

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Jayco Group, Inc. dba Yetter Steel, Inc.

Case No. 13-0642-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected subcontractor Jayco Group, Inc. dba Yetter Steel, Inc. (Yetter Steel), requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to the Merced Wastewater Treatment Plant, Phase V Solids Handling Upgrade Project No. 110040 (Project) performed for the City of Merced in Merced County. The Assessment determined that \$21,723.05 in unpaid prevailing wages and statutory penalties was due. On June 16, 2014, DLSE's motion to amend the Assessment to \$21,085.83 was granted. A telephonic hearing on the merits was held on July 9, 2014, before Hearing Officer Kumani L. Armstrong. David Cross, Sherry Gentry, and Lori Rivera appeared for DLSE and Steve Yount appeared for Yetter Steel. Now, based on unrebutted evidence showing that Yetter Steel failed to pay the required prevailing wages to its workers, the Director of Industrial Relations affirms the Assessment.

FACTS

On May 27, 2014, prime contractor Overaa/Miller Construction (Overaa/Miller) intervened in the present action pursuant to California Code of Regulations, title 8, section 17208. On June 17, 2014, DLSE informed the Hearing Officer that it settled all claims for unpaid wages and training funds with Overaa/Miller. The sole remaining issue for hearing is the assessment of penalties against Yetter Steel under Labor Code section 1775.¹

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

Failure to Appear: Prior to and at the commencement of the hearing, Yetter Steel's counsel, Steve Yount, informed the Hearing Officer that Yetter Steel had filed for Chapter 7 bankruptcy (Case No. 14-42098 N.D. Cal.) and did not intend to appear at the hearing. The parties stipulated that the hearing would proceed in Yetter Steel's absence and the Hearing Officer would recommend whatever decision is 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. Lori Rivera and Sherry Gentry testified on behalf of DLSE. Steve Yount was sworn as a witness and testified that Yetter Steel produced no defense to penalties because it had already worked with Overaa/Miller to pay wages and training funds. Yount also testified that Yetter Steel had settled all issues for any prior violations that served as the basis for penalties.

Assessment: The facts stated below are based on Exhibits 1 through 13 submitted by DLSE, the Assessment, testimony presented at trial, and any other documents in the Hearing Officer's file.

On or about March 21, 2011, Overaa/Miller entered into a public works contract with the City of Merced regarding the Project. On April 5, 2011, Overaa/Miller subcontracted with Yetter Steel for installation of metalwork on the Project. Eight workers performed work for Yetter Steel on the Project. The applicable prevailing wage determination is C-20-X-1-2009-1 (General Prevailing Wage Determination for all localities in California), and the applicable job classification for all eight affected workers is Iron Worker.

DLSE assessed \$12,250.00 in penalties under section 1775, at the rate of \$50.00 per violation, for 245 instances of failure to pay the applicable prevailing wage rates.

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." (Lab. Code § 90.5, subd. (a), and *see Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976.)

Section 1775, subdivision (a) prescribes daily penalties for failing to pay the prevailing wage rate. During the relevant time period, penalties under section 1775 were set at a maximum of \$50.00 per violation. 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 or subcontractor 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 or subcontractor shall be provided with an opportunity to review evidence that DLSE intends to utilize at the hearing.

The contractor or subcontractor "shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect." (*Id.*) In this case, the record establishes the basis for the Assessment and Yetter Steel presented no evidence to disprove the basis for the Assessment. Accordingly, the Assessment is affirmed in its entirety.

FINDINGS AND ORDER

1. Affected subcontractor Yetter Steel filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.
2. Penalties under section 1775 are due in the amount of \$12,250.00 for 245 violations at the rate of \$50.00 per violation.

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: 8/21/2014



Christine Baker
Director of Industrial Relations