

**STATE OF CALIFORNIA**  
**DEPARTMENT OF INDUSTRIAL RELATIONS**

In the Matter of the Request for Review of:

**Solar Blue West, Inc.**

Case No. 14-0233-PWH

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected contractor Solar Blue West, Inc. (Solar Blue) requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to the work of improvement known as the Design, Installation and Commissioning of Solar/Photovoltaic Systems (Project) performed for the Culver City Unified School District (CCUSD) in the County of Los Angeles. The Assessment determined that \$56,002.76 was due in unpaid prevailing wages and training funds and \$54,700.00 was due as statutory penalties under Labor Code sections 1775 and 1813.<sup>1</sup> The Assessment also sought liquidated damages in the amount of \$56,002.76.<sup>2</sup>

Pursuant to written notice, a Hearing on the Merits was held on June 18, 2015, in Los Angeles, California, before Hearing Officer Richard T. Hsueh. David Cross appeared for DLSE. There was no appearance for Solar Blue.

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

<sup>2</sup> Solar Blue did not deposit the full Assessment amount of unpaid wages and penalties with the Department of Industrial Relations (DIR) pursuant to section 1742.1, subdivision (b). However, in connection with its settlement with DLSE, the first tier subcontractor, Reno Contracting, deposited the full Assessment amount. Solar Blue is the second tier subcontractor on the Project. DSLE, therefore, did not seek liquidated damages against Solar Blue at the Hearing on the Merits.

The issues for decision are:

- Whether the Assessment correctly found that Solar Blue failed to pay the required prevailing wages for all straight time and overtime worked on the Project by its workers;
- Whether the Assessment correctly found that Solar Blue failed to contribute to the training fund for its workers on the Project;
- Whether DLSE abused its discretion in assessing penalties under section 1775 at the rate of \$120.00 per violation;
- Whether Solar Blue failed to pay the required prevailing wage rate for overtime work and was therefore liable for penalty under section 1813.

Since Solar Blue failed to appear at the Hearing on the Merits, the Hearing Officer proceeded with the hearing in Solar Blue's absence under California Code of Regulations, title 8, section 17246, subdivision (a).<sup>3</sup> The Director finds that Solar Blue has failed to carry its burden of proving that the basis of the Assessment was incorrect. Based on the unrebutted evidence showing that Solar Blue failed to pay the required prevailing wages, the Director affirms the Assessment in its entirety, with the exception of the request for liquidated damages.

#### Facts

Failure to Appear: Solar Blue's Request for Review was filed on or about April 3, 2014. Solar Blue's mailing address on file is 7505 W. Sand Lake Road, Orlando, FL 32819. Solar Blue, through its corporate officer Jeffrey Cain, participated in two Prehearing Conferences, one on February 6, 2015, and the other on April 6, 2015. Solar Blue participated in selecting June 18, 2015, as the date for Hearing on the Merits and had personal notice of the hearing date. Moreover, Notice for the Hearing on the Merits was served on Solar Blue. On June 18, 2015, the Hearing Officer called Solar Blue's phone number on file, (407) 996-8999, but was only able to leave a message.

The Hearing Officer then proceeded to conduct the Hearing on the Merits pursuant to the Notice for the purpose of formulating a recommended decision as warranted by the evidence pursuant to California Code of Regulations, title 8, section 17246, subdivision (a). DLSE's

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<sup>3</sup> The CWPA was also assessed against the prime contractor, Sun Power Corporation, and the first tier subcontractor, Reno Contracting, Inc. Both Sun Power and Reno Contracting have settled their respective requests for review with DLSE. Accordingly, only Solar Blue's request for review is before the Hearing Officer.

evidentiary exhibits were admitted into evidence without objections and the matter was submitted on the evidentiary record based on the testimony of DLSE's Deputy Labor Commissioner, Kristina Abadjian (Abadjian).

Assessment: The facts stated below are based on the testimony of Abadjian, Exhibits 1 through 48 submitted by DLSE, including the Assessment, and other documents in the Hearing Officer's file.

DLSE submitted evidence showing that twenty-four (24) workers performed work for Solar Blue under the contract at various times between August 15, 2013, and October 20, 2013. The applicable prevailing wage determination in effect on the contract date between the CCUSD and the general contractor is Inside Wireman, pursuant to Determination LOS-2012-1.

Based on certified payroll records, pay stubs, employee questionnaires, and phone interviews with employees, the Assessment found that Solar Blue failed to pay the required prevailing wages to the affected workers identified in the audit summary by one or more of the following: (1) underpayment of prevailing wages through misclassification and for all overtime hours worked; and (2) failure to make contributions to the applicable training fund. The Assessment found a total of \$56,002.76 in unpaid prevailing wages (including training fund contributions) and \$54,700.00 in sections 1775 and 1813 statutory penalties (\$120.00 per violation for 445 violations under section 1775 and \$25.00 per violation for 52 violations under section 1813).

Deputy Labor Commissioner Abadjian testified as to the preparation of the Assessment and the supporting audit worksheets. She testified regarding her investigation and identified the applicable prevailing wage determination, the misclassification of the affected workers by Solar Blue, and the proper job classification for work performed by the affected workers. Abadjian further testified that the Assessment was properly served on Solar Blue on March 18, 2014. Solar Blue, which thereafter submitted a timely request for review on or about April 3, 2014. She also testified that DLSE provided Solar Blue with a reasonable opportunity to review DLSE's evidence.



## 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). See, too *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 1813 prescribes a fixed penalty of \$25.00 for each instance of failure to pay the prevailing overtime rate when due. Section 1742.1, subdivision (a) provides for the imposition of liquidated damages, essentially a doubling of 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. Subdivision (b) of section 1742 provides, among other things, that the contractor shall be provided with an opportunity to review evidence that DLSE intends to utilize at the hearing. At the hearing the contractor “shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect.” (§ 1742, subd. (b).) If the contractor “demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment... with respect to a portion of the unpaid wages covered by the assessment..., the director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages.” (§ 1742.1, subd. (a).) As well, DLSE’s determination “as to the amount of the penalty shall be reviewable only for abuse of discretion.” (§ 1775, subd. (a)(2)(D).)

In this case, the record established the basis for the Assessment. DLSE presented evidence that the Assessment was properly served on Solar Blue and that DLSE provided Solar

Blue with a reasonable opportunity to review the evidence to be used at the hearing. DLSE presented evidence that the affected workers performed work in the classification of Electrician-Inside Wiremen instead of Laborer, as misclassified by Solar Blue. DLSE presented evidence that Solar Blue did not contribute to the training fund for the affected workers in the proper job classification and failed to pay 13 workers for all overtime hours worked.

Accordingly, DLSE's evidence constitutes prima facie support for the Assessment. Solar Blue, in turn, presented no evidence to disprove the basis for, or accuracy of, the Assessment.

### FINDINGS AND ORDER

1. Affected contractor Solar Blue West, Inc. filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.

2. Solar Blue West, Inc. underpaid 24 employees on the Project in the aggregate amount of \$54,118.64.

3. Solar Blue West, Inc. failed to contribute to the applicable training fund in the aggregate amount of \$1,884.12 for 24 employees on the Project.

4. Penalties under section 1775 are due in the amount of \$53,400.00 for 445 violations at the rate of \$120.00 per violation.

5. Penalties under section 1813 are due in the amount of \$1,300.00 at the rate of \$25.00 per calendar day for 52 violations.

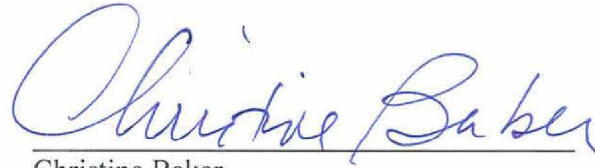
The amounts found due in the Assessment affirmed and modified by this Decision are as follows:

Wages:	\$ 54,118.64
Training Fund Contributions:	\$ 1,884.12
Penalties under section 1775, subdivision (a):	\$ 53,400.00
Penalties under section 1813:	\$1,300.00
<b>TOTAL</b>	<b>\$110,702.76</b>

Interest shall accrue on 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: 4/20/2016



Christine Baker  
Director of Industrial Relations