

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**G Coast Construction Inc.**

Case No. 13-0062-PWH

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected contractor G Coast Construction Inc. (G Coast) 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 Burbank Tree Removal project (Project) performed for the Los Angeles Community College District (District) in the County of Los Angeles. On December 19, 2012, DLSE served the Assessment on G Coast. The Assessment determined that \$9,677.39 in unpaid prevailing wages and training funds was due, and \$1,700.00 in Labor Code sections 1775 statutory penalties was due.<sup>1</sup> G Coast 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).

Pursuant to a written notice, a Hearing on the Merits was held on October 13, 2015, in Los Angeles, California, before Hearing Officer Richard T. Hsueh. Max Norris, Esq., appeared for DLSE. There was no appearance for G Coast, even though it had appeared telephonically for a Prehearing Conference on July 6, 2015, when the Hearing on the Merits was set.<sup>2</sup>

---

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

<sup>2</sup> G Coast did not appear for any of the Prehearing Conferences held on May 28, 2013 and August 5, 2013. It also did not appear for Hearing on the Merits that was set for October 10, 2013, which was then continued to November 22, 2013, January 10, 2014, and March 7, 2014 due to the unavailability of DLSE's Deputy Labor Commissioner. The case then went off calendar due to the unavailability of the assigned Hearing Officer. On June 29, 2015, this matter was reassigned to a New Hearing Officer, Richard Hsueh, who set another Prehearing Conference for July 6, 2015.

The issues for decision are:

- Whether the Assessment correctly found that the contractor, G Coast Construction Inc. (G Coast) failed to pay the required prevailing wages for all straight time and overtime worked on the Project by its workers;
- Whether DLSE abused its discretion in assessing penalties under Section 1775 at the rate of \$20.00 per violation;
- Whether the Assessment correctly found that G Coast failed to contribute to the training fund for its workers on the Project; and
- Whether G Coast has demonstrated substantial grounds for appealing the Assessment, entitling it to a waiver of liquidated damages under section 1742.1.

Since G Coast failed to appear at the Hearing on the Merits, the Hearing Officer proceeded with the hearing in G Coast's absence under California Code of Regulations, title 8, section 17246, subdivision (a). At the time of the hearing, DLSE made an oral motion to amend the Assessment downward as follows to account for the classification discrepancy involving one of the affected workers, Jeffrey Benevides: \$7,826.35 in unpaid prevailing wages and training funds and \$1,680.00 in Labor Code sections 1775 statutory penalties.<sup>3</sup> Since the amount of the Assessment was adjusted downward resulting in no prejudice to G Coast, the Hearing Officer granted DLSE's motion

The Director finds that G Coast has failed to carry its burden of proving that the basis of the Assessment, as amended, was incorrect. G Coast has also failed to carry its burden of proving grounds for waiver of liquidated damages. Based on the unrebutted evidence showing that G Coast failed to pay the required prevailing wages, the Director affirms the Amended Assessment, as modified, on all issues.

### **Facts**

Failure to Appear: G Coast's Request for Review was filed on or about February 13, 2013. G Coast did not participate in any of the Prehearing Conferences held in 2013 nor did it appear for the Hearing on the Merits that was set for October 10, 2013. The Hearing on the Merits was continued several times due to the unavailability of the handling Deputy Labor

---

<sup>3</sup> All further statutory references are to the California Labor Code, unless otherwise indicated.

Commissioner. Following the reassignment of this case in 2015 to a new Hearing Officer, G Coast ultimately participated in a Prehearing Conference on July 6, 2015. A Hearing on the Merits was then set for October 3, 2015. On October 3, 2015, G Coast failed to appear for the Hearing on the Merits. When the Hearing Officer called G Coast, G Coast advised the Hearing Officer that they weren't sure if anyone from G Coast would appear at the hearing.

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 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, Jaffer Islam (Islam).

Assessment: The facts stated below are based on Exhibits 1 through 18 submitted by DLSE, including the Assessment, the Amended Assessment, and other documents in the Hearing Officer's file.

G Coast was the primary contractor on the Project. Ten workers performed work for G Coast under the contract at various times between December 3, 2011, and June 3, 2012. The applicable prevailing wage determinations in effect on the bid advertisement date are: (1) SC-23-102-2-2011-1 (Laborer), with the applicable job classification being Laborer Groups 1 and 2. And (2) 2011-2 (Laborer-Apprentice) with the applicable classification being Period 1.

Based on the certified pay records obtained, the Assessment found that G Coast failed to pay the required prevailing wages to ten workers identified in the audit summary by one or more of the following: (1) underpayment of prevailing wages; and (2) failure to make contributions to the applicable training fund. The Assessment found a total of \$9,677.39 in unpaid prevailing wages (including training fund contributions) and \$1,700.00 in section 1775 statutory penalties (\$20.00 per violation for 85 violations under section 1775). The Amended Assessment found a total of \$7,826.35 in unpaid prevailing wages (including training fund contributions) and \$1,680.00 in section 1775 statutory penalties (\$20.00 per violation for 84 violations under section 1775).

Deputy Labor Commissioner Jafeer Islam testified as to the preparation of the Assessment, the Amended Assessment, and the supporting audit worksheets. He identified the Certified Payroll Records and the applicable prevailing wage determinations and apprentice wage rates. He further testified that the Assessment was properly served on G Coast on December 19, 2012. G Coast then submitted a timely request for review on or about February 19, 2013, and DLSE provided G Coast 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 a hearing on the request for review "shall be commenced within 90 days" and 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 and the Amended Assessment. DLSE presented evidence that the Assessment was properly served on G Coast and that DLSE provided G Coast with a reasonable opportunity to review the evidence to be used at the hearing. DLSE presented evidence that nine workers, at times, performed work in the classifications of Laborer and that one worker performed work in the classification of Laborer-Apprentice. DLSE presented evidence that G Coast did not contribute to the training fund for the affected workers and failed to pay them for all hours worked, including overtime.

Accordingly, DLSE’s evidence constitutes prima facie support for the Assessment and the Amended Assessment. G Coast, in turn, consciously chose not to appear at the Hearing on the Merits and to present evidence to disprove the basis for, or accuracy of, the Assessment or the Amended Assessment, or to show that it had substantial grounds for believing the Assessment was in error to support a waiver of liquidated damages under section 1742.1, subdivision (a). Liquidated damages are therefore affirmed in an amount equal to the unpaid wages.

#### **FINDINGS AND ORDER**

1. Affected contractor G Coast Construction, Inc. filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.
2. G Coast Construction, Inc. underpaid ten (10) employees on the Project in the aggregate amount of \$7,511.15
3. G-Coast failed to contribute to the applicable training fund in the aggregate amount of \$315.20.
4. Penalties under section 1775 are due in the amount of \$1,680.00 for 84 violations at the rate of \$20.00 per violation.

5. Liquidated damages are due in the amount of \$7,511.15 and are not subject to waiver under section 1742.1, subdivision (a).

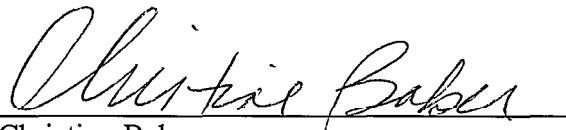
The amounts found due in the Amended Assessment affirmed and modified by this Decision are as follows:

Wages:	\$ 7,511.15
Training fund contribution	\$315.20
Penalties under section 1775, subdivision (a):	\$ 1,680.00
Liquidated damages:	\$ 7,511.15
<b>TOTAL</b>	<b>\$17,017.50</b>

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

The Amended 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: 5/16/2016



Christine Baker  
Director of Industrial Relations