

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Recom, Inc.

Case No. 14-0066-PWH

From a Civil Wage and Penalty Assessment issue by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

The Director's Decision on the merits of this case ("Decision") issued on April 22, 2015, affirmed in part and modified in part a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on October 23, 2013, with respect to work performed by affected subcontractor Recom, Inc. (Recom) on the University of California, Los Angeles (UCLA) Pauley Pavilion project (Project). Recom submitted a request for review of the Assessment. The Decision found that Recom was liable for \$91,095.19 in unpaid prevailing wages, \$8,435.32 in training fund contributions, \$46,175.00 in statutory penalties, and \$91,095.19 in liquidated damages. Recom filed a petition for writ of mandate in the Superior Court which was granted in part and denied in part, and the matter was remanded to the Director to issue a new decision that omits certain findings, including penalties for unpaid wages attributable to one of the workers covered by the Decision. Subsequently, DLSE filed a supplemental motion to amend the Assessment to conform to the Superior Court's order granting in part the writ of mandate, reducing the amount due under the Assessment to \$130,775.71. Recom did not object to DLSE's motion and the matter was submitted for decision following the issuance of a Notice of Intention to Submit the Matter for Decision. No party requested the Hearing Officer to convene another hearing on the merits, nor did any party submit further evidence or argument.

Accordingly, in this Decision, the Director amends finding number 6 of the April 22, 2015, Decision to remove Osef Allahgholi from the list of workers entitled to further

payments, reduces the amount of wages, penalties, and training funds owed that were attributed to Allahgholi, and adopts other changes per the remand order. Therefore, the Director of Industrial Relations issues this Decision affirming and modifying the Assessment.

FACTS

Based on instructions from the Superior Court, DLSE's amended Assessment found due and owing \$130,775.71, consisting of \$75,781.39 in unpaid prevailing wages for workers Gharakhanian, Parseghian, Espinoza, Klajyan, Solis, and Vartani; \$46,400.00 in penalties under Labor Code section 1775¹ for 928 violations at the penalty rate of \$50.00 charged for the unpaid prevailing wages for the aforementioned six workers; \$625.00 in penalties under section 1813 for 25 violations at the penalty rate of \$25.00 involving Parseghian; and \$7,949.32 in unpaid training contributions. Recom submitted no evidence to rebut the underpayment of wages, statutory penalties, and unpaid training contributions.

DISCUSSION

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. At the hearing on a request for review, the contractor "shall have the burden of proving that the basis for the Civil Wage and Penalty Assessment is incorrect." (§ 1742, subd. (b).)

As to unpaid wages DLSE's determination "as to the amount of the penalty shall be reviewable only for abuse of discretion." (§ 1775, subd. (a)(2)(D).) A contractor or subcontractor has the same burden of proof with respect to the penalty determination as to the wage Assessment. Specifically, "the Affected Contractor or Subcontractor shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty." (Rule 50, subd. (c) [Cal. Code Reg. tit. 8 §17250, subd. (c)].) Abuse of discretion by DLSE is

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

established if the “agency's non-adjudicatory action ... is inconsistent with the statute, arbitrary, capricious, unlawful or contrary to public policy.” (*Pipe Trades v. Aubry* (1996) 41 Cal.App.4th 1457, 1466.) In reviewing for abuse of discretion, however, the Director is not free to substitute her own judgment “because in [her] own evaluation of the circumstances the punishment appears to be too harsh.” (*Pegues v. Civil Service Commission*, 67 Cal.App.4th 95, 107.) Further, unlike section 1775, section 1813 does not give DLSE any discretion to reduce the amount of the penalty under that statute, nor does it give the Director any authority to limit or waive the penalty.

In this case, the record establishes the bases for the revised Assessment and Recom presented no evidence to disprove these bases. Nor has Recom shown the DLSE’s determination of the amount of section 1775 penalties constituted an abuse of discretion. However, an independent review of the revised Assessment by the Hearing Officer disclosed the total amount listed in that Assessment was incorrect, and this Decision accordingly reduces the total assessed violations to take into account the reduction in underpayment of wages and associated penalty violations associated with the number of days Recom’s CPRs reflected that Allahgholi worked on the project. The Decision had found that there were wages due of \$91,095.19. The DLSE Audit Summary listed \$15,418.80 in owing and unpaid wages to Allahgholi. Subtracting \$15,418.80 from \$91,095.19 leaves \$75,676.19 in remaining owing and unpaid wages. The Director had found that there were penalties under section 1775 of \$46,050.00. The DLSE Audit Summary listed \$2,500.00 in penalties associated with underpayment of Allahgholi. Subtracting \$2,500.00 from \$46,050.00 leaves \$43,550.00 in section 1775 penalties due. Also, the Director had previously found that there were only five overtime violations involving Parseghian. That determination had not been challenged. Therefore the section 1813 penalties were reduced from \$625.00 to \$125.00. Thus, the revised Assessment is affirmed as modified.

FINDINGS

1. Gharakhanian, and Parseghian performed work in Los Angeles County within the City limits of Los Angeles during the pendency of the Project and were entitled to be paid the journeyman rate for Fire Sprinkler Fitter for that work.
2. Espinoza, Klajyan, Solis, and Vartani performed work in Los Angeles County within the City limits of Los Angeles during the pendency of the Project and were entitled to be paid the journeyman rate for Laborer Group 1 for that work.
3. In light of findings 1 through 2 above, Recom, Inc. underpaid its employees on the Project in the aggregate amount of \$75,676.19.
4. Recom, Inc. failed to pay training fund contributions for its employees on the Project, and the resulting assessment of \$7,949.32, as modified for the reduction in hours worked by Allahgholi, is affirmed.
5. DLSE did not abuse its discretion in setting section 1775 penalties at the rate of \$50.00 per violation, and the resulting total penalty of \$43,550.00, as modified for 871 violations, is affirmed.
6. Penalties under section 1813 at the rate of \$25.00 per violation are due for five violations on the Project, for a total of \$125.00 in penalties.
7. The amount found remaining due in the Assessment is modified and affirmed by this Decision are as follows:

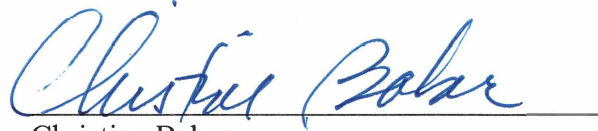
Wages due:	\$75,676.39
Penalties under section 1775(a):	\$43,550.00
Penalties under section 1813:	\$125.00
Training Fund Contributions:	\$7,949.32
TOTAL	\$127,300.71

In addition, interest is due and shall continue to accrue on all unpaid wages as provided in section 1741, subdivision (b).

ORDER

The revised Civil Wage and Penalty Assessment is affirmed in part and modified in part 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: 5/11/2017



Christine Baker
Director of Industrial Relations