

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

George Roofing, Inc.

Case No. 08-0159-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR

Affected contractor George Roofing, Inc. ("George Roofing"), requested review of a Civil Wage and Penalty Assessment ("Assessment") issued by the Division of Labor Standards Enforcement ("DLSE") with respect to the Town Hall Re-Roofing Project ("Project") performed for the Town of Colma in San Mateo County. The Assessment, as modified at hearing, determined that \$4,151.64 in unpaid prevailing wages and statutory penalties was due. A hearing on the merits was held on March 11, 2009, in San Francisco, California, before Hearing Officer Nathan D. Schmidt. Ramon Yuen-Garcia appeared for DLSE. George Roofing did not appear. Now, based on un rebutted evidence showing that George Roofing underpaid its workers by failing to pay the prevailing overtime rates for weekend work, the Director of Industrial Relations affirms the Assessment as modified.

Facts

Failure To Appear: George Roofing failed to appear at the hearing although it agreed to the date during a prehearing conference on January 6, 2009, and received notice from the Hearing Officer dated January 7, 2009. When Rollin George ("George"), George Roofing's representative, had not appeared for the hearing on the merits by 10:15 a.m., the Hearing Officer contacted George Roofing by telephone. George Roofing's receptionist told the Hearing Officer that George would not be appearing for the hearing, but that she "believed someone was coming to appear." The Hearing Officer informed George Roofing's receptionist that the hearing would commence at 10:30 a.m. unless the individual representing George Roofing contacted the Hear-

ing Officer to show good cause to the contrary. This matter went on the record for hearing at 10:35 a.m. at which time no one from George Roofing had appeared.

Assessment: The facts stated below are based on the un rebutted testimony of Deputy Labor Commissioner Rachel Farmer, Exhibits 1 through 7 submitted by the DLSE, the Assessment, and the other documents in the hearing officer's file.

On September 10, 2007, George Roofing entered into a public works contract with the Town of Colma to perform roofing work. The applicable prevailing wage determination is SMA-2007-1 (General Prevailing Wage Determination for San Mateo County).

Based on George Roofing's certified payroll records, George Roofing improperly paid its workers the straight time rate rather than the prevailing Saturday and Sunday overtime rates for work performed on three Sundays and two Saturdays between September 23 and October 7, 2007. The total wages due are \$ 3,351.64. George's Roofing failed to pay the proper overtime rate in 32 instances.

DLSE assessed an additional \$640.00 in penalties under Labor Code section 1775¹ at the rate of \$20.00 per violation (based on 32 violations) for failure to pay the applicable prevailing wages. DLSE dismissed the section 1775 penalties at hearing, because the Assessment consisted entirely of overtime violations and section 1775 penalties should therefore not have been assessed.

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.)

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

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 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.²

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 George Roofing 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, as modified at hearing, is affirmed in its entirety.

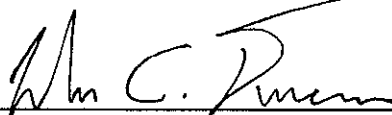
FINDINGS AND ORDER

1. Affected contractor George Roofing, Inc. 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 \$3,351.64 in wages.
3. Penalties under section 1813 are due in the amount of \$800.00 for 32 violations.
3. Liquidated damages are due in the amount of \$3,351.64, and are not subject to waiver under section 1742.1, subdivision (a).

² Section 17542.1, subdivision (a) was amended effective January 1, 2009. [Stats 2008 ch 402 § 3 (SB 1352).] Because the 60 day time after service of the Notice for payment of unpaid prevailing wages had run prior to the amendment’s effective date, however, the version in effect at that time remains applicable to this case.

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: 4/27/09



John C. Duncan
Director of Industrial Relations