STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Walker Bros. Concrete**

Case No. 09-0014-PWH

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement.**

# DECISION OF THE DIRECTOR

Affected subcontractor Walker Bros. Concrete ("Walker Bros.") requested review of a Civil Wage and Penalty Assessment ("Assessment") issued by the Division of Labor Standards Enforcement ("DLSE") with respect to the City Hall Renovation – Phase II project ("Project") performed for the City of Rohnert Park in Sonoma County. The Assessment determined that $17,148.21 in unpaid prevailing wages and statutory penalties was due. A hearing on the merits was held on June 23, 2009, in San Francisco, California, before Hearing Officer Nathan D. Schmidt. Ramon Yuen-Garcia appeared for DLSE. Walker Bros. did not appear. Now, based on unrebutted evidence showing that Walker Bros. underpaid its workers by failing to pay prevailing wages to workers performing work in the Laborer and Cement Mason classifications, and failing to pay the prevailing overtime rates for hours worked over eight hours per day and on weekends, the Director of Industrial Relations affirms the Assessment in its entirety.

## Facts

Failure To Appear: Walker Bros. failed to appear at the hearing although it agreed to the date during a prehearing conference on May 1, 2009, and received notice from the Hearing Officer, dated May 4, 2009. When Mark Walker, Walker Bros.'s representative, had not appeared for the hearing on the merits by 9:45 a.m., the Hearing Officer contacted Walker Bros. by telephone. No one answered at Walker Bros.'s telephone number of record, and the Hearing Officer left a voicemail message stating that the hearing would commence at 9:55 a.m. unless Mr.

Walker contacted the Hearing Officer to show good cause to the contrary. This matter went on the record for hearing at 9:55 a.m. at which time no one from Walker Bros. had appeared.

Assessment: The facts stated below are based on the testimony of Deputy Labor Commissioner Rachel Farmer, Exhibits 1 through 11 submitted by the DLSE, the Assessment, and the other documents in the Hearing Officer's file.

On or about November 11, 2007, Walker Bros. entered into a subcontract with Kenridge Builders, Inc. to perform concrete work on the Project. The applicable prevailing wage determinations are NC-23-203-1-2006-1 (Cement Mason) and NC-23-102-1-2007-1 (Laborer and Related Classifications).

Walker Bros.'s certified payroll records ("CPRs") show that Walker Bros. paid less than the required prevailing wage rates to workers reported as performing work in the Laborer and Cement Mason classifications. The CPRs also establish that Walker Bros. failed to pay the required prevailing overtime rates to those workers for hours worked over eight hours per day and on weekends. The total wages due are $13,903.21.

DLSE assessed $2,720.00 in penalties under Labor Code section 1775, based on 136 prevailing wage violations assessed at the rate of $20.00 per violation.[1] DLSE determined that the violations were not good faith mistakes, nor were they corrected when called to Walker Bros.'s attention. DLSE mitigated these penalties from the $50.00 maximum allowed under section 1775 because there was no record of any prior violations by Walker Bros. An additional $640.00 in penalties were assessed under section 1813, based on 32 violations at the rate of $25 per violation, for failing to pay prevailing overtime rates when due.

**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.

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

(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 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 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," that the contractor shall be provided with an opportunity to review evidence that DLSE intends to utilize at the hearing, and that the contractor "shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect."

In this case, the record establishes the basis for the Assessment, and Walker Bros. has presented no evidence to disprove the basis for the Assessment or to support waiver of liquidated damages under section 1742.1, subdivision (a). Accordingly, the Assessment is affirmed in its entirety.

## FINDINGS AND ORDER

1. Affected subcontractor Walker Bros. Concrete filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.

2. Unpaid prevailing wages are due in the amount of $13,903.21.

3. There was no showing that the Assessment's determinations were incorrect or that DLSE abused its discretion in determining the amount of penalties assessed under section 1775, subdivision (a).

4. Penalties under section 1775, subdivision (a) are due in the amount of $2,720.00 for 136 violations at the rate of $20.00 per violation.

5. Penalties under section 1813 are due in the amount of $525.00 for 21 violations.

6. Liquidated damages are due in the amount of $13,903.21 and are not subject to waiver under section 1742.1, subdivision (a).

Interest shall accrue on all unpaid wages in accordance with section 1741, subdivision (b). The Hearing Officer shall issue a Notice of Findings which shall be served together with this Decision on the parties.

Dated: 6/24/09

John C. Duncan
Director of Industrial Relations