

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

GBR Enterprise, Inc.

Case No. 14-0438-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor GBR Enterprise, Inc. (GBR) 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 Olive View Childcare (Project) performed for the UCLA Olive View Medical Center (Olive View) in the County of Los Angeles. On May 7, 2014, DLSE served the Assessment on GBR. The Assessment determined that \$4,755.66 was due in unpaid prevailing wages and training funds, and \$9,600.00 was due in statutory penalties under Labor Code section 1775.¹ GBR did not deposit the full Assessment amount of unpaid wages and penalties with the Department of Industrial Relations (DIR) pursuant to section 1742.1, subdivision (b).

Pursuant to written notice, a Hearing on the Merits was held on April 7, 2015, in Los Angeles, California, before Hearing Officer Richard T. Hsueh. Galina Velikovich appeared by telephone for DLSE. There was no appearance for GBR, which likewise did not appear for the two noticed Prehearing Conferences.

The issues for decision are:

- Whether the Assessment correctly found that GBR failed to report and pay the required prevailing wages for all straight time and overtime worked on the Project by its workers;

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

- Whether GBR abused its discretion in assessing penalties under section 1775 at the rate of \$200.00 per violation; and
- Whether GBR has demonstrated substantial grounds for appealing the Assessment, entitling it to a waiver of liquidated damages under section 1742.1.

Since GBR failed to appear at the Hearing on the Merits, the Hearing Officer proceeded with the hearing in GBR's absence under California Code of Regulations, title 8, section 17246, subdivision (a). The Director finds that GBR has failed to carry its burden of proving that the basis of the Assessment was incorrect. GBR has also failed to carry its burden of proving grounds for waiver of liquidated damages. Based on the unrebutted evidence showing that GBR failed to pay the required prevailing wages, this Decision affirms the Assessment in full.

Facts

Failure to Appear: GBR's Request for Review was filed on or about July 2, 2014. GBR's mailing address on file is 1611 6th Avenue, Los Angeles, CA 90019. Notices of Prehearing Conference (Notices) were mailed to GBR at the aforementioned address, thus giving GBR notice that the hearing officer would be conducting a telephonic prehearing conference on the date stated in each Notice. On January 9, 2014, GBR failed to appear for the first Prehearing Conference. The Hearing Officer called GBR's phone number on file, (323) 998-0469, but the calls did not go through. GBR provided no other telephone number where it could be reached. The Prehearing Conference was continued to afford GBR another opportunity to participate. On January 16, 2014, GBR again failed to appear for the duly noticed continued Prehearing Conference. A Hearing on the Merits was then set for April 7, 2015, but GBR did not appear at the Hearing on the Merits.

The Hearing Officer then proceeded to conduct the Hearing on the Merits pursuant to the Notice 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 objections and the matter was submitted on the evidentiary record based on the testimony of DLSE's Deputy Labor Commissioner, Fabian Cazares (Cazares).

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

GBR was the primary contractor on the Project. Nine workers performed work for GBR under the contract at various time between October 27, 2013, and November 8, 2013. The applicable prevailing wage determination in effect on the bid advertisement date is SC-23-31-2-2011-2 (Carpenters and Related Trades), with the applicable job classification being Carpenter, Area 1.

Based on payroll records obtained and interviews with employees, the Assessment found that GBR failed to pay the required prevailing wages to nine workers identified in the audit summary by one or more of the following: (1) failure to accurately report all hours worked; (2) underpayment of prevailing wages; and (3) failure to make contributions to the applicable training fund. The Assessment found a total of \$4,755.66 in unpaid prevailing wages (including training fund contributions) and \$9,600.00 in section 1775 statutory penalties (\$200.00 per violation for 48 violations under section 1775).

Deputy Labor Commissioner Cazares testified as to the preparation of the Assessment and the supporting audit worksheets. He identified the records reviewed and the applicable prevailing wage determinations. Cazares further testified that the Assessment was properly served on GBR on May 7, 2014. GBR then submitted a timely request for review on or about July 7, 2014, and DLSE provided GBR with a reasonable opportunity to review DLSE's evidence.

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). See, too *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 1742.1, subdivision (a) provides for the imposition of liquidated damages, essentially a doubling of 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 the contractor shall be provided with an opportunity to review evidence that DLSE intends to utilize at the hearing. At the hearing the contractor "shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect." (§ 1742, subd. (b).) If the contractor "demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment ... with respect to a portion of the unpaid wages covered by the assessment..., the director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages." (§ 1742.1, subd. (a).) As well, DLSE's determination "as to the amount of the penalty shall be reviewable only for abuse of discretion." (§ 1775, subd. (a)(2)(D).)

In this case, the record established the basis for the Assessment. DLSE presented evidence that the Assessment was properly served on GBR and that DLSE provided GBR with a reasonable opportunity to review the evidence to be used at the hearing. DLSE presented evidence that nine workers, at times, performed work in the classifications of Carpenter. DLSE presented evidence that GBR did not pay the affected workers for all hours worked. In fact, DLSE presented evidence that two workers, Alfredo Sanchez Picazo and Alfredo Padilla, are not even listed on GBR's Certified Payroll Records. DLSE then presented further evidence that GBR has six other pending prevailing wage violations.

Accordingly, DLSE's evidence constitutes prima facie support for the Assessment. GBR, in turn, presented no evidence to disprove the basis for, or accuracy of, the Assessment or to show it had substantial grounds for believing the Assessment was in error to support a waiver of liquidated damages under section 1742.1, subdivision (a). Liquidated damages are therefore affirmed in an amount equal to the unpaid wages.

FINDINGS AND ORDER

1. Affected contractor GBR Enterprise, Inc. filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.
2. GBR Enterprise, Inc. underpaid nine (9) employees on the Project in the aggregate amount of \$4,670.40.
3. GBR Enterprise, Inc. failed to contribute to the applicable training fund in the aggregate amount of \$85.26.
4. Penalties under section 1775 are due in the amount of \$9,600.00 for 48 violations at the rate of \$200.00 per violation.
5. Liquidated damages are due in the amount of \$4,670.40 and are not subject to waiver under section 1742.1, subdivision (a).

The amounts found due in the Assessment affirmed by this Decision are as follows:

Wages:	\$ 4,670.40
Training fund contributions:	\$85.26
Penalties under section 1775, subdivision (a):	\$ 9,600.00
Liquidated damages:	\$4,670.40
TOTAL	\$19,026.06

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

The Civil Wage and Penalty Assessment is affirmed 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: 5/19/2016



Christine Baker
Director of Industrial Relations