

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Infiniti Contractors Corp. dba Infiniti
Engineering**

Case No. 14-0335-PWH

From a Notice of Withholding of Contract Payments issued
by:

California Department of Transportation.

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor Infiniti Contractors Corp. dba Infiniti Engineering (Infiniti Engineering) requested review of a Notice of Withholding of Contract Payments (Notice) issued by the California Department of Transportation (Caltrans) with respect to the project known as Installation of Street Lighting (Project) performed for Caltrans. The Notice determined Infiniti Engineering owed \$38,049.41 in unpaid prevailing wages and training fund contributions. Caltrans assessed penalties against Infiniti Engineering under Labor Code sections 1775, 1776 and 1813.¹

The Hearing Officer, Ed Kunnes, held a Hearing on the Merits on October 27, 2015, in Oakland, California. Richard J. Mitchell appeared for Caltrans. There was no appearance for Infiniti Engineering.

The issues for decision are:

1. Did Infiniti Engineering pay its employees the proper base hourly rate of pay for work performed as an Operating Engineer, Laborer, and Electrician, and if not, what are the amounts due?
2. Did Infiniti Engineering pay the correct fringe benefits rates to or on behalf of workers in the Operating Engineer, Laborer and Electrician work classifications, and if not, what are the amounts due?

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

3. Did Infiniti Engineering provide the requested payroll records within the timeframe required by section 1776?
4. Did Infiniti pay its employees the required overtime rates of pay for workers in the Operating Engineer, Laborer, and Electrician work classification, and if not, what are the amounts due?
5. Did Infiniti pay its employees for all hours of work performed on this Project, and if not, what are the amounts due?
6. Did Infiniti pay applicable training fees to the California Apprenticeship Council as required, and if not, what are the amounts due?
7. What are the amounts of the penalties due with respect to all of the above?
8. What is the amount of liquidated damages?

Now, based on un rebutted evidence showing that Infiniti Engineering failed to pay the required prevailing wages to its workers, the Director of Industrial Relations affirms the Notice.

Facts

Failure to Appear: On May 8, 2015, the parties appeared for a Settlement Conference. Afor Mbanwi, the president of Infiniti Engineering, appeared at the Settlement Conference. Mbanwi had signed Infiniti Engineering's Request for Review and had previously appeared at prehearing conferences. The Hearing Officer held a continued prehearing conference on September 28, 2015, at which he set the Hearing on the Merits for October 27, 2015. Mbanwi did not appear at the continued prehearing conference. The Minutes of Prehearing Conference and Order Setting Hearing on the Merits was served on September 29, 2015 to Mbanwi's email address and to Mbanwi's mailing address.

The Minutes of Prehearing Conference and Order Setting Hearing on the Merits requested that Mbanwi contact the Hearing Officer by October 9, 2015 to confirm that she would appear at the Hearing on the Merits on October 27, 2015 in Sacramento, California. If Mbanwi failed to contact the Hearing Officer, the Hearing Officer would hold the Hearing on the Merits on the same date and at the same time by a conference call for which the number and participant

code were provided to all the parties. Mbanwi did not contact the Hearing Officer and, pursuant to the Minutes of Prehearing Conference and Order Setting Hearing on the Merits, the Hearing Officer held the Hearing on the Merits via a conference call.

Pursuant to notice, the Hearing Officer proceeded to conduct the Hearing on the Merits as scheduled 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). Caltrans' evidentiary exhibits were admitted into evidence without objection and the matter was submitted on the evidentiary record based on the testimony of Caltrans' Labor Compliance Manager for Division of Construction Pat Maloney and Caltrans' Central Region, Labor Compliance Manager Camillo Prandini.

Notice: The facts stated below are based on the testimony of Maloney and Prandini, Caltrans' Exhibits 1 through 33, the Notice, and other documents in the Hearing Officer's file.

On or about June 21, 2012, Infiniti Engineering entered into a public works contract with Caltrans as the general contractor for the Project, which was installing street lighting on Chicken Ranch Road and La Grange Road in Tuolumne County. Infiniti Engineering workers performed work on the Project between approximately September 2012 and June 2013. The applicable prevailing wage determinations and classifications are Operating Engineer, Laborer, and Electrician work classification for the bid date March 29, 2012.² Caltrans issued the Notice on June 6, 2014. The Labor Commissioner affirmed these amounts in the Notice.

The evidence establishes that Infiniti Engineering failed to pay \$37,707.67 for the required prevailing wages to its workers on the Project and failed to pay \$341.74 for training fund contributions. In addition, Caltrans assessed \$13,680.00 in penalties under section 1775, at the mitigated rate of \$120.00 per violation, for 114 instances of failure to pay the applicable prevailing wages. Caltrans also assessed \$275.00 in penalties, at the statutory rate of \$25.00 per violation, for 11 instances of failure to pay overtime under section 1813.

At the hearing, Prandini provided detailed testimony on Infiniti's failure to timely submit Certified Payroll Records (CPRs) pursuant to section 1776 pursuant to which the Notice assessed

² Caltrans set forth the wage rates for each of the job classifications in its Notice.

\$325,000.00 in penalties. The statutory rate for penalties under section 1776, subdivision (h) is \$100.00 for each worker for each calendar day that Infiniti Engineering failed to timely submit CPRs. Maloney testified, however, that Infiniti Engineering failed to provide CPRs for 302 days for 25 workers, which, when calculated (302 days x 25 workers x \$100.00), far exceeds the assessed penalty of \$325,000.00.³

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. A labor compliance program, such as Caltrans, 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; and *see* 1771.5, authorizing enforcement by labor compliance programs.)

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 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 the unpaid wages, if the contractor or subcontractor does not pay those wages within sixty days following the service of a notice of withholding of contract payments.

Additionally, employers on public works must keep accurate payroll records, recording, among other things, the work classification, straight time and overtime hours worked and actual per diem wages paid for each employee. (§ 1776, subd. (a).) Section 1776, subdivision (b) requires the contractor or subcontractor to furnish CPRs upon request to an enforcing entity. Section 1776, subdivision (h) provides, in the event that the contractor or subcontractor fails to furnish CPRs to the requesting party within the 10-day period, the contractor or subcontractor forfeits one hundred dollars (\$100.00) for each calendar day for each worker, until strict

³ The correct penalty amount, based on this calculation, would be \$755,000.00.

compliance is effectuated.

When a labor compliance program determines that a violation of the prevailing wage laws has occurred, the labor compliance program issues a written notice of withholding of contract payments pursuant to section 1771.6. An affected contractor may appeal that notice by filing a Request for Review under section 1742. The contractor "shall have the burden of proving that the basis for the notice of withholding of contract payments is incorrect." (§ 1742, subd. (b).) In this case, the record establishes the basis for the Notice, and Infiniti Engineering presented no evidence to disprove the basis for the Notice or to support a waiver of liquidated damages under section 1742.1, subdivision (a). Accordingly, the Director affirms the Notice in its entirety.

FINDINGS AND ORDER

1. Affected subcontractor Infiniti Engineering filed a timely Request for Review from a Civil Wage and Penalty Notice issued by Caltrans.
2. Infiniti Engineering underpaid its workers on the Project in the aggregate amount of \$37,707.67 in prevailing wages.
3. Penalties under section 1775 are due in the amount of \$13,680.00 for 114 violations at the mitigated rate of \$120.00 per violation.
4. Because none of the unpaid wages were paid within 60 days after service of the Notice, liquidated damages are due in the full amount of the unpaid wages, \$37,707.67, and are not subject to waiver under section 1742.1, subdivision (a).
5. Infiniti Engineering failed to pay training fund contributions in the amount of \$341.74.
6. Penalties under 1813 are due in the amount of \$275.00 for 11 instances of failure to pay overtime at the statutory rate of \$25.00 per violation.
7. Infiniti Engineering failed to timely submit accurate certified payroll records pursuant to the Caltrans's requests, as required by section 1776.

8. Caltrans properly assessed penalties against Infiniti Engineering under section 1776, subdivision (h) for its failure to provide accurate certified payroll records to Caltrans within 10 days of the request.

9. In light of the findings above, Infiniti Engineering is liable for penalties under section 1776, subdivision (h) in the total amount of \$325,000.00.⁴

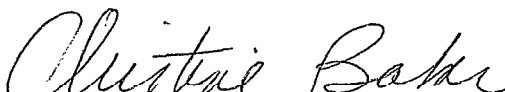
10. The amounts found remaining due in the Notice as affirmed by this Decision are as follows:

Wages due:	\$37,707.67
Penalties under section 1775, subdivision (a):	\$13,680.00
Liquidated damages:	\$37,707.67
Training fund contributions:	\$341.74
Penalties under section 1813:	\$275.00
Penalties under section 1776, subdivision (h):	\$325,000.00
TOTAL:	\$414,712.08

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

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

Dated: 2/8/2016


Christine Baker
Director of Industrial Relations

⁴ Although the evidence appears to support a significantly higher penalty as noted in footnote 3, above, Infiniti was not on notice that a larger penalty amount might be owing and, in the interest of due process, this Decision only affirms the noticed amount of penalties.