

**STATE OF CALIFORNIA**  
**DEPARTMENT OF INDUSTRIAL RELATIONS**

In the Matter of the Request for Review of:

**Blue Pacific Engineering & Construction**

Case Nos. 17-0165-PWH

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**ORDER DENYING RECONSIDERATION**

Affected contractor Blue Pacific Engineering & Construction (Blue Pacific) moves for reconsideration of the Decision of the Director issued on June 10, 2020 (Decision) on Blue Pacific's request to review the Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE). Blue Pacific's motion gives three grounds: (1) the Decision went beyond a stipulated issue; (2) liquidated damages should have been waived; and (3) the Decision was issued beyond the 45-day statutory period for decisions.

As to the first ground, Blue Pacific argues that the Decision did not answer the stipulated issue and it would have prevailed on the issue had the Decision done so. The stipulated issue was whether Grounds Person, which Blue Pacific used during the Project, was an appropriate classification when a Tree Trimmer was not on the Project. Contrary to Blue Pacific's argument, the Decision did rule on the issue, answering in the negative because the prevailing wage determination used by Blue Pacific did not cover the work as it was described by the parties.

Blue Pacific is also mistaken that DLSE had only argued the classification was wrong because it was not used in tandem with Tree Trimmer. The Decision quoted DLSE's brief, which included the argument "the classification was inappropriate because this was a new construction which did not involve

trimming of trees,” as well as the argument that the Ground Person craft was “not appropriate where there are no Tree Trimmers employed.” The Decision did not improperly stray from the issue stated in the prehearing order or rule sua sponte, as Blue Pacific claims. By virtue of the Assessment, Blue Pacific was on notice that the facts involved a landscaping project, not one where utility lines were being cleared, and the Decision properly considered the stipulated issue in that context and found the appropriate classification was Landscape Laborer.

As to the second ground, Blue Pacific does not show the Director abused her discretion in declining to waive liquidated damages. Blue Pacific argues it had substantial grounds for its request for review as evidenced by the reduction in amounts found due under the Assessment, first by a reduction under a DLSE amendment to the Assessment and second by a reduction under the Decision. However, the waiver consideration involves whether Blue Pacific showed it had “substantial grounds for appealing the assessment . . . with respect to a portion of the unpaid wages covered by the assessment . . . .” (Lab. Code § 1742.1, subd. (a).) Reductions in assessed amounts unrelated to the wages that are found due under the Decision are not a proper consideration. Considering the element of unpaid wages that were found due based on Grounds Person reclassification to Landscape Laborer, the Decision found that Blue Pacific did not have a reasonable basis on which to claim that aspect of the Assessment was erroneous, and Blue Pacific did not show it was an abuse of discretion to decline to waive liquidated damages.

As to the third ground, Blue Pacific argues the Decision was issued after the 45-day statutory limit and the Director thereby lost jurisdiction. Blue Pacific’s cited authority does not apply here. This matter is controlled by *California Correctional Peace Officers Association v. State Personnel Board* (1995) 10 Cal.4th 1133, 1144-1152 (*CCPOA*). *CCPOA* explained the difference between

mandatory and directory time limits provided by statute. The 45-day deadline for the Decision in this case, as provided in Labor Code section 1742, subdivision (b), is directory, not mandatory, because nowhere did the Legislature express an intent to deprive the Director of jurisdiction or to invalidate a decision for noncompliance with the 45-day period. Accordingly, despite the passage of 45 days before the issuance of the decision, the Director maintained jurisdiction, the CWPA remained valid, and there is no ground to invalidate the Decision

Accordingly, Blue Pacific's request for reconsideration is denied.

Dated: 6/25/20

/s/ Katrina S. Hagen   
Katrina S. Hagen, Director  
Department of Industrial Relations