

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

SDB Construction Co., Sole Ownership

Case No. 13-0439-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected subcontractor SDB Construction Co., Sole Ownership (SDB) requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to the Fairview Development Center project (Project) performed for the California Department of General Services (DGS) in Orange County. The Assessment determined that \$269,450.80 in unpaid prevailing wages and statutory penalties was due. DLSE subsequently moved to amend the assessed unpaid wages and training funds upward from \$100,450.80 to \$105,512.20 based on evidence discovered after the Assessment was issued. Finding good cause for the amendment, the Hearing Officer granted DLSE's motion on February 5, 2015, increasing the total assessed unpaid prevailing wages and statutory penalties to \$283,115.20. A telephonic hearing on the merits was held on February 10, 2015, before Hearing Officer Nathan D. Schmidt. William A. Snyder appeared for DLSE. There was no appearance for SDB. Now, based on un rebutted evidence showing that SDB failed to pay the required prevailing wages to its workers, the Director of Industrial Relations affirms the Assessment as amended.

Facts

At the last Prehearing Conference, held on November 24, 2014, SDB's counsel, Asbet A. Issakhanian, and Mr. Snyder informed the Hearing Officer that a parallel criminal case against SDB concerning its wage violations on the Project had concluded with a plea bargain agreement under which SDB entered a guilty plea and agreed to pay restitution. Mr. Snyder explained that the restitution amount, if ultimately paid, was less than the amount of the assessed unpaid wages

and did not include either penalties or liquidated damages. On that basis, Mr. Snyder asked that this case proceed to a hearing. Issakhanian stated that SDB would likely withdraw its Request for Review in light of the outcome of the criminal case against it.

Failure to Appear: Issakhanian informed the Hearing Officer on February 4, 2015, via a telephone conversation with the Hearing Officer's assistant, Cari Castellano, that SDB had decided to allow the case to proceed to an undisputed decision and that no one would be appearing for SDB at the Hearing on the Merits. The case proceeded in SDB's absence and the Hearing Officer recommended a decision based on the evidence presented pursuant to California Code of Regulations, title 8, section 17246, subdivision (a). DLSE's evidentiary exhibits were admitted into evidence without objection and the matter was submitted on the evidentiary record based on the testimony of DLSE's Industrial Relations Representative Fabian Cazares.

Assessment: The facts stated below are based on the testimony of Cazares, Exhibits 1 through 23 submitted by DLSE, the Assessment, and the other documents in the Hearing Officer's file.

In late 2012, DJM Construction Company, Inc. (DJM) entered into a public works contract with DGS regarding the Project.¹ DJM subsequently subcontracted with SDB to install fire sprinklers for the Project. SDB workers performed work on the Project from approximately February 9 to June 22, 2013. The applicable prevailing wage determination and classification for all SDB workers on the Project is ORA-2012-2 (Fire Sprinkler Fitter).

The evidence establishes that SDB failed to pay the required prevailing wages to 14 of its workers on the Project in the aggregate amount of \$96,000.40 and failed to pay required training fund contributions in the aggregate amount of \$9,514.80. In addition, DLSE assessed \$177,600.00 in penalties under Labor Code section 1775, at the maximum rate of \$200.00 per violation, for 888 instances of failure to pay the applicable prevailing wages.²

¹ DJM also requested review of the Assessment (Case No. 14-0025-PWH), but it settled with DLSE and withdrew its Request for Review prior to hearing on February 3, 2015.

² All further statutory references are to the California Labor Code, unless otherwise indicated.

Discussion

Sections 1720 and following set forth a scheme for determining and requiring the payment of prevailing wages to workers employed on public works construction projects. DLSE enforces prevailing wage requirements not only for the benefit of workers but also "to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards." (§ 90.5, subd. (a), and *see Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976.)

Section 1775, subdivision (a) requires, among other things, that contractors and subcontractors pay the difference to workers who received less than the prevailing rate and also prescribes penalties for failing to pay the prevailing rate. Section 1742.1, subdivision (a) provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if those wages are not paid within sixty days following the service of a Civil Wage and Penalty Assessment.

When DLSE determines that a violation of the prevailing wage laws has occurred, a written civil wage and penalty assessment is issued pursuant to section 1741. An affected contractor may appeal that assessment by filing a Request for Review under section 1742. The contractor "shall have the burden of proving that the basis for the Civil Wage and Penalty Assessment is incorrect." (§ 1742, subd. (b).) In this case, the record establishes the basis for the Assessment, and SDB presented no evidence to disprove the basis for the Assessment or to support a waiver of liquidated damages under section 1742.1, subdivision (a). Accordingly, the Assessment is affirmed in its entirety.

FINDINGS AND ORDER

1. Affected subcontractor SDB Construction Company filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.
2. SDB underpaid its workers on the Project in the aggregate amount of \$96,000.40 in prevailing wages and failed to pay required training fund contributions in the aggregate amount of \$9,514.80.

3. Penalties under section 1775 are due in the amount of \$177,600.00 for 888 violations at the maximum rate of \$200.00 per violation.

4. Because none of the unpaid wages were paid within 60 days after service of the Assessment, liquidated damages are due in the full amount of the unpaid wages, \$96,000.40, and are not subject to waiver under section 1742.1, subdivision (a).


5. The amounts found remaining due in the Assessment as affirmed by this Decision are as follows:

Wages due:	\$96,000.40
Training funds due:	\$9,514.80
Penalties under section 1775, subdivision (a):	\$177,600.00
Liquidated damages:	<u>\$96,000.40</u>
TOTAL:	\$379,115.60

Interest shall accrue on the unpaid wages in accordance with section 1741, subdivision (b).

The Civil Wage and Penalty Assessment is affirmed as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: 4/30/2015


Christine Baker
Director of Industrial Relations