

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Aria Fire Systems, Inc.

Case No. 15-0416-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected subcontractor Aria Fire Systems, Inc. (Aria), made a timely request for 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 Santa Paula High School Technology Building Project (Project) performed for the Santa Paula Union High School District (District) in Ventura County. The Assessment determined that \$113,892.12 in unpaid prevailing wages and training funds, and \$75,215.00 in statutory penalties was due. A Hearing on the Merits was held on June 29, 2016, in Los Angeles, California, before Hearing Officer Jessica L. Pirrone. Abdel Nassar appeared for DLSE. There was no appearance for Aria. Now, based on un rebutted evidence showing that Aria failed to pay the workers the required prevailing wages, timely submit payroll records to DLSE, and meet its apprenticeship obligations, the Director of Industrial Relations affirms the Assessment.

FACTS

Settlement with Prime Contractor. The prime contractor on the Project, Colombo Construction Company (Colombo), also filed a Request for Review. On November 19, 2015, Colombo filed a request to withdraw its Request for Review because it reached a settlement with DLSE.¹ Colombo's settlement resolved the unpaid wages and training funds, liquidated damages, and \$7,880.00 of the \$23,640.00 in 1777.7 penalties. As Labor Code section 1775,

¹ Case number 15-0423-PWH.

1813, 1776 and 1777.7² penalties remained at issue as to Aria, the Hearing on the Merits remained on calendar.

Failure to Appear: The Hearing Officer obtained contact information for Aria from two sources. Aria's November 2, 2015 Request for Review is signed by Kayhan Fatemi and provides a cellphone number (310-710-1482), as well as an address in West Hills. Additionally, the proof of service of the Assessment indicates the Assessment was served on Aria at an address in Manhattan Beach. The Hearing Officer used the cellphone number to contact Aria for Prehearing Conferences and all Notices, Minutes and Orders were served at both the West Hills and Manhattan Beach addresses.

The Notice of Appointment of Hearing Officer and Prehearing Conference was served on January 15, 2016. In accordance with the Notice, the first telephonic Prehearing Conference was held on February 22, 2016 at 2:00 p.m. The Hearing Officer called Fatemi at the number he provided, but the call went to voicemail. The Hearing Officer conducted the February 22, 2016 Prehearing Conference without Aria. During the Prehearing Hearing Conference, the Hearing Officer continued the matter to April 11, 2016 and set the Hearing on the Merits for June 29, 2016. The Minutes of the Prehearing Conference and related Orders were duly served.

At the April 11, 2016, Prehearing Conference, the Hearing Officer called Aria, but there was no answer. The Prehearing Conference was conducted in Aria's absence. Following the Prehearing Conference, the Hearing Officer issued minutes dated April 14, 2016, which stated, among other things: "The Hearing will commence as noticed regardless of whether there is an appearance by the Requesting Party."

At the June 29, 2016, Hearing on the Merits, Aria again failed to appear. The Hearing Officer conducted the Hearing in Aria's absence 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). Limited testimony was taken for the purpose of admitting DLSE's evidentiary exhibits and obtaining evidence regarding DLSE's settlement with Colombo. DLSE's exhibits were admitted into evidence without objection, and the matter was submitted on the evidentiary record.

² All further statutory references are to the California Labor Code, unless otherwise indicated.

Assessment: The facts stated below are based on Exhibits 1 through 11 submitted by DLSE, and other documents in the Hearing Officer's file.

Colombo entered into a public works contract with the District regarding the Project and later subcontracted with Aria to perform electrical work. The applicable prevailing wage determination is Ven-2013-1 and the applicable classification is fire sprinkler fitter.

According to the Assessment, Aria failed to pay the required prevailing wages to its workers on the Project in the aggregate amount of \$111,549.12 and failed to make training fund contributions in the aggregate amount of \$2,349.00. In addition, DLSE assessed: (1) \$43,800.00 in section 1775 penalties at the rate of \$200.00 per day for 219 instances of failure to pay the applicable prevailing wages; (2) \$75.00 in section 1813 penalties at the rate of \$25.00 per violation for 3 instances of failure to pay the proper overtime rate; (3) \$7,700.00 in section 1776 penalties at the rate of \$100.00 per day per each of the eleven workers for 7 instances of failure to turn over payroll records; and (4) \$23,640.00 in section 1777.7 penalties at the rate of \$60.00 for 394 instances of failure to meet its obligations to request the dispatch of and hire apprentices.

Colombo settled the full amount of the unpaid prevailing wages and training funds, liquidated damages, and \$7,880.00 of the 1777.7 penalties. The issues for hearing are the section 1775, 1813, 1776 and remaining 1777.7 penalties.

DISCUSSION

Sections 1720 and following set forth a scheme for requiring the payment of prevailing wages, maintaining and complying with requests for inspection of payroll records, and requesting the dispatch of and hiring apprentices 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 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, under section 1775, the penalty 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.

Additionally, employers on public works must keep accurate and detailed payroll records, setting forth worker classification, hours worked and actual per diem wages paid for each employee. (§ 1776, subd. (a).) If a contractor or subcontractor fails to comply with a request for payroll records within 10-days of the request, "he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated." (§ 1776, subd. (h).)

Sections 1777.5 through 1777.7 set forth the statutory requirements governing apprentices on public works projects. These requirements are further addressed in regulations promulgated by the California Apprenticeship Council. These statutes and regulations require that a contractor on a public work: (1) submit within a specified time period to applicable apprenticeship programs particular contract award information (Lab. Code, § 1777.5, subd. (e); Cal. Code Regs., tit. 8, § 230, subd. (a)); and (2) submit within a specified time period to applicable apprenticeship programs a request for the dispatch of apprentices and/or maintain a specified ratio of apprentices to journeymen on the project (Lab. Code § 1777.5, subd. (g) and Cal. Code Regs., tit. 8, § 230.1, subd. (a)).

If a contractor "knowingly" violates section 1777.5, a civil penalty is imposed under section 1777.7 in an amount not to exceed one hundred dollars for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. Here, the Labor Commissioner reduced the penalty from one hundred to sixty dollars per violation.

When DLSE determines that a violation of the prevailing wage, payroll records or apprenticeship requirements has occurred, it may issue a written Civil Wage and Penalty Assessment. (§§ 1741 and 1777.7, subd. (c)(1).) An affected contractor may appeal that assessment by filing a Request for Review. (§§ 1742 and 1777.7, subd. (c)(1).) The contractor has the burden of proving that the basis for the civil wage and penalty assessment is incorrect." (§1742, subd. (b); §1777.5.)

In this case, the record establishes the basis for the Assessment and Aria has presented no evidence to disprove the basis for the Assessment. Accordingly, the Assessment is affirmed.

FINDINGS AND ORDER

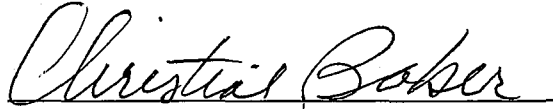
1. Affected subcontractor Aria Fire Systems, Inc. filed a timely Request for Review from a timely Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.
2. Affected contractor Colombo Pacific Construction, Inc. settled the issue of unpaid wages and training funds, and liquidated damages before the Hearing.
3. Penalties under section 1775 are due in the amount of \$43,800.00 for 219 violations.
4. Penalties under section 1813 are due in the amount of \$75.00 for 3 instances of failure to pay the proper overtime rate.
5. Penalties under section 1776 are due in the amount of \$7,700.00 for 7 days of failure to turn over payroll records for each of 11 workers.
6. Penalties under section 1777.7 are due in the amount of \$15,760.00³ for 394 failures to request dispatch of and hire apprentices.
7. The amounts found remaining due in the Assessment as affirmed by this Decision are as follows:

Penalties under section 1775, subdivision (a):	\$43,800.00
Penalties under section 1813:	\$75.00
Penalties under section 1776:	\$7,700.00
Penalties under section 1777.7:	\$15,760.00
TOTAL:	\$67,335.00

³ This amount reflects a credit of \$7,880.00, which is the amount that the prime contractor paid toward 1777.7 penalties in connection with its settlement with DLSE.

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: 7/20/2016



Christine Baker

Director of Industrial Relations