

RECEIVED

FEB 25 2014

CITY CLERK'S OFFICE

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Redflex Traffic Systems, Inc.

Case No.: 13-0674-PWH
13-0675-PWH
13-0676-PWH
13-0677-PWH
13-0678-PWH
13-0680-PWH
13-0681-PWH
13-0682-PWH
13-0683-PWH
13-0684-PWH
13-0685-PWH
13-0686-PWH

[Request For Review of
DLSE Case No.: 40-28680/552]

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

**NOTICE OF APPOINTMENT OF HEARING OFFICER;
NOTICE OF PREHEARING CONFERENCE;
and PRELIMINARY ORDERS**

1. **Nathan D. Schmidt** has been appointed as the Hearing Officer in this matter. A Prehearing Conference will be held on **March 3, 2014, at 10:00 am** by conference telephone call initiated by the Hearing Officer to the parties or representatives listed below:

Scott Osborne, Counsel for Contractor: (503) 229-0404

Galina Velikovich, Enforcing Agency Counsel: (415) 703-4875

Any party who needs to be reached at a different number or who is aware of any other person who should participate in the Prehearing Conference shall contact **Cari Castellano** at **(510) 286-1202** as soon as possible and at least two (2) Working Days prior to scheduled date of the conference. *Those who do not participate in the Prehearing Conference may be bound by Orders entered in their absence.*

2. Motions, applications, and other papers may be submitted to the Hearing Officer as follows:

Regular mail: **DIR, Office of Director, Legal Unit**
ATTN.: [Cari Castellano | 13-0674-PWH, 13-0675-PWH,
13-0676-PWH, 13-0677-PWH, 13-0678-PWH, 13-0680-PWH,
13-0681-PWH, 13-0682-PWH, 13-0683-PWH, 13-0684-PWH,
13-0685-PWH, 13-0686-PWH]
1515 Clay Street, Suite 701

Oakland, CA 94612

Fax: **ATTN.: [Cari Castellano | 13-0674-PWH, 13-0675-PWH,
13-0676-PWH, 13-0677-PWH, 13-0678-PWH, 13-0680-PWH,
13-0681-PWH, 13-0682-PWH, 13-0683-PWH, 13-0684-PWH,
13-0685-PWH, 13-0686-PWH]
(510) 286-1220**

THE CASE NAME AND NUMBER SHOWN ABOVE MUST APPEAR ON ALL PAPERS SUBMITTED TO THE HEARING OFFICER. All papers filed with the Hearing Officer shall include proof that copies have been provided to all other parties.

3. Parties and representatives have a continuing duty to keep the Hearing Officer and each other informed of their correct and current names and contact information. Parties are encouraged to accept service of papers from the Hearing Officer by e-mail in all cases. The attached Official Address Record lists the currently maintained addresses for all parties, attorneys, and potential interested persons. All documents served by the Hearing Officer from this point forward will be served only on parties or their attorneys and Interested Persons who have been granted permission to participate in this proceeding under Rule 8 (Cal. Code Regs., tit. 8, § 17208).
4. A hearing on the merits will be set as necessary if the case is not settled by the parties.
5. This proceeding is being conducted pursuant to section 1742 of the Labor Code and the Prevailing Wage Hearing Regulations found at California Code of Regulations, title 8, sections 17201 – 17270, with Rule 31 (§ 17231) authorizing the Prehearing Conference.¹ The regulations and optional forms used for these proceedings are available for review and downloading from the Department of Industrial Relations' web site at www.dir.ca.gov/t8/ch8sb6.html. *This is not a proceeding in court nor before an administrative law judge of the State Office of Administrative Hearings; and it is not governed by sections 11500 and following of the Government Code.*
6. Parties have the right to request an interpreter for any hearing requiring participation by a Party or witness who cannot speak or understand English, or who can do so only with difficulty, or who is deaf or hearing impaired as defined under Evidence Code section 754. Rule 48 (§ 17248) governs requests for and the appointment of interpreters for these proceedings.
7. **DISPUTE OVER COVERAGE:** Any contention that the workers listed in the Assessment were not entitled to the payment of prevailing wages shall be presented in writing to the Hearing Officer **at least ten days prior to the scheduled prehearing conference** and shall include sufficient information and analysis to enable the Hearing Officer and other parties to understand the legal and factual basis for the contention. In cases where a coverage dispute has been raised, the enforcing agency shall file and serve a counter-statement **at least two days before the scheduled prehearing conference** setting forth the legal and factual basis for determining that state prevailing wage requirements did apply. The hearing officer may refer the coverage question to the Director for a determination under California Code of Regulations, title 8, section 16001. **A failure to raise the coverage issue timely may result in a finding that the claim that the workers were not entitled to prevailing wages has been waived. However, all other defenses will be preserved.**

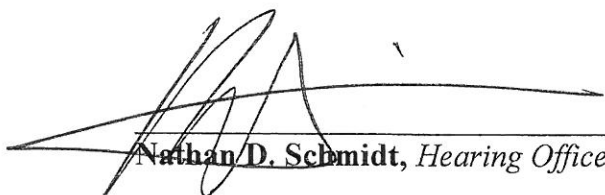
¹ All further references to Prevailing Wage Hearing "Rules" are to California Code of Regulations, title 8.

8. With the exception of names, personal identifying information (including but not limited to social security numbers, home addresses and telephone numbers) must be redacted from any document submitted into the record of this case. If personal identifying information other than names is absolutely essential for the determination of an issue, an unredacted copy of the document shall be submitted under seal together with an explanation of why the personal identifying information must be considered. If the personal information is not needed, the unredacted document will be returned.

9. Other orders: _____

SO ORDERED.

Dated: February 21, 2014



Nathan D. Schmidt, Hearing Officer

AGENDA FOR PREHEARING CONFERENCE

Stipulations on Threshold Issues: At the first Prehearing conference, the parties shall be prepared to stipulate to the following items or explain the factual and/or legal basis that makes stipulation impossible: (1) whether the work was a covered public work, subject to prevailing wage requirements. (Labor Code §§1720 *et seq.*); (2) whether the Assessment/Notice to Withhold was timely served; (3) whether the request for review was timely filed; (4) whether the enforcing agency's evidence has been made available to the affected contractor or subcontractor; and (5) whether any of the back wages and penalties have been paid following issuance of the Assessment/Notice to Withhold or whether the unpaid wages and penalties have been deposited with the Department of Industrial Relations to be held in escrow or an undertaking has been posted covering the full amount of the Assessment/Notice to Withhold.

The following additional matters may be considered at the Prehearing Conference:

- Other Stipulations: Whether the parties can stipulate to issues, facts, and the admissibility of evidence *when there is no reasonable basis for dispute.**
- Parties and Related Cases: (1) Whether the Assessment or Notice of Withholding has been served on all affected contractors, subcontractors, and the bonding or surety company; (2) The identity of any person or entity who filed a formal complaint that led to the Assessment or Notice of Withholding; (3) Whether any of the parties entitled to notice will seek to intervene or whether there are any other persons who will seek to become interested participants under Rule 08; and (4) Whether any other party has filed a Request for Review from the same Assessment or Notice of Withholding or whether the affected contractor or subcontractor has filed a Request for Review from a different Assessment or Notice of Withholding that raises the same issues; and whether consolidation of any of these related matters would be appropriate.
- Evidence: (1) Whether there are any issues concerning the disclosure and availability of evidence prior to the hearing; (2) Whether any party intends to present witness testimony by affidavit or declaration in lieu of appearance under Rule 34 (§ 17234); or whether any party will seek a stipulation to obtain testimony by a deposition in lieu of requiring a witness to attend the hearing; (3) What the parties anticipate will be the number of witnesses and scope of documentary evidence presented at the hearing (4) Whether any party who is not represented by an attorney will require the issuance of any subpoenas or subpoenas duces tecum; and (5) Whether the parties will be required to pre-mark and submit documentary evidence prior to the hearing.
- Hearing on the Merits: (1) The date and time for commencing the hearing in accordance with the statutory deadline and the number of additional days needed to complete the hearing; (2) Whether the hearing should be held in a location other than where the Hearing Officer maintains his or her office, and if so, whether there are suitable facilities in any alternative location; (3) Whether there are any special needs, such as for an interpreter; and (4) whether any party desires to have the hearing recorded by any means other than by electronic recording.
- Settlement: (1) Whether the parties are engaged in ongoing settlement discussions, and if so, whether and when they anticipate that a settlement will be reached; (2) Whether the parties desire the assistance of the appointed Hearing Officer or of another Hearing Officer to facilitate settlement discussions; and (3) *In*

* Matters that may be appropriate for stipulation include: (i) that the work was governed by specified Prevailing Wage Determinations made by the Director; (ii) that the rates actually paid by the contractor are or are not accurately reflected in the certified payroll records or other pay records maintained by the contractor; (iii) that information and figures set forth in the Labor Commissioner's Audit Worksheets (periods worked, hours worked, wages paid, etc.) are or are not accurate; (iv) that arithmetic calculations in the Audit Worksheets are or are not correct; and (v) that specified written statements (such as one or more of the statements found in the investigative file), may be presented in lieu of live testimony and shall not be objected to as hearsay.

cases reported as settled, which party will seek dismissal under Rule 25 or Rule 26 (§§ 17225 & 17226), and when.

- Other Issues or Concerns: (1) Whether there are any special issues and special procedures should be adopted to address those issues or any other matters likely to arise in the case; (2) Whether the parties desire a schedule for either prehearing motions or post-hearing briefs; (3) Whether service of motions, orders, and other papers should be permitted by fax or e-mail, and what limitations, if any, should be imposed on these alternative methods; (4) Whether a further Prehearing Conference is appropriate and (5) Whether the Hearing Officer or the parties have any other issues or concerns that they wish to address at the Prehearing Conference.

OFFICIAL ADDRESS RECORD

<p>Contractor: Mr. John Jacobs Redflex Traffic Systems, Inc. 23751 North 23rd Ave., Suite 150 Phoenix, AZ 85085 Phone: Fax:</p>	<p>Counsel for Contractor: Mr. Scott Osborne Jackson Lewis Attorneys at Law 1001 SW 5th Avenue, #1205 Portland, OR 97204 Phone: (503) 229-0404 Fax: (503) 229-0405</p>
<p>Enforcing Agency: Ms. Ying Wu [DLSE Case No.: 40-28680/552] Division of Labor Standards Enforcement 2031 Howe Avenue Suite 100 Sacramento, CA 95825 Phone: (916) 263-5604 Fax: (916) 263-2906 Email:</p>	<p>Counsel for Enforcing Agency: Ms. Galina Velikovich [DLSE Case No.: 40-28680/552] Division of Labor Standards Enforcement 455 Golden Gate Avenue, 9th Floor San Francisco, CA 94102 Phone: (415) 703-4875 Fax: Email: gvelikovich@dir.ca.gov</p>
<p>Contractor: Redflex Traffic Systems Inc C/O National Registered Agents Inc 2875 Michelle Drive, Suite 100 Irvine, CA 92606</p>	<p>Awarding Body: City of San Mateo 200 Franklin Parkway San Mateo, CA 94403 Matt Pangalos</p>
<p>Awarding Body: City of Redwood City 1301 Maple Street Redwood City, CA 94063 Chris Cesena</p>	<p>Awarding Body: City of Napa 1600 First Street Napa, CA 94559</p>
<p>Awarding Body: City of Citrus Heights 6315 Fountain Square Drive Citrus Heights, CA 95621 Jason Russo</p>	<p>Awarding Body: City of Stockton 425 N. El Dorado Street, Rm. 317 Stockton, CA 95202 Katherine Meissner</p>
<p>Awarding Body: City of Marysville 526 C Street Marysville, CA 95901 Billie Fangman</p>	<p>Awarding Body: City of Daly City 333 90th Street Daly City, CA 94015</p>

Awarding Body: City of Modesto – Public Works 1010 10 th Street, Ste. 6600 Modesto, CA 95353	Awarding Body: City of Oakland 250 Frank H. Ogawa Plaza, suite 3341 Oakland, CA 94314
Awarding Body: City of Menlo Park 701 Laurel Street Menlo Park, CA 94025	Awarding Body: City of Sacramento 3010 Explorer Drive, Ste. 3 Sacramento, CA 95827
Awarding Body: City of San Rafael 1400 Fifth Avenue, Room 202 San Rafael, CA 94901-1943	

CERTIFICATE OF SERVICE

Case Name(s): **Redflex Traffic Systems, Inc. vs Division of Labor Standards Enforcement**

Case No(s): **13-0674-PWH, 13-0675-PWH, 13-0676-PWH, 13-0677-PWH, 13-0678-PWH, 13-0680-PWH, 13-0681-PWH, 13-0682-PWH, 13-0683-PWH, 13-0684-PWH, 13-0685-PWH, 13-0686-PWH**

I certify that on February 21, 2014, I served the **NOTICE OF APPOINTMENT OF HEARING OFFICER; NOTICE OF PREHEARING CONFERENCE; and PRELIMINARY ORDERS** on the parties or representatives as indicated below:

BY E-MAIL TO:

Scott Osborne (obornes@jacksonlewis.com)	Julie Dod (dodj@jacksonlewis.com)
Galina Velikovich (gvelikovich@dir.ca.gov)	Ying Wu (ywu@dir.ca.gov)

BY FIRST CLASS MAIL TO: [List names and mailing addresses]

Mr. John Jacobs Redflex Traffic Systems, Inc 23751 North 23rd Ave., Suite 150 Phoenix, AZ 85085	Mr. Scott Osborne Jackson Lewis Attorneys at Law 1001 SW 5th Avenue, #1205 Portland, OR 97204
City of San Mateo 200 Franklin Parkway San Mateo, CA 94403 Matt Pangalos	City of Redwood City 1301 Maple Street Redwood City, CA 94063 Chris Cesena
Redflex Traffic Systems Inc C/O National Registered Agents Inc 2875 Michelle Drive, Suite 100 Irvine, CA 92606	City of Napa 1600 First Street Napa, CA 94559
City of Citrus Heights 6315 Fountain Square Drive Citrus Heights, CA 95621 Jason Russo	City of Stockton 425 N. El Dorado Street, Rm. 317 Stockton, CA 95202 Katherine Meissner
City of Marysville 526 C Street Marysville, CA 95901 Billie Fangman	City of Daly City 333 90 th Street Daly City, CA 94015
City of Modesto – Public Works 1010 10 th Street, Ste. 6600 Modesto, CA 95353	City of Oakland 250 Frank H. Ogawa Plaza, suite 3341 Oakland, CA 94314

City of Menlo Park 701 Laurel Street Menlo Park, CA 94025	City of Sacramento 3010 Explorer Drive, Ste. 3 Sacramento, CA 95827
City of San Rafael 1400 Fifth Avenue, Room 202 San Rafael, CA 94901-1943	

Date: February 21, 2014

Cari Castellano
Cari Castellano, Legal Secretary
DIR, Office of the Director, Legal Unit
Oakland, CA 94612