Analysis of SB 1328 states that the bill "provides that the prime contractor is not liable for penalties for a subcontractor's violation of prevailing wage laws."

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[5] The legislative history materials include Legislative Counsel's Digests, which, though not binding on the courts, are entitled to "great weight." (*Martin v. Pacificare of California* (2011) 198 Cal.App.4th 1390, 1402.)

(Senate Floor Analysis, SB 1328 (1997-1998 Reg. Sess.) as amended September 5, 1997, dated September 11, 1997.)

Under SB 1328, the prime contractor remains liable for the payment of prevailing wages and benefits; however, it is relieved of liability for penalties imposed for the subcontractor's failure to pay prevailing wages to its workers unless the prime contractor had knowledge of the failure or failed to perform certain duties specified in the bill (§ 1775, subd. (b)). (See Legis. Counsel's Dig. of SB 1328, ch. 757 (1997-1998 Reg. Sess.), page 1, 1997 Cal. Legis. Serv. ch. 757 (SB 1328) (West).) The bill makes the prime contractor or subcontractor subject to a penalty for its failure to produce payroll records within 10 days of a request for the records and expressly provides that the contractor is not liable for the subcontractor's failure to comply. Finally, as noted, the bill makes the prime contractor or subcontractor liable for overtime penalties for workers employed by "the respective contractor or subcontractor" (emphasis added). That this limiting language was intended to relieve the prime contractor of liability for overtime penalties for a subcontractor's failure to pay its workers overtime, to the extent not clear from the words themselves, is supported by the above-cited legislative history and shown clearly by the subsequent legislative history of section 1813.[6]

SB 1328 included a "sunset" provision which provided that the changes made by the bill to sections 1776 and 1813 would be repealed on January 1, 2003. In 2002, the Legislature enacted AB 1448 to avoid this result. As the Assembly Committee on Labor and Employment Analysis of AB 1448 summarized and explained:

> SUMMARY: Provides that a prime contractor is not responsible for a violation by a subcontractor on a public works project of specified duties related to certified payroll records *and overtime pay*. A prime contractor would become liable for such actions if two Labor Code sections are permitted to sunset on January 1, 2003.
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> This bill repeals the sunset of those sections. Specifically, this bill:
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> (1) Repeals the sunset on January 1, 2003, of Labor Code Section

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[6] Where a statute is ambiguous, a subsequent expression of the Legislature as to the intent, though not binding, may be used to determine the effect of a prior act. (*California Employment Stabilization Commission v. Payne* (1947) 31 Cal.2d 210, 213-214.)

1776, which provides that a contractor is not subject to a penalty assessment due to the failure of a subcontractor to comply with specified duties to prepare, maintain, and provide certified payroll records, for employees on a public works project.

(2) Repeals the sunset on January 1, 2003, of Labor Code Section 1813, which provides that a subcontractor on a public works project is subject to any penalties for failure of the subcontractor to pay overtime to the subcontractor's employees, and the contractor is subject to any penalties for the contractor's employees, *but the contractor is not responsible for penalties for the subcontractor's violations.*

EXISTING LAW

(1) Provides in Labor Code 1776, that a subcontractor is responsible to maintain and provide for inspection, as specified, certified payroll records for the subcontractor's employees on a public works project. Provides, also, that contractor is responsible to maintain and provide for inspection, as specified, certified payroll records for the contractor's employees on a public works project. The contractor is not responsible for the certified payroll for the subcontractor's employees. This current version of Labor Code Section 1776 will sunset of January 1, 2003. On that date, a former version of this section will become operative, which will make the general contractor responsible for the failure of the subcontractor to meet specified duties related to maintenance, inspection, and filing of the certified payroll records for the subcontractor's employees.

(2) Provides in Labor Code 1813, that a subcontractor is responsible to pay its employees on a public works project overtime, as specified. Provides, also that the general contractor is responsible for such penalties for its employees, *but not for employees of the subcontractor*. This version of Labor Code 1813 will sunset on January 1, 2003. On that date a former version of this section will become operative, which will make the general contractor responsible for penalties for the failure of the subcontractor to pay overtime, as specified.

(Assembly Com. on Labor and Employment, Analysis of AB 1448 (2001-2002 Reg. Sess.) as introduced February 23, 2001, dated April 25, 2001, pp. 1-2; italics added.)

Thus, by repealing the sunset provision in section 1813, the Legislature clearly intended to continue to exempt the prime contractor from penalties assessed against its subcontractor for overtime violations of the subcontractor.[7]

DLSE argues nevertheless that section 1813 must be construed in light of section 1743, which makes prime contractors liable for "all amounts due" including penalties against the subcontractor under section 1813. However, given the clear legislative history of section 1813, I find that section 1743 does not independently impose joint and several liability on a contractor for penalties assessed against its subcontractor under section 1813.

Section 1743 was enacted as part of AB 1646 (stats 2000, ch 954, § 14), operative July 1, 2001). AB 1646 streamlined the procedures for withholding funds from a contractor due to the failure to pay prevailing wages on a public works project. It was intended to cure a potential due process defect in the existing law in response to a decision of the Ninth Circuit Court of Appeal in *G&G Fire Sprinklers, Inc. v. Bradshaw* (9th Cir. 1998) 156 F.3d 893 (judg. vacated and cause remanded, *Bradshaw v. G & G Fire Sprinklers, Inc.* (1999) 526 U.S. 1061), in which the court determined that due process requires a hearing prior to the withholding of funds, or promptly thereafter.[8] (See Senate Floor Analysis, AB 1646, August 25, 2000.) AB 1646 retained the existing law requiring an awarding body of a public works contract to withhold payments to the contractor for unpaid wages and penalties, but now upon the issuance of a civil wage and penalty assessment by DLSE (§ 1727, subd. (a)), and added a provision requiring withholding by the contractor in certain circumstances of money due the subcontractor. (§ 1727, subd. (b)). AB 1646 also added a requirement that the awarding body report promptly to the Labor Commissioner any suspected violations of the prevailing wage laws (§ 1726) and a provision that awarding bodies enforcing the prevailing wage laws give notice to contractors and subcontractors of contract payments withheld for wages, penalties, and forfeitures. (§§ 1726 and 1771.6). Finally, AB 1646 gave affected

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[7] The changes made by SB 1328 to section 1775 were also to sunset on January 1, 2003. The Legislature reenacted the provision regarding prime and subcontractor liability for the non-payment of wages (§ 1775, subd. (b)) when it amended section 1775 in 2000 in AB 1646, discussed below.

[8] After remand and another Ninth Circuit decision, the Supreme Court in *Lujan v. G & G Fire Sprinklers, Inc.* (2001) 532 U.S. 189 found no due process violation in California's statutory procedures for withholding payments from subcontractors.

contractors or subcontractors the right to seek review of the assessment or notice of withholding in a hearing before the Director (§§ 1742(a), (b) and 1771.6(b)). (See Legis. Counsel's Dig. of AB 1646 (1999-2000 Reg. Sess.), ch. 954 (filed with Secretary of State September 30, 2000.)

Concerning the "joint and several liability" provision in section 1743, the Senate Judiciary Committee analysis of AB 1646 noted the following:

> The Associated Builders and Contractors have filed a late letter of opposition, 'strongly objecting to the provision that the contractor and subcontractor would be jointly and severally liable for the penalties imposed by AB 1646.'
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> The sponsor asserts that AB 1646 simply makes express what are [*sic*] already the law, citing subdivisions (b) and (d) of Section 1775. They also note that, as in existing law, the prime contractor specifically would not be liable for any penalties unless the prime contractor had knowledge of that failure of the subcontractor to pay the prevailing wage or the contractor failed to follow specified requirements requiring the contractor to require the subcontractor to comply with the prevailing wage law and to monitor for compliance. Thus, they argue, a policy of joint and several liability is soundly based on some act of the contractor in allowing the subcontractor to violate the law.

(Sen. Com. on Judiciary, Analysis of AB 1646 as amended August 16, 1999, dated August 24, 1999, p.7.)

Thus, the legislative history of AB 1646 shows that in providing for joint and several liability in section 1743, the Legislature was concerned only with wages and section 1775 penalties for the non-payment of wages found due in an enforcement action. The legislative history cautions against a literal construction of section 1743, which would result in joint and several liability for section 1775 penalties if the order of the Director found such penalties are due under section 1775, subdivision (a) from the subcontractor even though the prime contractor established under section 1775, subdivision (b) that it was not liable for such penalties. This would be contrary to the clear intent of the legislation. The same is true with regard to penalties under section 1813. Nothing in the legislative history of AB 1646 suggests that the Legislature intended to make the prime contractor liable for overtime penalties assessed against its subcontractor in contravention of a statute passed only three years previously (and extended indefinitely two years later) which relieved the prime contractor of liability for such penalties.

Based on the foregoing, I find that Brown is not liable for overtime penalties assessed against Weber.

Finally, of note is the impact of the withholding provisions. Under section 1727, subdivision (a), the awarding body is required to withhold all amounts necessary to satisfy a civil wage and penalty assessment issued by DLSE. If the awarding body has not retained sufficient funds to satisfy an assessment based on violations of the subcontractor, DLSE may require under section 1727, subdivision (b) that the prime contractor withhold sufficient funds due the subcontractor to satisfy the assessment. Similarly, under section 1771.6, subdivision (a), an awarding body may withhold wages, penalties and forfeitures from contract payments upon notice in writing to the contractor and subcontractor, if applicable.

Thus, withholding funds due under a public works contract is an essential part of the enforcement scheme adopted by the Legislature. AB 1646 was designed to streamline the procedures for review of a decision to withhold funds by providing an affected contractor or subcontractor the right to a hearing to challenge that decision. (Sen. Com. On Judiciary, Analysis, *supra*, August 24, 1999, p. 1.) Nothing in the statutory scheme or legislative history suggests that section 1813 penalties for a subcontractor's violation should not be withheld from contract payments due the prime contractor. Had the Legislature intended that the prime contractor not be subjected to the withholding of funds by the awarding body sufficient to satisfy subcontractor penalties under section 1813, it would have said so. It did not. To the contrary, section 1727 anticipates that funds will be withheld either by the awarding body or by the prime contractor to satisfy assessments based on violations of the subcontractor. This does not constitute a penalty assessed against the prime contractor; rather, it is a means of enforcing obligations of the subcontractor by ensuring that funds are available in the event the penalties are confirmed after hearing or in a judgment.

Moreover, it must be assumed that when passing a statute, the Legislature "is aware of existing related laws and intends to maintain a consistent body of rules." (*Vieira Enterprises, Inc. v. City of East Palo Alto* (2012) 208 Cal.App.4th 584, 604, internal quotation marks omitted.) When SB 1646 became law, the rules concerning enforcement of prevailing wage laws included section 1729, which states:

> It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the subcontractor's failure to comply with the terms of this chapter, and if payment has already been made to the subcontractor the contractor may recover from him the amount of the penalty or forfeiture in a suit of law.

Thus, the Legislature has provided a vehicle to the prime contractor who hired the subcontractor to protect the prime contractor's own interests where funds are withheld by the awarding body on account of the subcontractor's violations after the prime contractor has paid the subcontractor.

Based on the foregoing, I find that Humboldt State University properly withheld contract payments due Brown pursuant to the Assessment issued by DLSE to satisfy the section 1813 penalties due from Weber.

FINDINGS

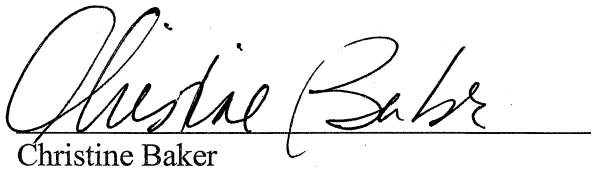
1. Affected prime contractor Brown and affected subcontractor Weber filed timely Requests for Review of the Civil Wage and Penalty Assessment issued by DLSE with respect to the Project.
2. There are no wages due for the Project.
3. DLSE did not abuse its discretion in setting section 1775, subdivision (a) penalties at the rate of $50.00 per violation, and the resulting total penalty of $21,850.00 assessed for 437 violations is affirmed against Weber.
4. Penalties under section 1813 at the rate of $25.00 per violation are due from Weber for 297 violations on the project, for a total of $7,425.00 in penalties.
5. Brown is not jointly or severally liable for the section 1813 penalties.
6. The amounts found remaining due in the Assessment as affirmed by this Decision are as follows:

Penalties under section 1775, subdivision (a): (against Weber only)	$21,850.00
Penalties under section 1813 (against Weber only):	$7,425.00
TOTAL:	**$29,275.00**

ORDER

DLSE'S Motion to Further Amend Assessment, dated December 27, 2011, is granted. The amended Civil Wage and Penalty Assessment is affirmed in part and modified in part as set forth in the above Findings. The Hearing Officer shall issue a notice of Findings which shall be served with this Decision on the parties.

Dated: 5/8/2017



Christine Baker
Director of Industrial Relations