

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**PacWest Corp.**

**Case No. 12-0411-PWH**

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

**INTRODUCTION**

Affected contractor PacWest Corporation (aka Pacwest Corporation) (PacWest) 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 Modernization – HVAC Upgrades Group project (Project) performed for the San Bernardino City Unified School District (District) in the County of San Bernardino. The Assessment, as later amended, determined that \$673,719.73 in unpaid prevailing wages and statutory penalties was due. The Ohio Casualty Insurance Company (Ohio Casualty), surety for PacWest, appeared to independently request review and also requested to participate as an intervenor pursuant to California Code of Regulations, title 8, section 17208, subdivision (b). Pursuant to written notice, a Hearing on the Merits was scheduled for May 9, 2014, in Los Angeles, California, before Hearing Officer John J. Korbol.

Before the hearing was opened, but after the DLSE moved to amend the Assessment, Ohio Casualty and the DLSE settled the issues related to unpaid prevailing wages and unpaid training fund contributions under the Assessment, leaving only the issue of statutory penalties alleged to be due and owing by PacWest. The Hearing on the Merits commenced as scheduled, with Max Norris appearing for the DLSE. There was no appearance for PacWest. PacWest similarly did not appear for seven Prehearing Conferences, nor did it appear for two voluntary settlement conferences. Calls to PacWest's telephone number on file produced messages that it was disconnected and PacWest provided no other telephone number where it could be reached.

Now, based on unrebutted evidence showing that PacWest failed to pay the required prevailing wages, the Director affirms the Assessment.

### FACTS

Failure to Appear: The Request for Review filed on behalf of PacWest was filed by its attorneys, Feldman & Associates, Inc. This firm then gave notice that it was no longer representing PacWest. According to the DLSE's file, PacWest's telephone number was (818) 843-3418 and its mailing address was 1303 N. San Fernando Rd., Suite 206, Burbank, CA 91504. On April 10, 2013, the Hearing Officer dialed the telephone number for PacWest for the purpose of conducting a telephonic Prehearing Conference. The person answering the phone told the Hearing Officer that no one was available for PacWest, and that the Hearing Officer should instead contact counsel for Ohio Casualty. The Prehearing Conference was instead rescheduled, and on May 6, 2013, there was no answer when the Hearing Officer dialed PacWest's telephone number. Additional Prehearing Conferences were conducted on July 3, 2013, August 16, 2013, October 18, 2013, January 28, 2014, February 27, 2014, and March 28, 2014. On each occasion, a notice of each Prehearing Conference was mailed to PacWest at its last known address. On each of those dates, the Hearing Officer attempted to contact PacWest at its telephone number, but found that the number had been disconnected.

The DLSE and Ohio Casualty also agreed to participate in a voluntary settlement conference with the assistance of a different hearing officer. This conference took place over two sessions, on December 9, 2013 and January 3, 2014. Written notice of each session was mailed to PacWest at its last known mailing address.

A notice of the Hearing on the Merits was provided to PacWest at its address of record on April 1, 2014. None of the notices mailed to PacWest by the Hearing Officer were returned by the U.S. Postal Service with a forwarding address.

The DLSE served a witness list, an exhibit list, and a proposed joint statement of issues on PacWest prior to the Hearing on the Merits as ordered by the Hearing Officer. PacWest submitted no witness list or list of exhibits and did not respond to the DLSE's proposed joint statement of issues.

PacWest did not appear at the Hearing on the Merits. Pursuant to notice, the Hearing Officer proceeded to conduct the Hearing on the Merits on May 9, 2014, 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). The DLSE's evidentiary exhibits were admitted into evidence without objection and the matter was submitted on the evidentiary record based on the testimony of the DLSE's Deputy Labor Commissioner, Maria Elena Sandoval.

Assessment: The facts stated below are based on Exhibits 1 through 24 submitted by the DLSE at the Hearing on the Merits, including the Assessment and other documents in the Hearing Officer's file.

Based on PacWest's certified payroll records (CPRs), inspector logs, and information gathered from PacWest employees (consisting mainly of affidavits, calendars, and time sheets), the Assessment and attached audit worksheets found that PacWest failed to pay the required prevailing wages and training fund contributions to 14 workers employed on the Project. The wage underpayments appear to have resulted from a combination of misclassifying the workers and underreporting the actual hours worked on the CPRs.

Based on the unrebutted evidence and testimony regarding the nature of the work performed, the number of hours worked, and the amount paid, the record shows that PacWest failed to pay the required prevailing wages. There also is no evidence that PacWest paid training fund contributions as required by the applicable prevailing wage determinations. In addition, the DLSE assessed \$247,600.00 in penalties under Labor Code section 1775 for 1,238 instances of failure to pay the applicable prevailing wages.<sup>1</sup> Penalties under section 1775 were assessed at the rate of \$200.00 per violation based on the DLSE's records regarding past allegations of section 1775 violations by PacWest and the DLSE's opinion that the current violations were willful. The DLSE assessed \$22,025.00 in penalties under section 1813 for 881 instances of failure to pay the proper overtime rate. The DLSE also assessed \$56,800.00 in penalties under section 1776 for PacWest's failure to timely provide its CPRs.

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

## 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. The 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. During the relevant period, the penalty under section 1775 was a maximum of \$200.00 for each calendar day for each worker paid less than the prevailing wage. During the relevant period, section 1813 prescribed a fixed penalty of \$25.00 for each instance of failure to pay the prevailing overtime rate when due. Section 1776, subdivision (d) requires a contractor to provide its CPRs within ten days after a written request of the DLSE. Subdivision (h) assesses a penalty of \$100.00 per day for each day the contractor fails to comply with such a request within the initial 10-day period.

When the 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 conducted and that the contractor shall be provided with an opportunity to review evidence that the 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).) The 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 establishes the bases for the Assessment and PacWest’s liability therefor. PacWest has presented no evidence to disprove those bases, nor has PacWest shown that the DLSE’s determination on the amount of section 1775 penalties constituted an abuse of discretion. Accordingly, the Assessment is affirmed. Because the DLSE voluntarily

settled the issues other than penalties in connection with the intervention by Ohio Casualty, there is no need for a finding as to PacWest's liability for unpaid prevailing wages and training fund contributions.

### FINDINGS AND ORDER

1. Affected contractor PacWest Corporation 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 \$247,600.00 for 1,238 violations at the maximum rate of \$200.00 per violation.

3. Penalties under section 1776 are due in the amount of \$56,800 for 568 violations.


4. Penalties under section 1813 are due in the amount of \$22,025.00 for 881 violations.

5. The amounts found remaining due in the amended Assessment, as affirmed by this Decision, are as follows:

Penalties under section 1775, subdivision (a):	\$247,600.00
Penalties under section 1776, subdivision (h):	\$ 56,800.00
Penalties under section 1813:	\$ 22,025.00
<b>TOTAL</b>	<b>\$326,425.00</b>

The amended 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: 10/23/2014



Christine Baker  
Director of Industrial Relations