In the Matter of:

Disputes concerning the payment of prevailing wage rates and overtime pay by:

PYTHAGORAS GENERAL CONTRACTING CORPORATION; STANLEY PETSAGOURAKIS, Owner,

PETITIONERS/RESPONDENTS

v.

ADMINISTRATOR, WAGE and HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

RESPONDENT/PETITIONER.

Proposed debarment for labor standards violations by:

PYTHAGORAS GENERAL CONTRACTING CORPORATION; STANLEY PETSAGOURAKIS, Owner

With respect to laborers and mechanics employed by the contractor on:

ARB CASE NOS. 08-107
09-007

ALJ CASE NO. 2005-DBA-014

DATE: February 10, 2011

Contract No. DC-9800015
(Jobsite: Vladeck Houses, New York, New York).

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For Petitioners/Respondents:
Chris Georgoulis, Esq., Joyce J. Sun, Esq., *Georgoulis & Associates PLLC,* New York, New York

For Petitioner/Respondent Administrator, Wage and Hour Division:
Roger W. Wilkinson, Esq., William C. Lesser, Esq., Steven J. Mandel, Esq., Carol DeDeo, Esq., *United States Department of Labor, Washington,* District of Columbia

Before: E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; Luis A. Corchado, *Administrative Appeals Judge*.

FINAL DECISION AND ORDER

This matter is before the Administrative Review Board pursuant to the statutory authority of the Davis-Bacon Act (DBA) and its implementing regulations,[1] the United States Housing Act of 1937 (U.S. Housing Act),[2] and the Contract Work Hours and Safety Standards Act (CWHSSA).[3] After a hearing, a United States Department of Labor Administrative Law Judge (ALJ) found that Pythagoras General Contracting Corporation (Pythagoras) violated the labor standards and prevailing wage provisions of the DBA, U.S. Housing Act, and CWHSSA. Pursuant to a Decision and Order dated June 4, 2008, and supplemental orders dated June 26, 2008, and August 28, 2008, the ALJ awarded a total of $447,670.36 in back wages and fringe benefits and ordered a three year debarment of Pythagoras and its President and sole shareholder, Stanley Petsagourakis (Petsagourakis). Pythagoras filed a petition for review (ARB No. 08-107), as did the

[1] 40 U.S.C.A. § 3141-3148 (West Supp. 2010); 29 C.F.R. Part 5 (2010).

[2] 42 U.S.C.A. § 1437j (Thomson Reuters 2010).

[3] 40 U.S.C.A. §§ 3701-3708 (West Supp. 2010).

Administrator for the Department of Labor's Wage and Hour Division (ARB No. 09-007).

After the evidentiary hearing in this matter ended, the total dollar amount the Administrator sought was $948,491.88 for a total of 80 employees.[4] The dollar amount sought by each of the 80 employees varied according to three different types of compensation allegedly owed: (1) uncompensated hours of work; (2) wages at the prevailing wage rate; and (3) fringe benefits.[5] Aside from the compensatory award, the Administrator continues to seek an affirmance of the debarment order. The Respondents seek a reduction of the ALJ's $447,630.36 award, reversal of the debarment order, and they oppose all of the Administrator's requests for additional monetary awards. As explained more fully below, we affirm the following findings of the ALJ: 1) Pythagoras failed to pay certain employees at prevailing wage rates for skilled labor actually performed; 2) Pythagoras routinely failed to pay certain employees for one-half hour of compensable time preceding the 8 a.m. start time; 3) Manni Kavalos and Jesus Hernandez performed no skilled labor work for which they were not compensated; and 4) Pythagoras General Contracting Corporation's and Stanley Petsagourakis's willful underpayment of wages due to misclassification of workers and failure to pay for all hours worked justified debarment. Additionally, we accept the Administrator's request and accordingly increase the ALJ's back wage awards to Patrick Richards, Clive Hall, Delroy Green, Edward Riley, Fabio Arbelaez, Philbert Franklin, Raymond Jesse Garcia, and Jude Merzy.

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[4] *See* Administrator's Supplemental Exhibit A35a, listing the "gross amounts" sought for 80 employees. On appeal, the Administrator succinctly stated in a footnote that a completely successful appeal will result in a total award of $891,236.23. *See* Administrator's Brief in Support of Petition for Review at 7, n.7. To understand this amount requires piecing together fragments of information contained in the Administrator's Brief (page 3, note 4), Administrator's Exhibit A35a, and the Administrator's Letter dated July 15, 2008, Exhibit 1 (itemized statement of the awards each of the 80 employees received). The lower amount of $891,236.23 reflects the fact that the Administrator is not appealing the partial awards received by four of the 80 employees (Frederico Lagoa, Linval Pratt, Enriques Roman, and Luis Vasquez) and relinquishing claims totaling $57,255.05 ($948,491.88 minus $57,255.05 equals $891,236.23).

We note that some workers' names are spelled differently in the record. *Compare* Administrator's Exhibits 8, 9 (Pythagoras payroll records), *with* Administrator's A34a, A35a (Administrator's records). We rely herein on the Administrator's records.

[5] Unfortunately, the record did not contain a document that itemized the composition of the gross amounts each of the 80 employees claimed, along with the disputed portions and the amounts the ALJ awarded. Again, we must glean these amounts from fragmented information, the most useful being Administrator's Exhibit A35a, the July 15, 2008 letter (Exhibits 1 and 2), and the ALJ's Orders. The relevant amounts are detailed in the chart on page 8.

BACKGROUND

The Legal Framework

The DBA requires that contractors pay no less than the prevailing wage to the various classifications of mechanics or laborers they employ.[6] The Department of Labor's Wage and Hour Division (Wage and Hour) determines the prevailing wages and publishes them as "Wage Determinations."[7] The prevailing wage rates contained in the wage determinations derive from rates prevailing in the area where the work is to be performed or from rates applicable under collective bargaining agreements.[8] "Prevailing" wages are wages paid to the majority of laborers or mechanics in corresponding classifications on similar projects in the area.[9] A covered contractor will be liable for its subcontractor's failure to pay the prevailing wage.[10]

The U.S. Housing Act and the CWHSSA are Davis-Bacon-related Acts.[11] The DBA and related Acts (collectively the "DBRA") incorporate the DBA's various wage requirements into contracts between a non-Federal entity, such as a State or local government, and a contractor where the Federal government provides funding.[12] This case concerns the wage requirements pertaining to the payment of prevailing wages for all compensable work and payment of fringe benefits under a federally funded contract entered into by Pythagoras and the New York City Housing Authority.[13]

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6 40 U.S.C.A. § 3142(a).

7 29 C.F.R. Part 1.

8 40 U.S.C.A. § 3142(b); 29 C.F.R. § 1.3.

9 *See* 29 C.F.R. § 1.2(a)(1).

10 *See* 29 C.F.R. § 5.5(a)(6).

11 29 C.F.R. § 5.1(a)(3), (30). The Reorganization Plan No. 14 of 1950, 5 U.S.C.A. App. (West 2001), centralized the Federal government's policy-making and enforcement authority for the Davis-Bacon Act and its related Acts in the Department of Labor.

12 29 C.F.R. § 5.2(h) states in relevant part that "under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards."

13 Hearing Transcript (T.) at 590-91, 1916.

In addition to the wage requirements, the DBRA require contractors to keep accurate payroll records that sufficiently and accurately demonstrate that workers were paid prevailing wages for all compensable work and all fringe benefits.[14] The employer must retain these payroll records for a period of three years after the work is performed.[15] The records must be accompanied by a signed statement of compliance certifying the DBRA wage requirements.[16]

When the employer's records are "inaccurate or inadequate" and the employees have no adequate substitute, the evidentiary principles enunciated in *Anderson v. Mt. Clemens Pottery Co.,* 328 U.S. 680 (1946) will apply.[17] Under these principles, the Administrator, as the party that brought this case, has the initial burden of proving that the employees performed work for which they were improperly compensated. The Administrator carries his burden if he proves that the employees have:

> in fact performed work for which [they were] improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.[18]

"Due regard must also be given to the fact that it is the employer who has the duty . . . to keep proper records of wages, hours and other conditions and practices of employment and who is in position to know and produce the most probative facts concerning the nature and amount of work performed." [19]

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14 29 C.F.R. § 5.5(a)(3)(i).

15 For each worker, the payrolls must include the name, address, and social security number, correct job classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits . . .), daily and weekly number of hours worked, deductions made, and actual wages paid. 29 C.F.R. § 5.5(a)(3)(i).

16 29 C.F.R. § 5.5(a)(3)(ii)(B)(3).

17 *Cody-Zeigler, Inc v. Admin'r, Wage and Hour Div.,* ARB Nos. 01-014, -015, ALJ No. 1997-DBA-017, slip op. at 7-8 (ARB Dec. 19, 2003).

18 *Mt. Clemens*, 328 U.S. at 687-688.

19 *Id.* at 687.

Chronology of Events

The ALJ's D. & O. thoroughly discussed the facts of this case as presented at the hearing on February 6-9, 2007; March 20, 2007; June 5-8 and 11-12, 2007. We summarize briefly.

In June 2000, the New York City Housing Authority and Pythagoras entered into a contract for interior and exterior renovations to residential buildings in lower Manhattan known collectively as the "Vladeck Houses."[20] The contract was valued at $23.4 million and was subject to the Davis-Bacon prevailing wage rates.[21] The contract incorporated General Decision Number NY 990003, listing work classifications and the corresponding prevailing wage rates and fringe benefits required to be paid.[22] Fernando Calzolaio was the project manager and Frank Louisdor was the general superintendent.[23]

In response to complaints that Pythagoras was not paying its employees at the Vladeck Houses project the prevailing wage rates for skilled labor actually performed, fringe benefits, or for all compensable time, Peter Zhu, a Wage and Hour investigator. began an investigation in November 2002.[24] In June, 2003, Wage and Hour informed Pythagoras of its preliminary determination that the company had misclassified several employees as performing the work of laborers rather than mason tenders and carpenters. Wage and Hour determined that Pythagoras had thereby failed to pay the prevailing wage rate for skilled labor actually performed, and had also not paid fringe benefits and/or for compensable time to certain employees.[25]

Pythagoras then conducted its own investigation. Pythagoras officials determined that due to "mistaken misclassifications," seven employees had in fact performed skilled labor for which they had not been compensated at the corresponding prevailing wage rate.[26] Pythagoras calculated that it owed a total of $34,669.11 in back pay to Fabio

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[20] Administrator's Exhibits 18, 19, 24.

[21] 29 C.F.R. § 5.2(h); Administrator's Exhibits 18, 24.

[22] Administrator's Exhibit 15.

[23] T. at 1748.

[24] T. at 589, 1935.

[25] T. at 592; Respondent's Exhibits K, L, M, N.

[26] T. at 1862-1863, 1941-1944, 1999.

Arbelaez, Philbert Franklin, Delroy Green, Clive Hall, Patrick Richards, Edward Riley, and Luis Vasquez. Petsagourakis provided these calculations to Wage and Hour in January 2004.[27]

In October 2004, the Wage and Hour Division concluded its investigation and its Regional Administrator issued a Charging Letter citing DBRA violations. The Regional Administrator determined that Pythagoras had misclassified and thus underpaid its employees (from 2/16/01 to 11/30/03), and owed $724,042.43 in back wages, among other unpaid amounts, to a total of eighty-seven employees. The Regional Administrator also determined, inter alia, that Pythagoras failed to pay for all hours worked; and its "[c]ertified payrolls do not reflect what was actually paid the employees" but rather "reflected inaccurate hours worked, inaccurate rates of pay and inaccurate job classifications." The Regional Administrator also stated that the violations were "aggravated or willful" and thus recommended debarment.[28] Subsequently, in June 2005, the Administrator, Wage and Hour issued an Order of Reference also seeking debarment of both Pythagoras and its president, Petsagourakis, based on the Administrator's finding that Pythagoras willfully disregarded its obligations to employees.[29] The Respondents objected to the Administrator's findings and requested a hearing.

Subsequent to a hearing, the ALJ found that Pythagoras had misclassified and thus underpaid several employees on the Vladeck Houses project, had failed to provide certain employees with fringe benefits, and had failed to compensate employees on the project for the initial one-half hour of the work day.[30] Finding that the violations were willful, the ALJ ordered debarment of both Pythagoras and its president for a period not to exceed three years.[31]

The Administrator subsequently sought correction of certain oversights and omissions in the ALJ's June 4, 2008 D. & O. In corrective orders, the ALJ rejected the Administrator's assertion that Manni Kavalos had performed carpentry work for which he had not been paid, awarded back pay to four additional employees, credited Pythagoras for wages previously paid, and added an additional one-half hour of back pay

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[27] Respondent's Exhibit 00.

[28] T. at 1116; Respondent's Exhibit SSSS.

[29] ALJ's June 4, 2008 Decision and Order (D. & O.) at 1-2. *See* 20 C.F.R. § 5.12(a)(2).

[30] The Administrator ultimately sought back wages for alleged underpayments to eighty Pythagoras employees who worked on the Vladeck Houses project. Administrator's Exhibits 34a, 35a.

[31] D. & O. at 34, 35.

per day for certain employees.[32] The ALJ ultimately ordered Pythagoras to pay a combined total of $447,670.36 to seventy-nine employees.[33] The following chart correlates the itemized account of the Administrator's $948,491.88 request with the ALJ's $447,670.36 award:

Group[34]	80 Employees	Total Requested 12/28/07	ALJ amended award
A	Fringe Group	277,198.04	277,198.04
B	41 Tier B - hours	29,930.29	29,930.29
C	Omitted janitors	12,034.00	12,034.00
D	Hernandez, Jesus	26,033.00	0.00
	Kavalos, M.	82,571.97	9,764.93
	Lagoa*	7,306.60	940.00
	Pratt*	22,034.20	2,320.00
	Roman*	8,086.52	490.00
	Vasquez*	26,297.83	2,720.00
E	Richards	116,947.31	29,612.62
	Hall	75,031.63	27,419.50
	Green	51,215.87	9,709.13
	Riley	28,237.84	8,367.57
	Arbelaez	44,576.63	6,280.95
	Franklin	38,347.49	9,972.00
	Garcia, R.J.	11,743.47	6,384.33

[32] In his August 28, 2008 Order on Cross Motions for Corrections (Aug. 28, 2008 Order), the ALJ indicated that in his original decision, he "held that all employees who worked on the project were entitled to be compensated for an additional one-half hour per work day." Aug. 28, 2008 Order at 3 n.5. *See also* June 26, 2008 Order Regarding Administrator's Assertions of Omissions.

[33] ALJ's Aug. 28, 2008 Order at 9.

[34] Groups A, B, and C match the categories and amounts listed for the first three categories listed in the July 15, 2008 letter (Exhibit 2). Group D reflects the employees who received only part of the back wage amount the Administrator requested, which the Board will not change. Group E reflects the employees who received partial awards from the ALJ, but will receive the full requested amount in this decision.

	Merzy	90,899.19	90,899.19
	Totals	948,491.88	447,670.36

*Award not appealed. *See* footnote 4.

Pythagoras filed a petition for review seeking a reduction in the amount awarded as well as challenging the debarment order. The Administrator appealed the ALJ's reduction of the underpayment sought by the Administrator.

JURISDICTION AND STANDARD OF REVIEW

The Administrative Review Board (ARB or the Board) has jurisdiction to hear and decide appeals taken from ALJ's decisions and orders concerning questions of law and fact arising under the DBRA.[35] In reviewing an ALJ's decision, the Board acts with "all the powers [the Secretary of Labor] would have in making the initial decision . . . ."[36] Nevertheless, 29 C.F.R. § 7.1(e) provides that the "Board is an essentially appellate agency" and appellate review gives some level of deference to an ALJ's credibility determinations based on demeanor. In addition, the Board will assess any relevant Administrator rulings to determine whether they are consistent with the statute and regulations, and are a reasonable exercise of the discretion delegated to her to implement and enforce the Davis-Bacon Act.[37] The Board generally defers to the Administrator as being "in the best position to interpret those rules in the first instance . . . , and absent an interpretation that is unreasonable in some sense or that exhibits an unexplained departure from past determinations, the Board is reluctant to set the Administrator's interpretation aside."[38]

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[35] 29 C.F.R. §§ 5.1, 6.34, 7.1(b) (2009). *See* Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010).

[36] 5 U.S.C.A. §557(b) (West 2001). *See also* 29 C.F.R. § 7.1(d) ("In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor. The Board shall act as fully and finally as might the Secretary of Labor concerning such matters.").

[37] *Miami Elevator Co.*, ARB Nos. 98-086, 97-145, slip op. at 16 (Apr. 25, 2000), *citing Department of the Army*, ARB Nos. 98-120, -121, -122 (Dec. 22, 1999) (under the parallel prevailing wage statute applicable to federal service procurements, the Service Contract Act, 41 U.S.C.A. §§ 351-358 (West 2001)).

[38] *Titan IV Mobile Serv. Tower*, WAB No. 89-14, slip op. at 7 (May 10, 1991), *citing Udall v. Tallman*, 380 U.S. 1, 16-17 (1965).

DISCUSSION

I. Pythagoras's Appeal (ARB No. 08-107):

A. Hours Worked

"It is axiomatic, under the FLSA, that employers must pay [non-exempt] employees for all hours worked."[39] "Work, the Supreme Court has long noted, is physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer."[40] It is also settled that duties an employee performed before and after scheduled hours, even if not requested, must be compensated if the employer "knows or has reason to believe" the employee is continuing to work,[41] and the duties are an "integral and indispensable part" of the employee's principal work activity.[42]

Pythagoras urges the Board to find that the Administrator's evidence was insufficient to establish a pattern or practice whereby Pythagoras failed to pay its employees at the Vladeck Houses for compensable work performed before the 8 a.m. start of their workday.[43] The ALJ found that Pythagoras's certified payrolls were not complete as they did not contain the daily and weekly hours worked by the employees in each classification. The ALJ specifically noted that Pythagoras did not maintain records of hours actually worked with starting and quitting times. Critically, the ALJ found that Pythagoras discarded, by the project's end in February 2004, all copies of its superintendents' records of employee work times, a finding which Pythagoras does not contest on appeal.[44] The ALJ stated, "Because Pythagoras discarded all of its records, it cannot produce any documents detailing when employees began work in the morning or quit for the evening." Moreover, the ALJ referred to the fact that Pythagoras's internal "home payrolls" do not cover the entire period of the project; no home payroll records were produced after December 2002.[45] Therefore, the ALJ concluded that the Respondents did not meet the requirement at 29 C.F.R. § 5.5(a)(3)(i) that "[p]ayrolls and

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39 *Alvarez v. IBP, Inc.*, 339 F.3d 894, 902 (9th Cir. 2003), *aff'd on other grounds sub nom. IBP v. Alvarez*, 546 U.S. 21 (2005).

40 *Id.* at 2.

41 29 C.F.R. § 785.11 (2010).

42 *Steiner v. Mitchell*, 350 U.S. 247, 256 (1956); 29 C.F.R. §§ 785.24, 785.25 (2010).

43 Respondent's Brief at 1-8, 20-23.

44 D. &. O at 5; T. at 1782, 1858; *see* Administrator's Exhibits 8, 9.

45 D. & O. at 5; *see* Administrator's Exhibit 17.

basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work." Consequently, the ALJ further concluded, "As the documentation produced by Respondents is incomplete and unreliable, [employee] testimony can be used to assess the hours worked."[46] The ALJ next determined that the Administrator met his burden to establish that the employees performed work before their 8 a.m. shift for which they were not compensated. The ALJ relied on employee testimony at the hearing and employee statements to Investigator Zhu. He found that this evidence "uniformly established that the majority of employees arrived prior to 8:00 a.m." and that these employees performed compensable work, namely gathering materials and tools and receiving work assignments.[47]

Pythagoras acknowledged that occasionally employees arrived at the Vladeck Houses worksite before 8 a.m. and spent time gathering tools and supplies and receiving instruction, and that gathering tools and supplies is compensable under the Davis-Bacon Act.[48] Pythagoras denies, however, that a pattern or practice existed whereby Pythagoras required its employees to report to work prior to 8 a.m. when the apartments first opened for the day's work. Based on our review of the record, the ALJ's determination that credible testimony from numerous employees establishes that Pythagoras employees worked one-half hour before the 8 a.m. opening of the apartments is consistent with the record evidence. Moreover, the ALJ's analysis of the parties' respective burdens on this issue accords with *Mt. Clemens.* Namely, the employees, or Administrator in this case, met their burden to present sufficient evidence to allow for the reasonable inference that they performed work for which they were not compensated. The burden then shifted to Pythagoras, which neither presented precise evidence of the time worked nor legally sufficient evidence to negate the reasonable inference drawn from the employees' evidence.[49] The fact that the Vladeck Houses apartments were not opened until 8 a.m. for work does not refute the conclusion that Pythagoras employees started their workday prior to entering those apartments. To the extent Pythagoras argues to the contrary, its argument is unavailing where proof is lacking to negate the reasonable inference to be drawn from the employees' testimony and statements.[50] Therefore, we determine, as did the ALJ, that the Administrator's estimate that Pythagoras failed to pay its employees for one-half hour of compensable time preceding the 8 a.m. start to the workday is correct as a matter of just and reasonable inference under *Mt. Clemens.*

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[46] D. & O. at 5.

[47] *Id.*

[48] D. & O. at 6 n.3; Respondent's Brief at 21-23. *See* Administrator's Response Brief at 18 n.31.

[49] D. & O. at 5-9.

[50] *See* Respondent's Brief at 20-23.

Pythagoras next argues that the ALJ's award of an additional one-half hour compensation erroneously covers non-testifying employees. Pythagoras contends that the employees who testified were not representative of the employees on the Vladeck Houses project, particularly those in other classifications.[51] We disagree.

Mt. Clemens specifically permits an award of back wages to non-testifying employees based on the representative testimony of a small number of employees.[52] The Department of Labor may rely on representative employees' testimony to establish a prima facie case of a pattern or practice of violations. Once a pattern or practice is established, the burden shifts to the employer to rebut the occurrence of violations or to show that particular employees do not fit within the pattern or practice.[53] In this case, the ALJ found a pattern or practice showing Pythagoras's failure to pay wages for one-half hour compensable work performed prior to the 8 a.m. opening of the Vladeck Houses. As set forth above, we uphold that finding as it is consistent with the record and in accordance with law. The fact that the ALJ relied on the testimony of a small number of employees does not refute his determination that the quality of this testimony was representative of the work and working conditions of the other employees who worked at the site but did not testify, even those whose work fell within another job classification. The ALJ reviewed the quality of the testimonial and other evidence and rendered a comprehensive analysis of this evidence in determining that the testimony was representative.[54] His determination that the testimony of these workers may serve as the basis for awarding non-testifying workers an additional one-half hour compensation for their work-related preparations before 8 a.m. is consistent with *Mt. Clemens*. Accordingly, we hold that the ALJ's award of an additional one-half hour compensation to non-testifying employees is not erroneous.

B. Underpayment of Wages

Under the DBRA, employees must be classified and paid according to the work they perform, without regard to their level of skill.[55] If workers perform labor in more than one job classification, they are entitled to compensation at the appropriate wage rate for each classification according to the time spent in that classification, which time the

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51 *Id.*; Respondent's Rebuttal Brief at 1-3.

52 *Mt. Clemens*, 328 U.S. at 687; *Cody-Zeigler*, ARB Nos. 01-014, -015, slip op. at 9. *See also Donovan v. New Floridian Hotel, Inc.*, 25 WH Cases 645 (11th Cir. 1982).

53 *Permis Constr. Corp.& Tratoros Constr. Corp.*, WAB Nos. 87-55, -56, slip op. at 4-5 (Feb. 26, 1991).

54 D. & O. at 4-9; Order on Cross Motions for Corrections.

55 29 C.F.R. § 5.5(a)(1)(i); *Fry Brothers Corp.*, WAB No. 76-06 (June 17, 1977).

employer's payroll records must accurately reflect.[56] "Although the Administrator has the burden of establishing that the employees performed work for which they were improperly compensated, where an employer's records are inaccurate or incomplete, employees are not to be penalized by denying them back wages simply because the precise amount of uncompensated work cannot be proved."[57] *Mt. Clemens* instructs, "Unless the employer can provide accurate estimates [of hours worked], it is the duty of the trier of facts to draw whatever reasonable inferences can be drawn from the employees' evidence."[58] Once these reasonable inferences have been drawn, an employer may rebut them only by producing "evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the employee's evidence." Having initially failed to produce the requisite wage and hour records, the employer's rebuttal burden to produce precise information pertaining to the amount of work performed is necessarily a strict standard, which may be met only with individualized documentation of who performed the work as well as the nature and amount of the work allegedly performed.

Pythagoras contends that the ALJ incorrectly credited the hearing testimony and/or statements of Raymond Jesse Garcia, Clinton Orridge, Jamie Velez, Raymond Garcia, Jr., Edward Tyler, and Michael Pagan, who stated that they performed roofing work for which they were due a higher wage as "mason tenders" and for which Pythagoras did not pay them.[59] Essentially, Pythagoras challenges the finding that the Administrator established a reasonable inference of an underpayment. The ALJ found that the Administrator presented credible evidence supporting the claims of these six individuals. We agree.

Administrator's Evidence of a Reasonable Inference

Raymond Jesse Garcia submitted statements to Zhu and testified at the hearing. He stated that he worked at the Vladeck Houses from July 17, 2001, to November 6, 2003, and was paid $20 per hour. The work he performed included: working on scaffolds every day for the first three months; building fences; removing debris; loading and unloading bricks, forms, and cement for the roofers; cleaning; demolishing

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[56] 29 C.F.R. § 5.5(a)(1)(i); *Palisades Urban Renewal Enters., LLP*, ARB No. 07-124, ALJ No. 2006-DBA-001, slip op. at 7-8 (ARB July 30, 2009).

[57] *Cody-Zeigler*, ARB Nos. 01-014, -015, slip op. at 8.

[58] *Mt. Clemens*, 328 U.S. at 693.

[59] The wage rates applicable to the contract in question are contained in General Decision Number NY 990003. Administrator's Exhibit 15. These wage rates were set by collective bargaining agreement. T. at 550-552, 1918. Work performed under the "mason tender" classification is compensated at $36.19 per hour ($24 hourly wage plus $12.19 in fringe benefits per hour). Administrator's Exhibit 15 at 9.

bathrooms; painting apartments; loading and unloading supplies; and setting up "the second yard."[60] Zhu calculated back pay due Raymond Jesse Garcia as follows: "From 7/20/01 to 11/2/01 and 9/12/03 to 10/24/03 70% Mason tender & 30% Tier B[.] From 11/9/01 to 8/15/03 100% Tier B." Based on Zhu's calculations, the Administrator sought $11,743.47 in back pay for Raymond Jesse Garcia.[61]

Clinton Orridge submitted a statement to NYCHA, and he testified at the hearing that he worked at the Vladeck Houses from April 2003 to February 2004 and was paid $20 per hour. His duties included: demolition, chipping plaster and bricks, cleaning, debris removal, truck driving, and putting up plastic.[62] Zhu calculated back wages due Orridge as follows: "Mason Tender 70% Tier B 30%." Based on Zhu's calculations, the Administrator sought $8,924.15 in back wages for Orridge.[63]

Jaime Velez worked at the Valdeck Houses from March 2002 to October 2003 and was paid $14 and then $20 per hour. Jaime Velez submitted a statement to NYCHA, and he testified at the hearing that he first worked for thirteen months as a mason tender, supplying the bricklayers with mortar, bricks, wall tiles, wire, nails and footprints, fixing fences, and building scaffolding. Velez testified that he then worked as a flagman directing traffic on the site, and at other times broke and leveled dirt and grass, removed debris, drained the roof of rainwater, and cleaned the buildings and apartments.[64] Zhu calculated back wages due Velez as follows: "Mason Tender 70% Tier B 30%." Based on Zhu's calculations, the Administrator sought $32,070.28 in back wages for Jaime Velez.[65]

Raymond Garcia, Jr. worked at the Vladeck Houses from March 9, 2002, to November 22, 2003, and was paid $20 per hour. Raymond Garcia, Jr. submitted statements to Zhu, NYCHA, and the U.S. Department of Housing and Urban Development (HUD). He testified at the hearing that he transported bricks, cement, and plaster; built and took down scaffolding; applied tar; put up flanges; cut rebar; broke dried concrete and brick; removed debris; swept apartments; and assisted the asbestos removal workers. Zhu calculated back wages due Raymond Garcia, Jr. as follows:

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60 Respondent's Exhibits W, X; T. at 183-219. Pythagoras paid Raymond Jesse Garcia $20 per hour, the Tier B Laborer's rate. T. at 190; *see* Administrator's Exhibit 15.

61 Administrator's Exhibits 34(a), 35(a).

62 T. at 501-516; Respondent's Exhibit HH.

63 Administrator's Exhibits 34(a), 35(a).

64 T. at 282-308; Respondent's Exhibit DD.

65 Administrator's Exhibits 34(a), 35(a).

"Mason Tender 70% Tier B 30%." Based on Zhu's calculations, the Administrator sought $27,117.88 in back wages for Raymond Garcia, Jr.[66]

Edward Tyler worked at the Vladeck Houses from February 2002 to December 2003 and was paid $20 per hour. Tyler submitted statements to Zhu, NYCHA, and HUD. He testified at the hearing that he removed tubs, cabinets, and other debris from inside the apartments; helped the bricklayers on the roof; laid cement slabs; mixed cement; laid sod and grass; hauled rocks; and built fences, catwalks, scaffolds, and "little sheds on top of the roof."[67] Zhu calculated the back wages due Tyler as follows: "Mason Tender 50% Tier B 50%." Based on Zhu's calculations, the Administrator sought $23,508.83 in back wages for Tyler.[68]

Michael Pagan worked at the Vladeck Houses from March 2002 to September 2003 and was paid $20 per hour. Pagan talked to Zhu over the phone about his job, and submitted a statement to NYCHA. He testified that he supplied the bricklayers with cement and tools, built scaffolds and fences, set roofing stones, and removed debris.[69] Zhu calculated Pagan's back wages as follows: "Mason Tender 70% Tier B 30%." Based on Zhu's calculations, the Administrator sought $22,265.03 in back wages for Pagan.[70]

The ALJ found that the Administrator established that Pythagoras had failed to pay these six, and other employees, proper prevailing wages by misclassifying them as "Tier B" laborers without regard to the actual work performed, some of which work was compensable at the higher "mason tender" rate. Based on the employees' statements and testimony, the ALJ concluded, "The record clearly supports the conclusion that Respondents misclassified certain employees and failed to segregate the hours spent performing different jobs."[71]

Pythagoras argues that the employee statements Zhu relied on were inconsistent regarding the work performed and were not reliable because Zhu did not check them against evidence of the scope of work performed at the project. The Administrator responds that in the absence of employer's payroll records, he reasonably relied on the employees' statements and other investigative evidence to reconstruct hours and calculate

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66 *Id.*

67 T. at 744-775; Respondent's Exhibits JJ, KK.

68 Administrator's Exhibits 34(a), 35(a).

69 T. at 360-378; Respondent's Exhibit EE.

70 Administrator's Exhibits 34(a), 35(a).

71 D. & O. at 10, 13-23.

back wages for work performed in different job classifications. The Administrator thus contends that the ALJ properly determined that the Administrator met his burden to show specific underpayment of wages which showing, he asserts, Pythagoras did not rebut.

The ALJ found that the Administrator met his burden of showing as a matter of just and reasonable inference that the employees in question performed work compensable at the "mason tender" wage rate and were not compensated for this work. The ALJ's finding is consistent with the record and we thus affirm it. Specifically, Petsagourakis and Calzolaio testified that Louisdor was responsible for classifying workers for the certified payroll.[72] Louisdor testified, however, that he did not segregate the hours employees spent performing work in different job categories and did not reclassify any employee when he performed work in another job classification.[73] It is undisputed that Pythagoras did not submit any evidence showing that it segregated the hours employees spent in different job classifications and compensated them at the corresponding wage rate. Under these circumstances, the law is clear: while it is permissible under the contract labor requirements for employees to work in more than one job classification, the contractor has the responsibility to ensure that it documents and pays the employee for the actual work performed at the appropriate rate and for the hours worked.[74] Pythagoras's certified payroll and Louisdor's testimony establish that Pythagoras did not meet its responsibility. The law requires that employees not be penalized for their employer's failure to keep adequate records.[75] Where the employer fails to produce evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the employees' or Administrator's evidence, then we may award damages even though the result be only approximate. Therefore, Pythagoras must pay the skilled labor rates as calculated by the Administrator and established by the inferences drawn from his evidence, unless Pythagoras's evidence negates those inferences.

Pythagoras's Rebuttal Evidence

Pythagoras argues that the ALJ erroneously awarded "mason tender" wages to Raymond Jesse Garcia, Clinton Orridge, Jaime Velez, Raymond Garcia, Jr., Edward Tyler, and Michael Pagan (the six employees) based on their assertions that they performed work on the roof of the Vladeck Houses. Pythagoras relies on testimony of Petsagourakis and other Pythagoras officials who explained that Pythagoras initially

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72 T. at 1750, 1781, 1783-84, 1859; *see* Administrator's Exhibit 39.

73 T. at 1863.

74 *Palisades,* ARB No. 07-124, slip op. at 7-8.

75 *Mt. Clemens*, 328 U.S. at 687-688, 693; *Palisades,* ARB No. 07-124, slip op. at 8; *Cody-Zeigler,* ARB Nos. 01-014, -015, slip op. at 8; *Thomas & Sons,* ARB No. 00-050, ALJ No. 1996-DBA-037, slip op. at 4-5 (ARB Aug. 27, 2001).

subcontracted installation and removal of a bulkhead and removal of existing asbestos-laden roofing material, but ultimately this work was accomplished by Pythagoras employees other than the six employees.[76]

As set forth above, the Administrator showed as a matter of just and reasonable inference the amount and extent of "mason tender" work performed by the six employees. Lacking payroll records or any evidence of the precise amount of work these employees performed under different classifications, Pythagoras must produce evidence to negate the reasonableness of that inference.[77] Pythagoras relies on testimony that it subcontracted certain roofing work, which its employees, other than the six employees, ultimately accomplished. This evidence does not, however, show, as it must, that the six employees did not perform the rooftop work they claimed to have done. None of the six employees asserted that they performed the specific roofing work of removing the existing roofing material and performing asbestos abatement. And while some asserted that they performed rooftop shed or bulkhead work, none of them claimed that they alone performed this work to the exclusion of other Pythagoras employees. Accordingly, the testimonial evidence Pythagoras relies on does not meet its burden to negate the inference that the six employees performed "mason tender" work, including rooftop work, for which they were not paid.

In support of its burden on rebuttal, Pythagoras also relies on the "Daily Look Aheads," documents Louisdor created for NYCHA inspectors that list the work to be performed. But a review of these documents shows that they reflect that both Pythagoras employees and subcontractors performed roofing work.[78] Therefore, this evidence does not negate the six employees' claims that they performed rooftop work. Moreover, Louisdor testified that the "Daily Look Aheads" detailed some of the exterior work done on the project but did not reflect all of the work performed on each day.[79] Critically, the "Daily Look Aheads" only cover the period from September 2001 through December 2002, and each of the six employees worked for Pythagoras at the Vladeck Houses in 2003 or 2004. Based on the foregoing, we agree with the ALJ and hold that Pythagoras failed to negate the Administrator's showing that the six employees performed "mason tender" work for which they were not paid. Pythagoras did not produce rebuttal evidence sufficiently complete or individualized to the workers.

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[76] Respondent's Brief at 9, 10; T. at 1963-65 (Petsagourakis), T. at 1794-95 (Calzolaio), T. at 1864 (Louisdor).

[77] *Mt. Clemens*, 328 U.S. at 687-688.

[78] Administrator's Exhibit 21; T. at 1748.

[79] T. at 1851-55.

Steven Washington Claim

Pythagoras next contends that the ALJ erroneously awarded Steven Washington "mason tender" wages where, it asserts, Washington's testimony that he performed plumbing and electrical work was false. Pythagoras claims it did not conduct any such work on this project but contracted that work out. The ALJ found this argument unpersuasive. So do we. As the ALJ correctly noted, Washington did not claim that he performed plumbing and electrical work. Rather, Washington testified that he did "punch list" work, which was understood to mean that he checked that work already performed was performed properly.[80] Moreover, we note that the "Daily Look Aheads" include punch list work as having been performed every day and no other employee is alleged to have performed this work.[81]

Thomas Justiniano Claim

Pythagoras also contests Thomas Justiniano, Jr.'s claim that he performed "mason tender" work for which he was not compensated. Justiniano worked at the Vladeck Houses from August 2001 until February 22, 2002, and testified that he did demolition and demolition clean-up, as well as painting, roofing, helping the plumbers and bricklayers, stacking materials in the yard, cement mixing, and cleaning and disassembling scaffolds. Justiniano stated on direct examination at the hearing that he did scaffolding work "[e]very day for a couple of weeks" but testified on cross-examination that he did scaffolding work every day. Justiniano added that he never performed just one task in a day; rather, he performed many tasks in one day and the work he performed varied from day to day.[82] To rebut the Administrator's estimation that Justiniano spent 50 percent of his time performing "mason tender" work, Pythagoras argues that it subcontracted the roofing and plumbing work. Pythagoras also relies on the "Periodical Estimates" that show that Pythagoras did not bill NYCHA for scaffolding work from August 1, 2001, to January 31, 2002 (but did bill for February 1-28, 2002).[83]

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[80] T. at 381; D. & O. at 20. Within his discretion, the ALJ found that Washington's admittedly false initial statement to Zhu that he performed only laborer's tasks - cleaning and removing debris, Administrator's Exhibit 6, is not sufficient to rebut the inference that he performed mason tender work for which he was not compensated. The ALJ accepted Washington's explanation that he lied under threat of losing his job. D. & O. at 19, 20; *see* T. at 383, 389.

[81] Administrator's Exhibit 21.

[82] T. at 779-781, 786, 794.

[83] Respondent's Brief at 12; *see* Respondent's Exhibit E.

The ALJ found that none of the evidence on which Pythagoras relies directly contradicts the inference that Justiniano spent 50 percent of his time performing "mason tender" work. We agree with the ALJ's finding as it is consistent with the record. Specifically, the fact that Pythagoras subcontracted plumbing and roofing work does not prove that Pythagoras employees, including Justiniano, did not perform the work they claim to have performed. Moreover, while the "Periodical Estimates" are probative of what work Pythagoras billed NYCHA for and when, they cannot be considered to reflect the amount and extent of "mason tender" work Justiniano, or any individual employee, performed. Therefore, we conclude, as did the ALJ, that Pythagoras fails to rebut the inference that Justiniano performed work under the "mason tender" classification for which he was not compensated.

Other Pythagoras Challenges to the Compensatory Awards

Pythagoras next alleges that the ALJ erred when he awarded back wages to employees who did not testify at the hearing but who did submit statements to Zhu. Pythagoras argues that these employees' statements are unreliable because the Administrator did not verify or authenticate them and they were neither sworn to, notarized, nor accompanied by copies of a government issued photo identification card.[84] Contrary to Pythagoras's argument, employee interview statements are permissibly used as evidence in administrative cases.[85] Therefore, we find no error in the ALJ's decision to rely on the statements of non-testifying employees Marvin Woodward, Juan Hernandez, Eric Quinnones, Shawn Mims, Jose Rivera, and Baffour Agyemong.

Pythagoras also challenges the ALJ's award of fringe benefits to Christian Strickland, Luis Bermeo, Ivan Cajamarca, and Manuel Tenesca. Pythagoras argues that the Administrator's request for the payment of these fringe benefits is based on "speculation" and a clerical error on the certified payroll records. Pythagoras asserts that it actually paid these fringe benefits to these employees but claims that Zhu "failed to follow-up."[86] Pythagoras's arguments are contradicted by the record evidence. The certified payroll does not list these employees as having been paid fringe benefits.[87] Moreover, Pythagoras's attempt to avoid liability for these fringe benefits by claiming the existence of a payroll error is unavailing where its failure to keep accurate records is the very basis for their liability.[88]

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84 Respondent's Brief at 12, 25.

85 *See, e.g,. Palisades,* ARB No. 07-124, slip op. at 6, 7; *Cody-Zeigler*, ARB Nos. 01-014, -015, slip op. at 10-11.

86 Respondent's Brief at 13.

87 Administrator's Exhibits 8, 9.

88 29 C.F.R. § 5.5(a)(ii)(D); *see* Administrative Law Judge's Order on Cross Motions for Corrections dated Aug. 28, 2008 at 9 n.10.

Pythagoras next argues that the ALJ erred in determining that workers performing janitorial duties during the workday were entitled to the prevailing wage rate for "Tier B" Laborers. Pythagoras asserts that while the contract includes "cleaning at the end of the work day," cleaning during the workday is not covered. It thus argues that because this janitorial work, performed at NYCHA's request, was outside the contract, the workers are not entitled to prevailing rate wages. The ALJ determined that these employees are entitled to "Tier B" Laborer wages. We agree. The Administrator's interpretation of the term "mechanics and laborers" in 29 C.F.R. § 5.2 as including janitorial workers is reasonable, and we accept it.[89] Because the contract provides that all cleaning be performed to the NYCHA's satisfaction, we agree with the ALJ's conclusion that this work fell within the contract at issue. Therefore, we conclude, as did the ALJ, that these janitorial workers are entitled to the "Tier B" Laborers' wage rate.[90]

C. Debarment

"Aggravated or willful violations of the Davis-Bacon and Related Acts require debarment of a contractor for a period not to exceed three years."[91] Under established law, a "willful" violation encompasses intentional disregard or plain indifference to the statutory requirements.[92] The ALJ determined that the violations in this case were aggravated or willful within the meaning of 29 C.F.R. § 5.12(a)(1).

Pythagoras contends that the ALJ erred in ordering that Pythagoras and Petsagourakis be debarred. Pythagoras argues that the ALJ's debarment order cannot stand as there is no evidence that the company or Petsagourakis committed willful or aggravated violations of the applicable labor standards.[93] The ALJ discussed: (1) the failure to list employees on the certified payrolls and to segregate the work performed under different job classifications; (2) the failure to pay employees according to the work actually performed; (3) the continued violations to the project's 2004 end after the investigator put them on notice in 2002; and (4) the acts of witness intimidation. The ALJ found that experienced federal contractors, such as Pythagoras and its president, are presumed to have knowledge of the requirements of the Davis-Bacon Act, including the

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89 *Titan IV Mobile Serv. Tower*, WAB No. 89-14, slip op. at 7.

90 *See* Respondent's Exhibit B.

91 29 C.F.R. § 5.12(a)(1).

92 *Cody-Zeigler,* ARB Nos. 01-014, -015, slip op. at 31 citing *LTG Constr. Co.*, WAB No. 93-15, slip op. at 7 (Dec. 30, 1994); *see McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988).

93 Respondent's Brief at 14-19, 26-30.

requirement to keep adequate records and to pay prevailing wages for work performed. The ALJ also noted the fact that Petsagourakis allowed certain violations to perpetuate and did not attempt to correct them after he learned of the November 2002 investigation, including the failure to keep payroll records and to pay for work performed at higher wage rates. The ALJ also addressed the undisputed facts concerning witness intimidation that involved Pythagoras's president Stanley Petsagourakis; his brother Nick; and Louisdor, the superintendent on the Vladeck Houses project. The ALJ concluded that the Administrator met his burden to show that Pythagoras and Petsagourakis committed willful violations of the Davis-Bacon Act which violations warranted debarment for a period of three years.[94]

We agree with the ALJ's determination that Pythagoras and Petsagourakis warrant debarment as it is supported by the evidence. The record shows that Pythagoras officials signed and certified the accuracy of incomplete and inaccurate payrolls that reflected the misclassification of its workers as performing the work of laborers instead of mason tenders and carpenters.[95] Also, the Administrator found evidence of manipulation of the payroll records, at least with regards to one employee, Manni Kavalos, which we find a reasonable interpretation of the pertinent payroll evidence.[96] Further, the record supports the ALJ's finding that Pythagoras and Petsagourakis failed to correct ongoing violations or to ensure future compliance with applicable labor standards. Therefore, the labor standards violations continued through the project's end in February, 2004. Moreover, Petsagourakis does not dispute that he and Louisdor visited former employees Patrick Richards and Delroy Green to discuss their upcoming testimony at the hearing. We agree with the ALJ that this effort was an improper attempt at witness coercion or intimidation.[97] Similarly undisputed is the fact that Nick Petsagourakis, a

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94 D. & O. at 30-34.

95 Administrator's Exhibits 8, 9; *see* discussion *infra.* The Administrator argues:

> Pythagoras's submission of numerous certified payrolls showing no workers paid as mason tenders and only two workers paid as carpenters when considered together with its undisputed knowledge of [Davis-Bacon Related Acts] requirements and the admission that the project needed large amounts of carpentry and mason tender work, leads ineluctably to the conclusion that Pythagoras was not merely negligent when it misclassified workers on the certified payrolls.

Administrator's Response Brief at 25. The certified payroll records support the Administrator's argument. *See* Administrator's Exhibits 8, 9.

96 Administrator's Response Brief at 25-26; *see* Administrator's Exhibits 8, 9.

97 Respondent's Brief at 17, 28, 30; *see* T. at 1956.

Pythagoras official and Stanley Petsagourakis's brother, went to Arbelaez's home the weekend before Arbelaez was scheduled to testify for the Administrator, to speak to him about his testimony.

Pythagoras argues that it should not be debarred because it conducted an internal investigation and determined that back wages were due and conveyed this information to Wage and Hour.[98] But its calculations of total wages owed ($34,669.11) differed substantially from the total wages the Administrator ultimately sought ($891,236.23).[99] Moreover, Petsagourakis admitted that Pythagoras never paid even the back wages it determined were due and owing.[100] Further, it is plain from the record that Pythagoras failed to maintain the required payroll records for the period of the project and three years beyond, as required by law.[101] The record thus supports the ALJ's determination that Stanley Petsagourakis had sufficient knowledge of Pythagoras's recordkeeping and pay practices to merit debarment. We conclude, as did the ALJ, that this case warrants debarment of both Pythagoras and Petsagourakis.

Consequently, the ALJ's holding that Pythagoras and Petsagourakis committed aggravated or willful violations of the DBRA pursuant to 29 C.F.R. § 5.12(a)(1) and are subject to debarment is affirmed. We agree with the Administrator and the ALJ that a proper basis for debarment has been established. Pythagoras and its president, Stanley Petsagourakis, shall be debarred for a period of three years and shall be ineligible to receive any contract or subcontract subject to any of the statutes listed in 29 C.F.R. § 5.1 during that period.

II. The Administrator's Appeal (ARB No. 09-007):

A. Patrick Richards, Clive Hall, Delroy Green, Edward Riley, Fabio Arbelaez, Raymond Jesse Garcia, Philbert Franklin, and Jude Merzy

The Administrator argues that the ALJ erroneously credited Pythagoras's calculation of the back wages it owes certain employees, as well as the "Daily Look Aheads" and Periodical Estimates, to rebut the Administrator's calculations of the back pay Pythagoras owes Patrick Richards, Clive Hall, Delroy Green, Edward Riley, Fabio Arbelaez, Philbert Franklin, Raymond Jesse Garcia, and Jude Merzy.[102] The

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98 *See* Respondent's Exhibit OO.

99 Compare Respondent's Exhibit OO and Administrator's Brief at 7 n.7. *See* Administrator's Exhibits 34a, 35(a).

100 T. at 1980; *see* Respondent's Exhibit OO.

101 29 C.F.R. § 5.5(a)(3)(i).

102 *See* Respondent's Exhibits E, OO; Administrator's Exhibit 21.

Administrator essentially argues that Pythagoras merely offered a "parallel" inference and failed to meet the "demanding" standard of *Mt. Clemens*.[103] We agree that Pythagoras's rebuttal evidence was legally insufficient to rebut the just and reasonable inference the Administrator established.

Before addressing the evidence specifically, it is important to revisit some of the general facts that were undisputed and the ALJ's findings as to the Administrator's evidence. First, the Administrator relied on the certified payrolls to determine the minimum total number of hours a particular employee worked.[104] None of the parties suggest that the certified payrolls overstate the hours. Critically important, it is undisputed that Pythagoras failed to document when its employees worked in multiple job classifications. The certified payroll records were the only remaining individualized records of the hours and work the employees performed. Also critically important, Pythagoras admitted that, (1) Richards, Hall, Green, Riley, Arbalaez, Franklin, and Merzy did work in higher job classifications for which they were underpaid, and (2) Pythagoras's records failed to record when these employees worked in different classifications.[105] The ALJ found that the Administrator established a just and reasonable inference for the wage awards sought for Richards, Hall, Green, Riley, Arbalaez, Franklin, Merzy, and Garcia. The ALJ's finding of a just and reasonable inference is well supported in the record, as described more fully below.

Once the ALJ determined that the Administrator established a just and reasonable inference for the hours worked in a higher classification and the amounts owed, to rebut such inference, the employer needed to present more than a contrary reasonable inference based on generalized records. Allowing a wage claim to be defeated by an equally contrary inference based on generalized records would remove the incentive for employers to keep precise records as required by law. We believe this concept is consistent with the Supreme Court's announcement in *Mt. Clemens* that it should not be the employee that is penalized by the lack of complete and accurate records. The employer must rely on individualized records, such as assignment rosters and other records that might contain individualized information (e.g., field supervisor records, daily logs of work crew supervisors, and other work crew records). Additionally, to adhere to the letter and spirit of the FLSA, we believe that the employer must account for all of the time an employee claims he or she worked in a higher classification. Otherwise, as happened in this case, an employer can defeat a prevailing wage claim by looking at general project records and innocently or deliberately fail to find where the employee could have worked in the higher classification. Only by accounting for the entire disputed claim can an employer properly negate the just and reasonable inference the

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[103] Brief of Wage and Hour Deputy Administrator in Support of Pet. for Review at 14.

[104] Administrator's Exhibits 8, 9.

[105] Respondent's Brief in Response and Opposition to the Administrator's Petition for Review at 7, 11, 13, 15, 17.

Administrator's evidence raised. The employer's accounting must be consistent with the project records and the number of employees working on each particular day. For example, Pythagoras admits that Richards worked at least two and one-half years on the project; yet, it argues that Richards worked only 118 days in a higher classification without accounting for what he did the remainder of the time and considering the project as a whole.[106] In sum, to properly rebut a just and reasonable inference under the demanding requirements first announced in *Mt. Clemens*, an employer must present rebuttal evidence that, (1) is based on individualized records, and (2) fully accounts for the work hours in question, consistent with the project as a whole.

In this case, Pythagoras presented generalized records to rebut the just and reasonable inference created by the Administrator from the certified payroll records and employee testimony and statements. Pythagoras's rebuttal records were the Daily Look Aheads, Periodical Estimates, and Requisitions. Daily Look Ahead records simply listed buildings, modules, apartment numbers, and one-line boilerplate phrases describing the general work done, but no individual names or work crews or hours worked were listed.[107] Similarly, the Periodical Estimates were general budget and billing documents that identified categories of work very generally, the cost of the work, and the overall progression of the project, but it was not individualized to the employee or work crew levels.[108] Requisitions also reflect expenditures very generally.[109] All these documents were used to create Respondent's Exhibit OO, which identified Pythagoras's estimate of the amounts owed to only a few employees with very little detail.

(1) Patrick Richards and Clive Hall

Turning to the evidence presented as to Richards and Hall, the record shows that they worked together as a carpentry team on the Vladeck Houses project.[110]

Richards submitted a statement to Zhu and testified at the hearing. Richards worked as a carpenter at the Vladeck Houses project from July 2001 to March 2004 and was paid $20 per hour, a fact firmly established by the certified payroll records. He testified that his duties included: remove, assemble, and install kitchen cabinets, and install bathroom accessories and molding strips. He also testified that he worked on four or five bathrooms a day every day.[111] Zhu calculated back wages to Richards as follows:

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106 Respondent's Responsive Brief at 8.

107 *See* Administrator's Exhibit 21.

108 *See* Respondent's Exhibit E.

109 *See* T. at 1742-1747.

110 T. at 15-16, 21-22 (Richards), 1842 (Louisdor).

111 T. at 10-52; Respondent's Exhibit Q.

"Carpenter 100%." Based on Zhu's calculations, the Administrator sought back wages in the amount of $116,947.31 based on the carpentry hourly rate of $48.53.[112] The ALJ found Zhu's analysis established a just and reasonable inference.

Hall submitted a statement to Zhu in December 2002. The Administrator determined that Pythagoras underpaid Hall from September 29, 2001, through April 5, 2003. Hall stated that his job duties included: installing doors, kitchen cabinets, and door locks, and laying floor tiles in the bedrooms and living rooms.[113] Zhu calculated back wages to Hall as follows: "Carpenter 100%." Based on Zhu's calculations, the Administrator sought back wages in the amount of $75,031.63 based on the carpentry rate of $48.53.[114] The ALJ found Zhu's analysis supported a just and reasonable inference.

In January 2004, Pythagoras calculated that it owed back wages to Richards and Hall, for 118 days at 1.5 hours/day at the rate of $28.55 for a back wage of $5,053.35 to each.[115]

The ALJ found that Pythagoras rebutted Richards's and Hall's testimonies that they spent 100% of their time performing carpentry work, as well as Richards's claim that he worked on 4-5 bathrooms a day. The ALJ noted Pythagoras's assertions regarding the extent of the project's carpentry work, including the undisputed fact that the project involved some 700 bathrooms. The ALJ thus determined that Pythagoras rebutted the claims of Richards and Hall to 100% carpentry work. Therefore, the ALJ accepted Pythagoras' calculation that it owed Richards and Hall each 118 days back wages, but calculated that back wage at 7.5 hours/day, rejecting Pythagoras' calculation of 1.5 hours/day, and used the full carpentry rate of $48.53 (minus a $20 per hour credit that was paid), not the $28.55 rate Pythagoras used.[116] The ALJ ultimately awarded $29,612.62 in back wages to Richards and $27,419.50 in back wages to Hall.[117]

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[112] Administrator's Exhibits 34, 35a; *see* Administrator's Exhibit 15.

[113] Respondent's Exhibit NNN.

[114] Administrator's Exhibits 34, 35a; *see* Administrator's Exhibit 15.

[115] Respondent's Exhibit OO.

[116] D. & O. at 10-11. We note the discrepancy contained in Respondent's Exhibit OO. Since Richards and Hall testified that they were paid $20 per hour, and the carpentry rate is $48.53, then the back wage rate would be $28.53 ($48.53 - $20 = $28.53).

[117] Aug. 28, 2008 Order at 3-4, *see* Susan B. Jacobs letter to ALJ Burke dated July 15, 2008, Exhibit 2.

On appeal, the Administrator contends that the ALJ erroneously found that the employer's evidence, including Respondent's Exhibit OO and the "Daily Look Aheads," negate the reasonableness of the inference drawn from its evidence, to the effect that Richards and Hall performed carpentry 100% of the time. We agree. We note that the ALJ accepted Pythagoras's calculation in Respondent's Exhibit OO that Richards and Hall were due 118 days of back wages. Petsagourakis testified that his company made the calculations in Respondent's Exhibit OO based on conversations he had with Louisdor and by looking at the Daily Look Aheads that Louisdor prepared.[118] But neither party elicited testimony from Louisdor regarding the calculation of days Richards or Hall worked as a carpenter, as contained in Respondent's Exhibit OO. In fact, Louisdor conceded that he did not keep track of the time workers spent performing work in one classification or another, and indicated that the "Daily Look Aheads," (1) do not reflect all of the work that was performed each day on the project, (2) were not produced for all dates, and (3) were not records of the precise amount of hours worked.[119] Pythagoras's rebuttal evidence did not satisfy the two-prong test. On this record, we hold that under *Mt. Clemens* neither Respondent's Exhibit OO nor the "Daily Look Aheads" show the precise amount of work Richards or Hall performed and do not negate the reasonableness of the inference drawn from the Administrator's evidence that Richards and Hall spent 7.5 hours each day performing carpentry work for which they were not compensated.

Further, the certified payrolls show that Pythagoras paid Richards and Hall for the work they performed on the Vladeck Houses project. Critically, Pythagoras fails on this record to show for what work, if not carpentry work, it paid Richards and Hall.[120] Because Pythagoras did not negate the Administrator's calculations of the back wages owed Richards and Hall, they stand. Accordingly, we modify the ALJ's award of back wages, to award $116,947.31 to Richards and $75,031.63 to Hall.

(2) Delroy Green and Edward Riley

We next address the cases of Delroy Green and Edward Riley whom the Administrator alleges performed mason tender work for which they were not paid.

Delroy Green worked at the Vladeck Houses for the entire project. He testified that he performed bathroom demolition work, chipping bathroom ceilings, built and took

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118 T. at 1944. *See* Administrator's Exhibit 21.

119 T. at 1853-55. The "Daily Look Aheads" end in December 2002. Administrator's Exhibit 21. Both Richards and Hall worked on the project until 2004. Administrator's Exhibits 8, 9.

120 *Id.*; *see Solis v. Best Miracle Corp.*, 709 F. Supp 843 (C.D. Cal. 2010)(Defendants failed to rebut Secretary of Labor's prima facie case that they kept inaccurate records and did not pay employees overtime).

down scaffolding or sidewalk sheds, removed debris, and laid and removed plastic sheeting.[121] Zhu calculated back wages owed Green as follows: "Mason tender 70% Tier B 30%." Based on Zhu's calculation, the Administrator sought back wages for Green in the amount of $51,215.37.[122] Pythagoras contested the amount of time Green spent performing mason tender work. Similar to the cases of Richards and Hall as discussed above, the ALJ accepted Pythagoras's calculation in Respondent's Exhibit OO that Pythagoras owed Green 45 days wages at the mason tender rate of $36.19.[123] The ALJ ultimately awarded Green $9,709.13 in back wages.[124]

Riley submitted statements to NYCHA and Zhu, and he testified at the hearing. Riley testified that he was paid $20 per hour and worked at the Vladeck Houses from 2001 until 2003, laying plastic to cover furniture and walls, and building and dismantling scaffolding or sidewalk sheds, removing debris, building fences, pouring cement, "chipping guns to break out beams," taking stone up to the parapet wall, and bricklaying.[125] Zhu calculated the back wages Pythagoras owed Riley as follows: "8/31/01 to 5/2/02: 100% Tier B; 5/3/02 to 10/24/03: 70% Mason Tender 30% Tier B." Based on Zhu's calculations, the Administrator sought $28,237.84 in back wages.[126] Pythagoras determined that it owed Riley $4,469.00 in back wages for "Shed 45."[127]

The ALJ found that the Administrator established that Riley performed mason tender work for which he was not compensated. The ALJ noted that Pythagoras disputed the length of time Riley engaged in mason tender work. Without more, the ALJ found, "Respondents have presented a precise amount of work performed to rebut the reasonableness of the Administrator's assessment."[128] The ALJ found that the Respondents derived this number from a review of the records and knowledge of the scope of the project. In light of the ascertainable and verifiable basis for the Respondents' calculations, when compared with those of investigator Zhu, the ALJ

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121 T. at 54-80.

122 Administrator's Exhibits 34a, 35a.

123 The ALJ did not accept, however, Pythagoras's calculation of 7 hours per day. D. & O. at 13-14, 14 n.11; *see* Respondent's Exhibit OO.

124 Aug. 28, 2008 Order at 4-5, *see* Susan B. Jacobs letter to ALJ Burke dated July 15, 2008, Exhibit 2.

125 T. at 128-164; Respondent's Exhibits S, T.

126 Administrator's Exhibits 34a, 35a.

127 Respondent's Exhibit OO.

128 D. & O. at 15.

determined that the Respondents have presented sufficient evidence to negate the reasonableness of the inference derived from Riley's testimony. The ALJ thus accepted Pythagoras's calculation in Respondent's Exhibit OO that Riley is owed $4,469.00.[129]

On appeal, the Administrator argues that Respondent's Exhibit OO, Pythagoras's evidence offered to rebut the inferences drawn from the Administrator's evidence regarding what time Green and Riley spent performing mason tender work for which they were not paid, is not a precise indication of work performed and does not negate the inferences drawn from the Administrator's evidence. We agree. Pythagoras contests the amount of scaffolding work these two workers claimed. Pythagoras did not, however, explain nor substantiate how the calculations contained in Respondent's Exhibit OO for Green ("45 days x 7 x 14.19") and Riley ("For Shed 45") show the precise amount of scaffolding performed or negate these workers' claims upon which the Administrator relied to calculate back wages. Critically, the record shows that Pythagoras employees performed scaffolding work at the Vladeck Houses when Green and Riley claim they performed this work.[130] On this record, we conclude that Pythagoras has not satisfied the two-prong test and rebutted, under *Mt. Clemens*, the inferences to be drawn from the Administrator's evidence regarding the back wages owed Green and Riley; we thus reverse the ALJ's contrary legal conclusion. We vacate the ALJ's reduced award. We award back wages as calculated by the Administrator, $51,215.37 to Green and $28,237.84 to Riley.

(3) Fabio Arbelaez and Philbert Franklin

We next address the Administrator's challenge to the ALJ's reduced back wage awards to Fabio Arbelaez and Philbert Franklin.

Arbelaez submitted a statement to Zhu and testified at the hearing. Arbelaez worked at the Vladeck Houses from November 2001 to December 2003 and was paid $20 per hour. He testified that he made cement, cut bricks, built and took down scaffolding, removed debris, and cleaned materials and the yard.[131] Zhu used the following calculation for back wages due: "Mason Tender 70% Tier B 30%." Based on Zhu's calculations, the Administrator sought $44,576.63 in back wages.[132] Pythagoras determined that it owed Arbelaez $3,958.00 in back wages using the following

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129 *Id.* The ALJ subsequently additionally awarded Riley $3,898.57 for the additional one-half hour Riley worked, for a total award of $8,367.57. Aug. 28, 2008 Order at 7; *see* Susan B. Jacobs letter to ALJ Burke dated July 15, 2008, Exhibit 2.

130 Administrator's Exhibits 20, 21; Respondent's Exhibit E.

131 T. at 253-279; Respondent's Exhibit CC.

132 Administrator's Exhibits 34a, 35a.

calculation: "244.5 H x 16.19."[133] The ALJ accepted Pythagoras's calculation of back wages due. Without citation to the record, the ALJ found that Pythagoras gave Arbelaez credit for every day there was scaffolding or sidewalk shed work performed, determined how many days the bricklayers required cement, and noted, "Respondents assert that it took 1 to 2 hours to mix the cement, as opposed to the 5 hours testified to by Arbelaez. Respondents' assessment is found to be more accurate, and, therefore, more credible."[134] The ALJ subsequently adjusted the $3,958.00 award up for the additional one-half hour worked ($2,490) and down for credit for wages paid ($167.50), for a total award of $6,280.96.[135]

Franklin submitted a statement to Zhu and testified at the hearing. Franklin worked at the Vladeck Houses project from May 2001 to March 2003. He testified that he chipped or broke 10 to 12 bathroom ceilings a day, built scaffolds, broke concrete bathroom floors, and laid plastic sheeting.[136] Zhu calculated back wages as follows: "Mason Tender 70% Tier B 30%." Based on Zhu's calculations, the Administrator sought $38,347.49 in back wages for Franklin.[137] Pythagoras determined that it owed Franklin $5,832.60 for "Rate Diff."[138]

The ALJ found that Zhu's testimony that three or four bathrooms were being worked on in a day rebuts Franklin's testimony that he chipped 10 to 12 bathroom ceilings a day.[139] The ALJ accepted Respondent's Exhibit OO as sufficient to negate the inference drawn from the Administrator's evidence that Franklin performed mason tender work for which he was not compensated. Accordingly, the ALJ awarded Franklin $5,832 in back wages, which he subsequently increased by $4,140 for an additional one-half hour worked, for a total award of $9,972.[140]

With regard to Arbelaez and Franklin, Pythagoras offered Respondent's Exhibit OO to rebut the Administrator's evidence regarding the amount of back wages due them in light of their misclassifications. The ALJ accepted Respondent's Exhibit OO as a

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133 Respondent's Exhibit OO.

134 D. & O. at 15-16, 15 n.12.

135 Aug. 28, 2008 Order at 6.

136 T. at 81-103; Respondent's Exhibit R.

137 Administrator's Exhibits 34a, 35a.

138 Respondent's Exhibit OO.

139 T. at 98-99 (Franklin), 1351 (Zhu); *see* D. & O. at 17.

140 Aug. 28, 2008 Order at 6.

"detailed estimate" of the hours Arbelaez worked as a mason tender and as an "accurate and credible" assessment of the hours Franklin worked as a mason tender. The Administrator argues that the ALJ's findings are contrary to the record and that Pythagoras failed to rebut the Administrator's calculations for Arbelaez and Franklin. We agree. Again, the record shows that Pythagoras did not explain or substantiate how it computed the number of hours of mason tender wages owed Arbelaez (244.5 hours). Pythagoras did not even specify, in Respondent's Exhibit OO, any amount of hours owed Franklin. Moreover, Zhu's estimate that 3-4 bathrooms were worked on a day, does not call into question the Administrator's estimate that Franklin spent 70% of his time performing mason tender work. On this record, we conclude that, under *Mt. Clemens*, Respondent's Exhibit OO neither constitutes evidence of the precise amount of work Arbelaez or Franklin performed nor constitutes evidence negating the reasonableness of the inferences drawn from the Administrator's evidence. Pythagoras's rebuttal evidence failed to satisfy the two-prong test and was legally insufficient. Accordingly, we vacate the ALJ's reduced wage awards to Arbelaez and Franklin. We award back wages as calculated by the Administrator, $44,576.63 to Arbelaez and $38,347.49 to Franklin.

(4) Raymond Jesse Garcia

Concerning Raymond Jesse Garcia, we agree with the Administrator's argument that Pythagoras did not produce rebuttal evidence of the precise amount of work performed or evidence to negate the reasonableness of the inference drawn from the Administrator's evidence. As explained above, the evidence Pythagoras offered on rebuttal, namely the Periodical Estimates reflecting billing information, does not address what scaffolding work Raymond Jesse Garcia actually performed. Under *Mt. Clemens*, the inference to be drawn from the Administrator's evidence stands and Raymond Jesse Garcia is due back wages as calculated by the Administrator. Accordingly, we vacate the ALJ's reduced award. We award $11,743.47 in back wages to Raymond Jesse Garcia.

(5) Jude Merzy

The Administrator challenges the ALJ's finding that Jude Merzy is due no more than a few days of compensation at the mason tender rate. We agree with the Administrator. Merzy, like the workers above, received from the ALJ an initial reasonable inference of the amount and extent of his work based upon his testimony. The only rebuttal evidence Pythagoras provided was based on general records and general testimony.[141] We conclude that, relying upon *Mt. Clemens*, Pythagoras's rebuttal evidence failed to satisfy the two-prong test and was legally insufficient. Accordingly,

[141] The ALJ adopted Pythagoras's mischaracterization that Merzy claimed to have worked in over 1,300 bathrooms. This is not a reasonable inference from the limited and ambiguous testimony in the record. Merzy never clearly said that he did more than 1,300 bathrooms. The one isolated phrase in question followed a fragmented, multiple-choice math equation addressed to him by both Pythagoras's attorney and the ALJ. Pythagoras's attorney tried to ask a clearer question but could not and moved on. T. at 418, 433-35, 442-446.

we vacate the ALJ's reduced back wages and award to Merzy back wages of $90,899.19 as calculated by the Administrator.

(6) Conclusions as to the Administrator's Appeal

Based on the foregoing, we hold that the employer failed to rebut the Administrator's evidence and thus, the Administrator's calculations of back wages owed to Richards, Hall, Green, Riley, Arbelaez, Franklin, Raymond Jesse Garcia, and Merzy stand.[142] Therefore, we modify the ALJ's back wage awards to award back wages as calculated by the Administrator for these eight employees. Further, we note that a remand of this case is not warranted. Pythagoras adduced no evidence individualized to these employees that fully accounts for their work and could be sufficient to establish rebuttal of the reasonable inferences established in this case. Accordingly, we hold that to remand the case would be a futile exercise where, regardless of any further findings, the record supports only one legal conclusion.

B. Manni Kavalos and Jesus Hernandez

The Administrator argues that the ALJ erred when he rejected the Administrator's calculations for the back wages owed Kavalos and Hernandez. The ALJ found that the Administrator failed to establish a just and reasonable inference for Kavalos's and Hernandez's claims. Uncontroverted testimony establishes that Kavalos was hired for part-time work only and thus, the ALJ properly found that Pythagoras negated the contrary inference drawn from the Administrator's evidence.[143] Similarly, the record supports the ALJ's finding that the Administrator did not present sufficient evidence to demonstrate that Hernandez was misclassified and had performed work for which he was not compensated. Hernandez lacked memory of the jobsite, the project location, what work he accomplished, and his alleged work hours. He did not recall the term "Vladeck Houses" and was vague as to its location and how he travelled to the jobsite. Moreover, while the Administrator relies on the fact that the record contains some paystubs showing Hernandez's employment with Pythagoras, this evidence is not dispositive of the issue of whether he performed work for which he was not compensated. Therefore, we uphold the ALJ's decision not to award back pay to Hernandez.[144]

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142 *Mt. Clemens,* 328 U.S. at 687- 88 (If the employer fails to produce rebuttal evidence, the court may then award damages even though the result be only approximate); *see Best Miracle Corp.*, 709 F. Supp 843 (C.D. Cal. 2010).

143 T. at 1927-28.

144 D. & O. at 26.

CONCLUSION

Based on the foregoing, we affirm the following findings of the ALJ: (1) Pythagoras failed to pay certain employees at prevailing wage rates for skilled labor actually performed; (2) Pythagoras routinely failed to pay certain employees for one-half hour of compensable time preceding the 8 a.m. start time; (3) Manni Kavalos and Jesus Hernandez performed no skilled labor work for which they were not compensated. Consequently, the Respondents are liable for the ALJ's entire amended award of $447,670.36. However, we accept the Administrator's request and accordingly increase the ALJ's back wage awards to Patrick Richards, Clive Hall, Delroy Green, Edward Riley, Fabio Arbelaez, Philbert Franklin, Raymond Jesse Garcia, and Jude Merzy by a total amount of $344,726.33. In sum, the total award is $792,396.69.

ORDER

For the foregoing reasons the ALJ's decision and orders are **AFFIRMED** in part and **REVERSED** in part.

In particular, we **AFFIRM** the ALJ's awards to the following individuals for back wages and/or fringe benefits in the amounts specified (identified as Group A on chart at p. 8):

Baffour Agyemang -	$6,168.39
Luis Bermeo -	$979.90
Ivan Cajamarca -	$834.32
Jasline Francois -	$5,782.00
Raymond Garcia, Jr. -	$7,117.88
Juan Hernandez -	$3,406.06
Thomas Justiniano -	$7,397.68
Gregory Kavalos -	$48,196.80
Shawn Mims -	$6,682.90
Clinton Orridge -	$8,924.15
Michael Pagan -	$22,265.03
Marie Paul -	$14,028.00
Eric Quinnones -	$5,668.14
Jose Rivera -	$16,718.16
Christian Strickland -	$2,399.04
Manuel Tenesaca -	$870.70
Edward Tyler -	$23,503.83
Tereza Ubinas -	$14,856.80
Jaime Velez -	$32,070.28
Steven Washington -	$21,377.07
Marvin Woodard	$7,950.91

Subtotal Fringe Group A - $277,198.04

We also **AFFIRM** the ALJ's awards to the following 41"Tier B Laborers" for the extra one-half hour of uncompensated time (identified as Group B on chart at p. 8):

Cesar Aguilar -	$1,603.00
Carlos Alvarez -	$1,355.00
Jose Balzano -	$1,348.00
Roussel Costume -	$770.00
David Crespo -	$330.00
Fernando Cuascat -	$1,000.00
Anthony Davis -	$104.00
Rosane Day -	$710.00
Juan Diaz -	$870.00
Alfredo Enriquez -	$580.00
David Enriquez -	$784.00
Fabian Garcia -	$1,270.00
Douglas Gomez -	$1,000.00
Pedro Guzman -	$400.00
Julio Laracuente	$310.00
Hector Lopez -	$280.00
Rafael Malgaold -	$880.00
Santiago Merino -	$470.00
Victor Morales -	$625.00
Francisco Moran -	$681.29
Mike Padin -	$220.00
Antonio Perez -	$260.00
Nestor Quinonez -	$1,310.00
Carlos Ramirez -	$610.00
Juan Ramirez -	$520.00
Armando Ramos -	$580.00
Edwin Ramos -	$200.00
Jose Ramos -	$890.00
Juan Rivera -	$160.00
Ray Rivera -	$1,080.00
Joje Roa -	$140.00
Victor Roman -	$1,240.00
Esteban Salvidar -	$520.00
Antony Schnias -	$340.00
Porfirio Tapia -	$630.00
Arturo Torres -	$1,165.00
Ovidio Valdez -	$1,420.00
Angelo Vargas -	$1,930.00
Carlos Vargas -	$1,080.00
Angel Velez -	$90.00
Enrique Velez -	$175.00

Subtotal 41 Tier B Laborers - $29,930.29

We also **AFFIRM** the ALJ's awards to the following omitted janitorial employees (identified as Group C on chart at p. 8):

Fred Baptiste - $5,790.00
Lillian Calle - $1,813.00
Thelma Jeter - $1,274.00
Evelyn Ruiz - $3,157.00

Subtotal omitted janitors - $12,034.00

We also **AFFIRM** the ALJ's denial of an award to Jesus Hernandez and **AFFIRM** the ALJ's award of $9,764.930.00 to Manni Kavalos (identified as Group D on chart at p. 8. The awards of Lagoa, Pratt, Roman, and Vasquez are not included because they were not appealed).

We **MODIFY** the ALJ's awards to the following individuals such that their back wages are increased from the ALJ's awards by the amounts specified (identified as Group E on chart at p. 8):

Patrick Richards is awarded $116,947.31. (The ALJ awarded $29,612.62. This is an additional award of $87,334.69.)

Clive Hall is awarded $75,031.63. (The ALJ awarded $27,419.50. This is an increase of $47,612.13.)

Delroy Green is awarded $51,215.87. (The ALJ awarded $9,709.13. This is an increase of $41,506.74.)

Edward Riley is awarded $28,237.84. (The ALJ awarded $8,367.57. This is an increase of $19,870.27.)

Fabio Arbelaez is awarded $44,576.63. (The ALJ awarded $6,280.95. This is an increase of $38,295.68.)

Philbert Franklin is awarded $38,347.49. (The ALJ awarded $9972. This is an increase of $28,375.49.)

Raymond Jesse Garcia is awarded $11,743.47. (The ALJ awarded $6384.33. This is an increase of $5,359.14.)

Jude Merzy is awarded $90,899.19. (The ALJ awarded $14,527.00. This is an increase of $76,372.19.)

The total amount of increase by ARB of the ALJ's amended award is $344,726.33.

Finally we **AFFIRM** the ALJ's order to debar Pythagoras and its president, Stanley Petsagorakis for willful violations of the Davis-Bacon Related Acts described above for a period of three years.

SO ORDERED:

LUIS A. CORCHADO
Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge