

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Ecostructive LLC, Eleazar Flores
Mores, and Juliana Calderon Vallejo,**
Petitioners,

No. LB 23-0586

Dated: January 22, 2026

v.

**Office of the Attorney General
Fair Labor Division,**
Respondent.

Appearances:

For Petitioners: Eleazar Flores Mora and Juliana Calderon Vallejo, *Pro Se*

For Respondent: Alexander Sugerman-Brozan, Esq.

Administrative Magistrate:

James Rooney

Summary of Tentative Decision

An employer who was issued four citations by the Fair Labor Division for wage and hour violations did not contest that employees were owed restitution, but appealed the penalties assessed. Penalty of \$50,000 for failing to pay prevailing wage with specific intent is tentatively reduced to \$25,000 because the evidence shows that the employer did not act with specific intent. Penalty of \$15,000 for failure to submit true and accurate certified payroll records to the awarding authority with specific intent is tentatively reduced to \$1,000 because the evidence supported a finding of only two technical violations and the employer lacked notice of the bases for the most serious charge that it paid some employees in cash and left them off the payroll. Penalty of \$15,000 for failure to furnish records to the Fair Labor Division is tentatively reduced to \$3,750 because the evidence showed that the employer did not act with specific intent and the employer lacked notice of the basis on which it was charged with failure to produce records of cash payment to some unidentified employees. Penalty of \$15,000 for failure to provide suitable pay stubs is vacated because penalty was based entirely on the contention that the employer failed to provide pay stubs to employees who were paid in cash, but the employer was provided with no notice of the identity of any individuals who did not receive pay stubs.

TENTATIVE DECISION

Petitioners Eleazar Flores Mora and Juliana Calderon Vallejo¹ appeal four citations issued to them by the Office of the Attorney General’s Fair Labor Division for: 1) failure to pay prevailing wages for work performed on two public works projects; 2) failure to submit true and accurate certified payroll records to the awarding authorities; 3) failure to furnish true and accurate payroll records to the Fair Labor Division; and 4) failure to furnish suitable pay stubs to Ecoconstructive employees. Mr. Mora and Ms. Vallejo do not contest that they owe additional wages. They are seeking a reduction in the fines assessed in each citation.

I held a hearing on April 22, 2024 at the Division of Administrative Law Appeals in Malden. The Fair Labor Division presented testimony from its investigator, Greg Reutlinger. Mr. Mora and Ms. Vallejo testified for Petitioners.² I marked the Petitioners’ prehearing memo as Pleading A and the Fair Labor Division’s prehearing memo as pleading B. I admitted the eight exhibits proposed by Mr. Mora and Ms. Vallejo (Eco. 1-8) and nine exhibits proposed by the Fair Labor Division (FLD Ex. 1-9). I have added Ecoconstructive’s appeal letter as Eco. Ex. 9. Each party presented a closing argument when the hearing finished, which closed the record. This decision is issued as a tentative decision because I am reducing certain penalties.

Findings of Fact

Based on the testimony and exhibits presented at the hearing and reasonable inferences drawn from them, I make the following findings of fact:

¹ Ecoconstructive LLC was also cited. Because the company no longer exists, I treat it as a nominal party.

² Mr. Mora testified by Webex from Mexico.

1. Ecoconstructive LLC, was a limited liability corporation based in New Hampshire that was founded in 2019. Eleazar Flores Mora has worked in construction since he was 15. He ran the company and hired employees and subcontractors. Because he was not a U.S. citizen, Julianna Calderon Vallejo incorporated the company. (Pleading A; Mora testimony.)

2. Prior to 2021, Ecoconstructive had ten employees and provided general labor on small jobs, including the installation of wallboard. (Mora testimony.)

3. In 2021, one of Ecoconstructive's suppliers suggested that the company bid on large public projects. Mr. Mora followed up by contacting CTA Construction company, which was the general contractor on three public projects in Massachusetts: the Ashland Public Safety Building, the Amesbury Middle School, and a laboratory in Natick.³ (Mora testimony.)

³ The lab in Natick was a federal project. Ecoconstructive ran into the same problems it had with the Amesbury and Ashland projects; it misclassified its workers as apprentice carpenters rather than journeymen. The federal government determined that Ecoconstructive had underpaid its employees by \$518,000 and barred the company from federal projects for three years. CTA, rather than Ecoconstructive, ended up paying the restitution. (Mora and Vallejo testimony.)

Why the federal case focused on the general contractor while the state case before me focused on the subcontractor was explained by Assistant AG Sugerman-Brozan. He observed that the federal Davis-Bacon Act under certain circumstances makes a general contractor liable for wages owed by its subcontractor and that there is no such provision in Massachusetts law. 40 U.S.C. § 3142(c)(3); 29 C.F.R. § 5.5(a)(6) ("The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.") The government may withhold funds due under the prime contract to cover the back wages. See 29 C.F.R. §§ 5.5(a)(2), 5.9(a) (authorize contracting agency to withhold "so much of the accrued payments as may be considered necessary to pay laborers and mechanics the full amount of wages required.")

4. Ecoconstructive ran as an open shop, i.e., it was not a union shop. Mr. Mora was unfamiliar with public projects and the expenses associated with them, including the need to pay prevailing wages. (Mora testimony.)

5. The construction projects Ecoconstructive entered into in Amesbury and in Ashland in 2021 required that “[a]ll labor is to be provided at prevailing wage rates” and that a copy of the certified payroll was to be emailed to CTA and to the respective appointing authority’s representatives. (FLD Ex. 2 and 4.) For each project, the Department of Labor Standards issued documents listing the prevailing wages for the types of workers that were likely to be needed on the projects. Apprentice carpenters were to be paid somewhere between \$33/hr and \$66/hr and journeyman carpenters were to be paid in the \$70/hr range. These figures included not only base wages but payments toward health care and pension benefits. In bold, on the first pages of these two single-spaced documents, the Department of Labor Standards warned that “[a]ny apprentice not registered with DLS/DAS . . . must be paid the journeyman’s rate for the trade.” (FLD Exs. 3 and 5.)

6. Mr. Mora conceded that he found the prevailing wage sheet confusing and that he received no guidance on how he should approach his first public project. He regarded most of the people who worked for the company as inexperienced and lacking knowledge of all the tasks that carpenters perform. To Mr. Mora, someone like him with extensive experience in carpentry was a journeyman, while the people who worked for the company and had less experience were apprentices. With that in mind, the company bid for the two projects relevant here and the federal Natick project with the idea that the company would pay its workers at the carpenter apprentice rate. Mr. Mora was unaware that he could not treat employees as

apprentices unless Ecostructive was running an apprentice program (it was not) and the individual workers were registered as apprentices with the Department of Labor Standards (they were not). Mr. Mora conceded that this was a misjudgment that led the company to significantly underbid each of the projects, leading to significant financial problems later and the ultimate dissolution of the company. (Mora testimony.)

7. At first, Ecostructive submitted certified payrolls to both CTA and the relevant appointing authority. After three months, CTA told Mr. Mora to just submit the certified payrolls to it with the understanding that CTA would forward them to the towns. Ecostructive followed that process thereafter. (Mora testimony.)

8. With all three projects going at the same time, Ecostructive had to bring 60 workers total onto the jobsites to fulfil its obligations. It paid the people that worked as Ecostructive employees by using a payroll company called ADP. Most were paid by direct deposit into bank accounts or by check, if that was the way a particular employee wanted to be paid; these individuals were provided with payroll stubs whether they were paid by direct deposit or by check. (Mora testimony.)

9. Ecostructive hired subcontractors to bring more workers onto these jobsites. Ecostructive did not pay the employees of the subcontractors. It instead made out checks to the subcontractors. How many extra workers worked for the two subcontractors Ecostructive used depended on the exigencies of each job and how much work needed to be performed at any one time. Mr. Mora retained two companies with which he was familiar: Boston Best Drywall with Marcos Ramirez acting as the foreman for this company and Eli Drywall with Eric Sanchez as the foreman. (Mora testimony.)

10. Ecoconstructive began having financial problems during the course of these projects. It is likely that the problems arose after the carpenters' union learned that Ecoconstructive was paying its employees as apprentices. Investigator Reutlinger understood that union officials had been shown a text exchange at an unknown date between Ms. Vallejo and someone named Juan offering weekend wallboarding work at \$30/hr. on the Amesbury project.⁴ (Mora and Reutlinger testimony; FLD Exs. 8 and 9.)

11. Once it had been brought to Ecoconstructive's attention that it could not pay its employees as apprentices, it stopped that practice.⁵ When this happened is not clear from the record. After the Fair Labor Division became involved, Investigator Reutlinger noticed that some workers were receiving pay stubs from Ecoconstructive but were not listed on the company's certified payroll.⁶ As Mr. Mora explained, once the company started to have financial problems he had shifted some company employees to the payrolls of the two subcontractors. After Mr. Reutlinger pointed out the discrepancy he had observed, the two subcontractors began to submit certified payrolls. (Reutlinger and Mora testimony.)

⁴ Juan's identity is not reflected in the record. Nor is there any evidence that he ever worked for Ecoconstructive on the Amesbury project. If it was Juan who alerted the carpenters' union of the offer he got from Ecoconstructive, it is unlikely that he then went to work for the company.

⁵ Mr. Mora investigated establishing an apprentice training program but found that there were practical difficulties that would make it unworkable for Ecoconstructive, such as needing to pay employees for classroom training. (Mora testimony.)

⁶ Investigator Reutlinger mentioned one employee, Byron Medina, who in one week in July 2022 was apparently working for a subcontractor but was paid by Ecoconstructive. Investigator Reutlinger had enough information to determine that Ecoconstructive owed Mr. Medina \$4,136.44. (Reutlinger testimony; Eco. Ex. 2.) Mr. Mora and Ms. Vallejo did not contest this figure.

12. Investigator Reutlinger became involved after the Fair Labor Division received complaints from the carpenters' union and from ten Ecoconstructive employees. None of these employees are identified in the record. He interviewed two of the workers and sent questionnaires to the remainder. He did not receive complete responses to all the questionnaires. He did not interview employees who were paid the prevailing wage, which I take to mean that he determined that some employees were paid the prevailing wage. Mr. Reutlinger was told by an unknown number of workers that they had been paid in cash by Mr. Mora, Ms. Vallejo, or a foreman. He interviewed Mr. Marcos, who Mr. Mora identified as a foreman employed by Best Boston Drywall. Mr. Marcos said he was not familiar with that company and was not its owner. It is not clear from the record whether Mr. Reutlinger spoke to Mr. Mora. Had he spoken to Mr. Mora, he would have learned that Ecoconstructive denied ever paying any of its employees in cash. (Reutlinger and Mora testimony.)

13. On March 11, 2022, Investigator Reutlinger sent Ms. Vallejo a demand for payroll record, pay stubs, timekeeping records, and photocopies of apprentice cards. He initially asked that the company respond by March 28, 2022. In further email exchanges, he extended the deadline until April 29 and then May 13, 2022. (Reutlinger testimony; FLD Ex. 1; Eco Exs. 1 and 7-9.)

14. Ecoconstructive hired an attorney to handle document production. (Eco Ex. 9.) Mr. Reutlinger recalled that it took nine or ten supplemental productions for Ecoconstructive to complete its document production. The production included certified payroll records for the Amesbury and Ashland projects and pay stubs for Ecoconstructive employees. It did not include

timekeeping records. The production also did not include any records of cash payments to employees or pay stubs to employees paid in cash. (Reutlinger testimony.)

15. As a result of its investigation, on November 1, 2023, the Fair Labor Division issued four citations to Ecoconstructive, Mr. Mora, and Ms. Vallejo. (Eco Exs. 2-5).

16. Citation #22-03-47557-001 (“Citation 1”) alleges that Ecoconstructive failed to pay prevailing wages to its employees that worked on the Ashland Public Safety Building and the Amesbury Middle School projects. The essence of this citation is that Ecoconstructive paid its employees as apprentice carpenters when it should have paid them as journeyman carpenters. The citation declares that the violation was with specific intent. Investigator Reutlinger reached this conclusion because the contract documents signed by the company clearly stated that unless employees were registered as apprentice carpenters, they had to be paid as journeymen. Thus, the company must have known this and its subsequent payment of its employees as apprentices when they were not registered as such must have been intentional. Investigator Reutlinger determined how much restitution the company owed its employees by calculating the difference between what they were paid as apprentices and what they should have been paid as journeymen. The citation lists 20 Ecoconstructive employees and how much each was owed in restitution. The total figure was \$95,091.79. Although Investigator Reutlinger suspected that some Ecoconstructive employees were paid in cash, he arrived at restitution figures by looking only at the pay of employees listed in certified payroll records received or at pay stubs from December 2021 to October 2022. The penalty the Fair Labor Division assessed was \$50,000. (Reutlinger testimony; Eco Ex. 2.) Mr. Mora and Ms. Vallejo do not contest the restitution figure Mr. Reutlinger calculated. (Mora testimony.)

17. Citation # 22-03-47577-002 (“Citation 2”) alleges that Ecoconstructive failed, with specific intent, to provide the two awarding authorities with true and accurate certified payroll records on a weekly basis for both projects as required by M.G.L. c. 149, § 27B. Investigator Reutlinger thought there were three aspects to its violation: Ecoconstructive submitted its certified payroll to the general contractor and not to the awarding authorities, the payrolls did not list employees who were paid in cash, and the records failed to include a necessary element, namely employee addresses. The penalty the Fair Labor Division assessed was \$15,000. (Reutlinger testimony; Eco Ex. 3.)

18. The record contains only one page of a certified payroll record. This page was from a payroll for the Ashland project. Mr. Mora testified that the templates provided by the awarding authorities for certified payrolls for the two projects were different. The Amesbury template instructed that employee addresses be listed, which the company did. The Ashland template, however, instructed that the company provide the name of each employee and an “individual identifying number” such as the last four digits of each employee’s Social Security number. Even though this was a state project, the town used a template prepared by the U.S. Wage and Hour Division. The page in the record shows that Ecoconstructive listed each employee’s name and the last four digits of their Social Security number. The sheet listed five employees who were paid as apprentices and one who was paid as a rough carpenter. It listed the hours each employee worked each day, the gross salary amount and each deduction taken. (Mora testimony; EC Ex. 6.) The record does not contain the names of any employees the Fair Labor Division thought were paid in cash by Ecoconstructive.

19. Citation # 22-03-47557-003 (“Citation 3”) alleges that Ecoconstructive failed, with specific intent, to furnish true and accurate payroll records to the Attorney General’s Office. Once Ecoconstructive’s document production ended, Investigator Reutlinger had obtained certified payroll records and certain pay stubs but had received neither employee timekeeping records nor pay stubs for employees paid in cash. The penalty assessed was \$15,000. (Reutlinger testimony; Eco Ex. 4.)

20. Citation # 22-03-47557-004 (“Citation 4”) alleges that Ecoconstructive failed, with specific intent, to provide employees with pay stubs or pay receipt documentation as required by M.G.L. c. 149, § 148. This citation was based only on Investigator Reutlinger’s determination that Ecoconstructive had paid some employees in cash but failed to produce pay stubs for these employees. He conceded that the pay stubs Ecoconstructive produced included all the information pay stubs were supposed to contain. The penalty assessed was again \$15,000. (Reutlinger testimony; Eco Ex. 5.)

21. The Wage and Hour statute requires that when the Attorney General issues a penalty it must take “into consideration previous violations of this chapter or said chapter 151 by the employer, the intent by such employer to violate the provisions of this chapter or said chapter 151, the number of employees affected by the present violation or violations, the monetary extent of the alleged violations, and the total monetary amount of the public contract or payroll involved.” M.G.L. c. 149, § 27C(b)(2). Mr. Reutlinger did not make the decision on any of the penalty amounts, but he offered testimony on the statutory factors. Ecoconstructive had not previously been cited for wage and hour violations. The Fair Labor Division had concluded that Ecoconstructive acted with specific intent with respect to the

violations alleged in the four citations. It identified 20 affected employees who were owed \$95,091.79. And Ecoconstructive’s gross annual payroll was \$1.5 million.⁷ (Reutlinger testimony.)

22. Ms. Vallejo filed an appeal on November 20, 2023 seeking a reduction in the fines. As to Citation 1 (misclassification of employees as apprentices), she stated that any underpayments were an unintentional mistake. As to Citation 2 (inaccurate certified payroll), she thought that the underpayments reflected on the certified payroll amounted to the same charge as in Citation 1. With respect to Citation 3 (record production), she stated that the company produced a large volume of records and hired a well-known attorney to help produce the requested documents. She asked the Attorney General to identify the documents the company failed to produce.⁸ With respect to Citation 4 (pay stubs), she noted a lack of documentary evidence. (Eco Ex. 9.)

Discussion

Ecoconstructive was a small construction company that temporarily ballooned in size to work on several public works projects without any prior experience. Its inexperience led to several errors and resulted in the Fair Labor Division issuing it four citations for wage and hour violations.

The Wage and Hour statute provides that an employer who appeals a citation issued by the Fair Labor Division must demonstrate “by a preponderance of evidence that the citation or

⁷ It is not clear whether this figure reflects just the payroll for the two projects at issue here or all three public projects Ecoconstructive was working on at the time.

⁸ There is nothing in the record to show that the Fair Labor Division identified the documents it thought were missing after Ms. Vallejo appealed and before the hearing. As noted earlier, Mr. Reutlinger testified that the company failed to produce timekeeping records, pay stubs for employees paid in cash, and records of wages paid in cash. (Reutlinger testimony.)

order was erroneously issued.” M.G.L. c. 149, § 27C(b)(4). The obligation of the Fair Labor Division was to provide adequate notice to Ecoconstructive of the issues involved. M.G.L. c. 30A, § 11(1) provides that:

Parties shall have sufficient notice of the issues involved to afford them reasonable opportunity to prepare and present evidence and argument. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable.

The evidence shows that Ecoconstructive failed to carry out certain responsibilities unique to state public works projects. It also shows that the Fair Labor Division failed to provide adequate notice to Ecoconstructive as to the bases of some of the citations.

Citation 1 – Prevailing Wage: Misclassification of Employees as Apprentices

Citation 1 charges that Ecoconstructive failed to pay prevailing wages, with specific intent, to its employees that worked on the Ashland Public Safety Building and the Amesbury Middle School projects. The prevailing wage law requires contractors and sub-contractors engaged in public works construction projects to pay employees the prevailing wage as determined by the Commissioner of the Department of Labor. M.G.L. c. 149, § 26. The Commissioner is obligated to prepare a list of the jobs usually performed on public works projects. Prior to awarding a contract on a public works project, the awarding authority must submit a list of the jobs the project will include for which the prevailing wage must be paid. The Commissioner then determines the wage rate for each of the job classifications and issues a wage rate sheet for the project. M.G.L. c. 149, § 27. The job classifications and the wage rates for each classification are derived from collective bargaining agreements, if any, that exist in private industry in the localities where the work is to be performed. M.G.L. c. 149, § 26.

Mr. Mora admitted that he mistakenly classified some workers as carpenter “apprentices” and paid them at apprentice rates. For a worker to be employed as an apprentice on a public works project, that person must be participating in an apprenticeship program registered with the Division of Labor Standards. M.G.L. c. 23, § 11J. The apprentice must also have an apprentice identification card. M.G.L. c. 23, § 11W. Mr. Mora conceded that his company did not have a registered apprenticeship program and that its employees did not have apprentice identification cards.

Because these workers were performing carpentry and were not apprentices, they should have been paid the wage rate applicable to journeyman carpenters. M.G.L. c. 149, § 26. Mr. Mora and Ms. Vallejo accept responsibility for paying the workers the proper wage rate. They do not contest that they owed the amount of restitution that Investigator Reutlinger calculated.

The only issue is the penalty and whether Mr. Mora and Ms. Vallejo deliberately misclassified workers for the purpose of avoiding paying them journeyman wages that the employees were otherwise entitled to. Mr. Mora denies that he intended to underpay Ecoconstructive’s employees. He maintains that he was unfamiliar with public works projects, the prevailing wage requirement, or what it took to treat someone as an apprentice; thus, he simply did not realize he was paying the wrong wage rate. Investigator Reutlinger asserts that Mr. Mora must have known that the company had to pay any carpenters the journeyman rate because the contracts that Ecoconstructive signed made clear that the company could not treat its employees as apprentices.

As a general matter, ignorance of the law is no excuse for a violation of the law, but ignorance may show a lack of specific intent.

The term “specific intent,” in this context, has the same meaning as it does in criminal law. *Watsop, et al. v. Office of Atty. Gen.*, LB-20-0462, at *11 (Div. Admin. Law App., Dec. 23, 2021). To act with specific intent requires that the actor “must not only have consciously intended to take certain actions, but that he also consciously intended certain consequences.” *Id.* (citing *Commonwealth v. Gunter*, 427 Mass. 259, 269 (1998)). As applied to wage and hour cases, specific intent refers to “purposeful violations, meaning that the employer consciously committed an act or omission with the goal of causing a particular result.” *DeLuca’s Market, Inc. v. Office of Atty. Gen.*, LB-18-0235, at *10 (Div. Admin. Law App., Oct. 8, 2019) (citation omitted).

The record establishes that Mr. Mora thought he could validly classify inexperienced workers performing carpentry as apprentices, and that only experienced carpenters, like himself, were journeymen. The evidence is that Ecoconstructive did pay carpenters Mr. Mora thought were journeymen at the journeyman rate. The one and only page of a certified payroll included a payment to a rough carpenter at the journeyman rate. (Finding 18.) No doubt Mr. Mora should have read the contracts Ecoconstructive signed more carefully, but what he lamented as “significant underbids” on the Ashland and Amesbury projects shows that Ecoconstructive bid the project with the expectation that most of its employees could legitimately be paid as apprentices. This would have been foolish if Mr. Mora knew beforehand that all the inexperienced workers employed by Ecoconstructive would ultimately have to be paid the much higher journeyman rate. I am not convinced that Mr. Mora misclassified Ecoconstructive

employees with the aim of evading prevailing wage obligations. Because the element of specific intent is lacking, I conclude that Mr. Mora and Ms. Vallejo violated the prevailing wage law without specific intent.

There is very little evidence to explain why the Fair Labor Division penalized Mr. Mora and Ms. Vallejo \$50,000. The Wage and Hour statute provides that the maximum penalty for an intentional violation is twice the maximum for an unintentional violation. M.G.L. c. 149, § 27C (b)(2). Since Investigator Reutlinger emphasized his determination that Ecoconstructive acted with specific intent and the citation recites that the company acted with specific intent, I conclude that the citation should be half that now that I have concluded that the company did not act with specific intent. I thus affirm the uncontested restitution amount of \$95,091.79 and reduce the penalty associated with Citation 1 to \$25,000.

Citation 2 – Inaccurate Certified Payroll

Citation 2 charges that Ecoconstructive failed, with specific intent, to provide the two awarding authorities with true and accurate certified payroll records on a weekly basis for both projects as required by M.G.L. c. 149, § 27B. Every employer on a public works project that must prepare a certified payroll “shall submit a copy [of the certified payroll] to awarding authority on a weekly basis by mail, first class postage prepaid, or by electronic mail.” M.G.L. c. 149, § 27B. This payroll must show “the name, address and occupational classification of each such employee on said works, and the hours worked by, and the wages paid to, each such employee” and be accompanied by a statement from the employer that payroll is correct and lists the wages paid to each employee. *Id.*

The Fair Labor Division found three flaws in the way Ecoconstructive handled certified payroll records: it did not provide them directly to the awarding authorities, it did not always include employee addresses, and it did not list wage payments to employees paid in cash.

There is evidence in the record that, for a short time, Ecoconstructive sent certified payroll records to one of the awarding authorities. But then, CTA, the general contractor, asked Ecoconstructive to send certified payroll just to it with the assurance that CTA would forward a copy to the awarding authorities. The Wage and Hour Act does not specifically bar an employer from having a third party submit certified payroll to an awarding authority. It specifically allows one third party – the Post Office – to be used as a means of delivery. But overall, the legislature seems clear that it wanted employers to submit certified payrolls directly to the awarding authority.

Relying on CTA to forward certified payrolls to the awarding authorities was an error on Ecoconstructive's part, but it appears to have been merely a technical violation. Investigator Reutlinger testified that he obtained copies of certified payrolls from Ecoconstructive and the awarding authorities. He did not testify to any differences between those he obtained from Ecoconstructive and those he obtained from the awarding authorities. Thus, it appears that CTA did what it said it would do; it forwarded intact Ecoconstructive's certified payrolls to the appropriate awarding authorities. The evidence is that Ecoconstructive provided certified payrolls just to CTA because CTA asked it to do so. There was no specific intent on Ecoconstructive's part to avoid providing certified payrolls directly to the awarding authorities.

As for any failure on Ecoconstructive's part to include employee addresses on its certified payroll, the evidence is that Ecoconstructive provided addresses on the certified payrolls for the

Amesbury project but not on the Ashland project. It did not do so for the Ashland project because the form that the appointing authority used for employers to fill out certified payrolls asked for an “individual identifying number” such as the last four digits of each employee’s Social Security number. The form came from the federal government’s Wage and Hour Division and would, on its face, seem legitimate. Ecoconstructive filled it out as directed by providing the last four digits of each employee’s Social Security number. This sufficed to provide a unique identifier for each employee, which appears to have been the legislature’s purpose in asking employers to include employee addresses. And, as Mr. Mora testified, there was nowhere on the form to list employee addresses. Again, this is a technical violation and one without any specific intent to violate state law.

As for the most serious charge, namely that the company deliberately left off its certified payrolls the employees it paid in cash, the problem here is that the Fair Labor Division failed to provide any notice as to the identity of these individuals. Mr. Reutlinger testified that he had spoken to two Ecoconstructive employees and had received some completed questionnaires from a few other employees who told him they had been paid in cash. There is no evidence as to how many employees told him of being paid in cash. The record contains none of the names of the individuals making such claims. Ecoconstructive cannot be expected to respond to this charge without knowing who it is that the company allegedly paid in cash and left off its certified payroll. Consequently, I conclude that the Fair Labor Division did not give adequate notice of this violation and that it was therefore erroneously issued.

With the most serious charge failing for lack of notice, the only thing left are the two charges that were simply technical violations. Again, there is little information to explain why

the Fair Labor Division imposed a \$15,000 penalty, but presumably its belief that week after week, month after month, Ecoconstructive had hidden from the appointing authorities the money it was paying employees in cash, was the primary driver of this substantial penalty. Absent its most serious charge, the other violations deserve only a minimal penalty of \$500 each. I therefore modify the penalty to \$1,000.

Citation 3 – Record Production

Citation 3 charges that Ecoconstructive failed, with specific intent, to furnish true and accurate payroll records to the Fair Labor Division. Every employer who pays employees for work in Massachusetts must:

Keep a true and accurate record of the name, address and occupation of each employee, of the amount paid each pay period to each employee, of the hours worked each day and each week by each employee, and such other information as the commissioner [of labor] or the attorney general in their discretion shall deem material and necessary.

M.G.L. c. 151, § 15.

Employers must maintain these records for two years, and when the Attorney General demands to inspect these records, the employer must “furnish [the records] immediately.” M.G.L. c. 151, § 15. An employer who fails to furnish a required record to the Attorney General or who “hinders or delays” the Attorney General in the performance of his/her duties shall be subject to civil citation. M.G.L. c. 151, § 19.

Similarly, an employer performing work on a public works project must keep for three years after the end of the project a copy of the certified payroll associated with that project and “promptly furnish” it to the Attorney General on demand. M.G.L. c. 149, § 27B.

The record of what happened during Investigator Reutlinger's efforts to obtain documents from Ecoconstructive is less than clear. The company asked for a few extensions to produce documents. It hired an attorney who helped produce what Mr. Mora described as voluminous documents. According to Investigator Reutlinger, it took numerous supplementary productions to obtain documents from the company. In the end, Mr. Reutlinger was missing employee time records and records of cash payments to employees.

The only records produced by either party regarding document production were the initial payroll demand from Investigator Reutlinger and a few emails between Ms. Vallejo and Investigator Reutlinger asking for more time to produce records. No other communications are in the record. About all the record reflects is that it took a few months for the company to produce documents, it did so in a somewhat piecemeal fashion, and it hired an attorney to help it respond to the payroll request. Thus, the record offers little help to determine if something went on during the production that would support or not support the \$15,000 penalty.

That leaves the gaps Investigator Reutlinger identified in the production overall as the evident bases for the penalty: the lack of timekeeping records and the lack of documentation of the amount paid to employees in cash. It is hard to figure out what to make of the lack of production of timekeeping records. Did Ecoconstructive not have timekeeping records, or did it not produce what it had? I assume the company kept some record of the hours of its employees. The one page of certified payroll that is in the record shows that the company kept track of the hours of its employees. Did the

company or its attorney not understand that this was one of the items Investigator Reutlinger was seeking? There is a dearth of information on this from either the Fair Labor Division or the company. As it was Ecoconstructive's burden to show that the citation was erroneous, it has failed to provide a basis for determining that the penalty is erroneous, to the extent it is based on the lack of production of timekeeping records.

I am not convinced, however, that Ecoconstructive acted with specific intent to withhold records from the Fair Labor Division. It tried to comply with the payroll demand by hiring an attorney to handle the production. This does not seem like a company that deliberately withheld documents from the Fair Labor Division.

As for the notion that Ecoconstructive failed to produce records of the employees it paid in cash, this is a surmise on Investigator Reutlinger's part but not one in which he revealed which employees he thought were the ones paid in cash. As I mentioned above, Investigator Reutlinger had been told by some employees that they were paid in cash, but unless the company was informed who the Fair Labor Division thought was paid in cash, it lacked notice of what it would have to disprove. Mr. Mora denied that the company paid any employees in cash and pointed out that the company used a payroll service to deposit wages in employee bank accounts or give employees checks for their wages. But it is the lack of notice that undermines this basis for the penalty.

Lacking information on how the Fair Labor Division chose a \$15,000 penalty, I assume that it relied equally on both the company's failure to produce timekeeping records and its failure to produce records of employees paid in cash. As for its conclusion that the company acted with specific intent, I take this to mean that the

penalty assessed was greater than what would have been assessed had the Fair Labor Division thought the company acted without specific intent. As the Division's reasoning is unexplained, and the maximum penalty that could be assessed is twice what it would be if a company lacked specific intent, I assume the Division doubled the penalty because it thought the violation was with specific intent. As I have concluded that the company did not act with specific intent, that halves the penalty. And as I have upheld the penalty with respect to timekeeping records but not as to records of cash payments, that halves the penalty again. I therefore affirm the citation but reduce the penalty to \$3,750.

Citation 4 – Lack of Pay Stubs

Citation 4 charges that Petitioner failed, with specific intent, to provide employees with pay stubs or pay receipt documentation as required by M.G.L. c. 149, § 148. Employers in Massachusetts are required to provide their employees suitable pay slips, check stubs, or envelopes showing at least the name of the employee, the name of the employer, the day, month, year, number of hours worked, and hourly rate, and the amounts of deductions or increases made for the pay period. M.G.L. c. 149, § 148. Since Investigator Reutlinger acknowledged that the pay stubs Ecoconstructive produced all had the required information, the only basis for this citation is Investigator Reutlinger's belief that the company failed to produce pay stubs for the employees it paid in cash. But as with the other charges related to this belief, the Fair Labor Division has not identified any individuals for whom the company failed to provide a pay stub or any other evidence that would show the company both paid employees in cash and failed to give them a pay stub. Thus, inadequate notice was provided to Ecoconstructive

as to this charge, and all records produced to the Fair Labor Division show that the company provided compliant pay stubs to its employees. I therefore vacate this citation.

Conclusion

For the reasons stated above, the uncontested restitution amount of \$95,091.79 is affirmed. The penalty for misclassifying employees as apprentices is tentatively reduced to \$25,000. The penalty for failing to file true and accurate certified payrolls is tentatively reduced to \$1,000. The penalty for failure to produce payroll records to the Fair Labor Division is tentatively reduced to \$3,750 and the penalty for failure to provide employees with pay stubs is vacated.

Division of Administrative Law Appeals

James P. Rooney

James Rooney
First Administrative Magistrate

Dated: January 22, 2026