

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Worthington Construction, Inc.

Case No. 19-0044-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

ORDER DENYING RECONSIDERATION

Affected contractor Worthington Construction, Inc. (Worthington) and the Division of Labor Standards Enforcement (DLSE) seek reconsideration of the Decision of the Director issued on August 7, 2020 (Decision) on Worthington's request to review the Civil Wage and Penalty Assessment (Assessment) issued by DLSE. Worthington request seeks a "corrected and updated" Decision to reflect that unpaid wages were paid to each of the three employees on February 5, 2019, and copies of the cancelled checks showing proof of payment were sent to DLSE on February 13, 2019. DLSE takes issue with the Decision based on its disagreement with dicta therein concerning California Code of Regulations, title 8, section 230.1, subdivision (a).

I find no grounds for reconsideration of the Decision on the basis asserted by Worthington. Stipulation number four on page three of the Decision states that back wages were paid as a result of the Assessment. Footnote three on page three expands on the stipulation to observe that the wage payment that Worthington made within 60 days of the January 19, 2019 Assessment dispenses with liability for liquidated damages in the amount of the unpaid wages, a result flowing from application of Labor Code section 1742.1, subdivision (a). The Findings in the Decision require no payment of liquidated damages. The cited stipulation and its footnote are correct.

Further, whereas Finding number one states the unpaid wages are \$612.36, footnote ten amplifies that Finding and states that Worthington paid an amount on the unpaid wages, for which he is entitled to credit. Finding number one and footnote ten are also correct. Based on that footnote, Worthington is entitled to credit in the amount of wages paid as shown in the record by way of copies of cancelled checks.

With respect to DLSE's request for reconsideration, which is opposed by Worthington, I also find no grounds for reconsideration. DLSE's request seeks reconsideration based on its disagreement with what DLSE depicts as dicta in the Decision concerning California Code of Regulations, title 8, section 230.1, subdivision (a). Specifically, DLSE takes issue with the following sentence in the Decision: "the language of California Code of Regulations, title 8, section 230.1, subdivision (a), does not require that the exact start date be provided on a request for dispatch." However, that sentence is an accurate summation of the regulation. DLSE contends that the dicta is contrary to DLSE's interpretation and enforcement practices, but DLSE presented no evidence of those practices at the Hearing. Further, the sentence is followed in the Decision by the enumerated requirements under section 230.1, subdivision (a), including the provision that "the request must be sent to the committee at least 72 hours before the date on which the apprentice is needed." The Decision's statement of the requirements of the regulation is also correct. Because DLSE has not identified any ground on which the Decision is incorrect, the request for reconsideration has no merit.¹

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¹ In support of its contention, DLSE also requests official notice of the Director's decision issued in *In the Matter of the Request of Review, GRFCO, Inc.* Case Number 16-0471-PWH (GRFCO), in order to rely on dicta in that decision. The request for official notice is denied. Director's decisions are not precedential and therefore are not binding beyond the parties involved in each decision.

Because Worthington and DLSE do not identify any error in the Decision to be corrected, both requests for reconsideration are denied.

Dated: 08-21-2020

/s/ Katrina S. Hagen
Katrina S. Hagen, Director
Department of Industrial Relations