

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Cool Air Supply, Inc.**

Case No. 14-0014-PWH

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement.**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected subcontractor Cool Air Supply, Inc. (Cool Air) requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to the California Military Institute School – Music and Science Building project (Project) in Riverside County. The Assessment determined that \$18,497.24 in unpaid prevailing wages and \$20,040.00 in statutory penalties was due. Cool Air's surety, The Hanover Insurance Company (Surety), participated as an interested party in one Prehearing Conference, following which it settled the wages with DLSE, leaving at issue the statutory penalties. A duly noticed Hearing on the Merits was held on July 8, 2014, in Los Angeles, California, before Hearing Officer Jessica L. Pirrone. Max Norris appeared for DLSE. There was no appearance for Cool Air. The case was submitted for decision on August 29, 2014. Now, based on un rebutted evidence showing that Cool Air failed to pay the required prevailing wages to its workers, the Director of Industrial Relations affirms the Assessment.

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**Facts**

Failure to Appear: According to the Request for Review filed by Simon Pilibossian, President of Cool Air, Cool Air's address is 26074 Avenue Hall, #20, Valencia, CA 91355 and its telephone number is 661-295-5030. On May 2, 2014, a Notice of Appointment of Hearing Officer; Notice of Prehearing Conference; and Preliminary Orders was mailed to Cool Air giving Cool Air notice that the Hearing Officer would be conducting a telephonic prehearing conference on May 13, 2014 at 10:00 a.m. Cool Air was not available at the telephone number it provided and otherwise failed to appear at the May 13 Prehearing Conference.

On May 22, the Hearing Officer issued and caused to be served Minutes of Prehearing Conference; Order Continuing Prehearing Conference and Setting Hearing on the Merits, which memorialized Cool Air's failure to appear at the May 13 Prehearing Conference, continued the Prehearing Conference to June 6, 2014 at 10:30 a.m., set the Hearing on the Merits for July 8, 2014 at 10:00 a.m., and set dates for the exchange and filing of exhibits, exhibit lists, witness lists, joint statement of issues, and charts listing the workers and related issues. DLSE complied with the Order for the filing and exchange of records; Cool Air did not.

At the June 6, 2014, 10:00 a.m. Prehearing Conference, Cool Air, again, was not available at the telephone number it provided and otherwise failed to appear. The Surety appeared and requested permission to participate as an interested party, which was granted. DLSE and Cool Air advised that they were working on settling the wages, and requested a continuance, which was granted.

On June 9, 2014, the Hearing Officer issued and caused to be served Minutes of Prehearing Conference; and Order Continuing Hearing on the Merits, which memorialized the Prehearing Conference and continued to August 29, 2014, at 10:00 a.m., the Hearing on the Merits.

Cool Air did not appear at the Hearing on the Merits. Pursuant to the June 9th Notice, the Hearing Officer proceeded to conduct the Hearing on the Merits as scheduled 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 Industrial Relations Representative Tony Eguavoen.

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~~Assessment: The facts stated below are based on the testimony of Eguavoen, Exhibits 1-13 submitted by DLSE and the other documents in the Hearing Officer's file.~~

On or about April 3, 2012, the Perris Union High School District (District) issued a notice inviting bids for the Project. On or about May 17, 2012, the District and Cool Air entered a Construction Services Agreement under which Cool Air agreed to conduct specified HVAC work for \$229,500.00.

Cool Air workers performed work on the Project between approximately February 25, 2013 and June 28, 2013. The applicable prevailing wage determination is RIV-2012-1 (Sheet Metal Worker). The applicable Travel and Subsistence provision is 166-102-1 (Sheet Metal Worker).

Based on Cool Air's certified payroll records, and additional wage information that the workers and project inspectors provided to DLSE, the evidence establishes that Cool Air failed to pay the required prevailing wages to seven of its workers on the Project leading to DLSE's assessment of \$20,040.00 in penalties under Labor Code section 1775,<sup>1</sup> at the rate of \$120.00 per violation, for 167 instances of failure to pay the applicable prevailing wages.

### 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) 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 \$200.00 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.

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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 Cool Air presented no evidence to disprove the basis for the Assessment. Accordingly, the Assessment is affirmed in its entirety.

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

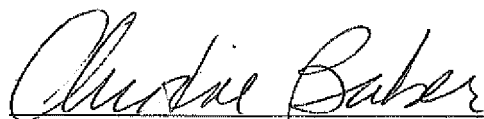
## FINDINGS AND ORDER

The issue of wages having been settled before the Hearing on the Merits and the only issue before the Director being penalties, the Director finds:

Penalties under section 1775 are due in the amount of \$20,040.00 for 167 violations at the rate of \$120.00 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: 9/5/2014

  
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Christine Baker  
Director of Industrial Relations