

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

RCI Electrical & Design

Case No. 11-0233-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR

Affected contractor Mitchell Kaady and Laurie Kaady doing business as RCI Electrical & Design, a general partnership (RCI), 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of Labor Standards Enforcement (DLSE) with respect to the work of improvement known as the 10-185 Electrical – Replace Outdated Lamps, Ballasts, and Strip Lighting project (Project) performed for the Department of Motor Vehicles (DMV) in Capitola, Santa Cruz County. The Assessment determined that \$6,291.52 in unpaid prevailing wages and statutory penalties was due. A Hearing on the Merits was held on February 22, 2012, in Los Angeles, California, before Hearing Officer John J. Korbol. Ramon Yuen-Garcia appeared for DLSE. There was no appearance for RCI. Now, based on un rebutted evidence showing that RCI failed to pay the required prevailing wages to its workers, the Director of Industrial Relations affirms the Assessment.

Facts

Failure to Appear: According to the Request for Review filed by Mitchell Kaady of RCI, RCI's telephone number is (818) 843-7705 and RCI's mailing address is 1816 W. Parkside Ave., Burbank, California 91506. A notice of prehearing conference was mailed to RCI at this address, giving RCI notice that the Hearing Officer would be conducting a telephonic prehearing conference on December 14, 2011. When the Hearing Officer attempted to contact RCI at RCI's telephone number, there was no answer. Subsequent attempts to reach a representative of RCI for prehearing conferences on January 6, 2012, and January 30, 2012, were also unavailing. The matter was ultimately set for a telephonic Hearing on the Merits on February 22, 2012. Once

again, there was no answer to the call put through to RCI's telephone number by the Hearing Officer. The Hearing Officer proceeded to conduct the Hearing on the Merits in RCI's absence 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 objection, and the matter was submitted on the evidentiary record based on the testimony of DLSE's investigator, Ying Wu.

Assessment: The facts stated below are based on Exhibits 1 through 8 submitted by DLSE, including the Assessment, and the other documents in the Hearing Officer's file.

On or about November 18, 2010, RCI entered into a public works contract with DMV to perform electrical and lighting work. Three workers performed work for RCI under the contract between February 20, 2011, and March 13, 2011. The applicable prevailing wage determinations are: (1) STZ-2010-2 (General Prevailing Wage Determination for Santa Cruz County), with the applicable job classification for two of the three affected workers being Inside Wireman; and (2) NC-23-102-1-2010-2 (General Prevailing Wage Determination for several Northern California counties, including Santa Cruz County) with the applicable job classification for one of the three affected workers being Laborer Group 4.

Based on RCI's certified payroll records, paycheck stubs, and timesheets, RCI failed to pay the prevailing wage to workers employed on the Project by paying them as laborers rather than as inside wiremen when they were performing inside wireman work, and by failing to pay for work performed on Saturday and Sunday at the proper rate. Based on a letter from the California Apprenticeship Council, RCI also failed to pay training fund contributions as required by the applicable prevailing wage determinations. The total wages due are \$4,816.52, including \$124.88 in unpaid training fund contributions.

DLSE assessed \$1,050.00 in penalties under Labor Code section 1775,¹ at the maximum rate of \$50.00 per violation, for 21 instances of failure to pay the applicable prevailing wages. DLSE also assessed \$50.00 in penalties under section 1813 for two instances of failure to pay the proper overtime rate. In addition, DLSE assessed penalties under section 1776 for failure to

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

provide certified payroll records timely. These penalties were calculated at the rate of \$25.00 per day for five days for three workers, totaling \$375.00.

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), 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 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 1776, subdivision (g) prescribes a fixed penalty of \$25.00 for each calendar day for each worker when a contractor fails to timely provide certified payroll records within 10 days after a request by DLSE. 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” and that the contractor shall be provided with an opportunity to review evidence that DLSE intends to utilize at the hearing.

The contractor “shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect.” (*Ibid.*) In this case, the record establishes the basis for the Assessment, and RCI presented no evidence to disprove the basis for the Assessment or to support a waiver of liquidated damages under section 1742.1, subdivision (a). Accordingly, the

Assessment is affirmed in its entirety.

FINDINGS AND ORDER

1. Affected contractor Mitchell Kaady and Laurie Kaady doing business as RCI Electrical & Design, a general partnership, filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.
2. Unpaid wages are due in the amount of \$4,691.64.
3. Unpaid training fund contributions are due in the amount of \$124.88.
4. In light of Findings 2 and 3, above, RCI underpaid its employees on the Project in the aggregate amount of \$4,816.52.
5. Penalties under section 1775 are due in the amount of \$1,050.00 for 21 violations at the maximum rate of \$50.00 per violation.
6. Penalties under section 1813 are due in the amount of \$50.00 for two violations.
7. Penalties under section 1776 are due in the amount of \$375.00 for 15 violations.
7. Liquidated damages are due in the amount of \$4,816.52, and are not subject to waiver under section 1742.1, subdivision (a).
8. The amounts found remaining due in the Assessment as modified and affirmed by this Decision are as follows:

Wages Due:	\$4,691.64
Training Fund Contributions Due:	\$124.88
Penalties under section 1775, subdivision (a):	\$1,050.00
Penalties under section 1813:	\$50.00
Penalties under section 1776, subdivision (g):	\$375.00
Liquidated damages:	\$4,816.52
TOTAL:	\$11,108.04

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

The Civil Wage and Penalty Assessment is affirmed in full 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: 3/7/2012



Christine Baker
Director of Industrial Relations