

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Industrial Coating & Restoration, Inc.

Case No. 15-0435-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor Industrial Coating & Restoration, Inc. (ICR) submitted a timely request for review of the Civil Wage and Penalty Assessment (Assessment) issued by Division of Labor Standards Enforcement (DLSE) with respect to the San Diego Community College District project (Project) in San Diego County. The Assessment determined that \$87,629.74 in unpaid prevailing wages and statutory penalties was due. Before the hearing commenced, DLSE moved to amend the Assessment downward to \$78,172.70. The Hearing Officer granted the motion and amended the Assessment (Amended Assessment) because there was no prejudice to ICR. A Hearing on the Merits was conducted on June 28, 2016, in San Diego, California, before Hearing Officer Edward Kunnes. A continued Hearing on the Merits was conducted on August 3, 2016. Michele Lisi Merzi, general manager and an officer of ICR, appeared for ICR, and Theresa Bichsel, counsel, appeared for DLSE. The matter was submitted for decision on August 3, 2016.

The issues for decision are:

- Whether the Amended Assessment correctly found that ICR had failed to pay the required prevailing wages for all hours worked on the Project by the affected workers.
- Whether DLSE abused its discretion in assessing penalties under Labor Code

section 1775¹ at the maximum rate of \$200.00 per violation.

- Whether ICR failed to pay the required prevailing wage rates for overtime work and is therefore liable for penalties under section 1813.
- Whether ICR demonstrated substantial grounds for appealing the Amended Assessment, entitling it to a waiver of liquidated damages.
- Whether ICR violated section 1777.5 by failing to submit contract award information to all applicable apprenticeship committees in a timely manner, failing to request apprentices from all applicable apprenticeship committees in a timely and factually sufficient manner, and failing to employ apprentices in the required minimum ratio of apprentices to journeymen on the Project.
- Whether DLSE abused its discretion in assessing penalties under Labor Code section 1777.7 at the maximum rate of \$100.00 per violation.

The Director finds that ICR failed to pay the required prevailing wages to affected workers, but it paid at least some of those wages more than a year late, thereby violating section 1771.² DLSE did not abuse its discretion in assessing penalties under section 1775, subdivision (a) at the rate of \$200.00 per violation. However, the Director remands the matter to DLSE to determine which payments were late because DLSE failed to distinguish between timely payments and late payments when it imposed section 1775 penalties. That is, DLSE did not identify, for each worker, the number of calendar days on which ICR made late payment. Additionally, ICR did not rebut that it had violated section 1777.5 and did not prove that DLSE had abused its discretion in assessing penalties under section 1777.7, subdivision (a) at the rate of \$100.00 per violation. Therefore, the Director of Industrial Relations issues this Decision denying in part and affirming in part the Amended Assessment and remands it for recalculation of penalties under section 1775, subdivision (a). ICR has proven the existence of grounds for a waiver of liquidated damages because it paid all wages owed prior to DLSE issuing the

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

² Section 1771 states that the general prevailing rate of per diem wages for work "shall be paid to all workers employed on public works." Section 204 provides that all wages earned by any person in any employment are due and payable twice during each calendar month, with certain exceptions.

Assessment. Pursuant to section 1742.1, subdivision (a), ICR is not liable for liquidated damages.

FACTS

The San Diego Community College District advertised the Project for bid on June 27, 2011, and July 5, 2011, and awarded the contract to ICR on August 25, 2011. The San Diego Community College District hired ICR as a prime contractor to install and apply waterproofing for the buildings under construction. ICR's employees worked on the Project from approximately February 21, 2012, through June 15, 2013.

Applicable Prevailing Wage Determination (PWD): The applicable PWD and scope of work in effect on the bid advertisement date was Industrial Painter (SDI-2011-1).³

The Assessment and Amended Assessment: DLSE served the Assessment on October 27, 2015. The Assessment found that ICR failed to pay the required prevailing wages for straight time and over time, failed to make the required training fund contributions, and failed to request apprentices from the applicable apprenticeship programs and employ apprentices. The Amended Assessment revised the wages owed downward to reflect \$6,097.70 and reduced section 1775 and 1813 penalties to reflect \$24,075.00. Penalties were assessed under section 1775 in the amount of \$200.00 per violation, for 120 violations, totaling \$24,000.00. DLSE determined that its findings warranted the maximum penalty because ICR had a record of prior prevailing wage violations and submitted falsified payroll documents. In addition, DLSE assessed penalties under section 1813 for three overtime violations, at the statutory rate of \$25.00 per violation, totaling \$75.00.

The Assessment also found that ICR failed to timely submit Contract Award Information (DAS 140) to all applicable apprenticeship committees and failed to meet the minimum required ratio of apprentices to Journeymen because ICR employed no apprentices on the Project. The Amended Assessment did not revise the penalties

³ Throughout the relevant period, the prevailing hourly wage due under the Industrial Painter PWD was \$40.07, which comprised of a base rate of \$29.32, fringe benefits totaling \$9.54, a training fund contribution of \$0.54 and other payments of \$0.67. The daily overtime work prevailing hourly wage was \$43.98.

assessed under section 1777.7. Penalties were assessed under section 1777.7 in the amount of \$100.00 per violation for 480 violations, totaling \$48,000.00. DLSE determined that its findings warranted the maximum penalty because ICR knew of the requirement to employ apprentices and had previously violated the requirement to hire apprentices.

GAFCON, acting as the labor compliance program for the San Diego Community College District, audited ICR and found wages owed to ICR workers. ICR paid wages to its workers pursuant to the GAFCON audit, thereby conceding the propriety of the GAFCON audit. ICR had written checks to its workers at the time payment was due in 2012 but ICR did not deliver them to the workers because the workers had chosen to receive cash in lieu of checks. In 2013, ICR used these old checks to pay its workers wages due from 2012 as determined by the GAFCON audit. ICR also failed to make timely training fund contributions while performing work on the Project but paid them subsequent to the GAFCON audit.

ICR rebutted DLSE's contention that there remained \$6,097.00 owing to the workers through the testimony of its workers, and established that the workers had ultimately received full payment of prevailing wages. However, these same workers testified that they would deposit their paychecks within a few days of receipt. That timing confirmed that ICR paid them, at least on some occasions, more than a year late as check dates preceded the deposit date by more than 12 months. In addition, the daily reports, signed by Clinton Kellogg, the foreman, belied his own testimony and that of other witnesses that they did not work more than eight hours in any one day. The daily reports thereby supported a finding that overtime penalties were appropriate.

Additionally, DLSE presented substantial evidence of ICR's failure to submit requests for apprentices and to obtain apprentices. DLSE showed that ICR did not

request Painter apprentices from at least two of the three applicable committees and did not employ any apprentices.

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. Specifically:

The overall purpose of the prevailing wage law . . . is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees.

(Lusardi Construction Co. v. Aubry (1992) 1 Cal.4th 976, 985, 987 [citations omitted].)
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, supra*, at p. 985.)

Section 1775, subdivision (a) requires, among other things, that contractors and subcontractors pay the difference to workers who were paid less than the prevailing rate, and also prescribes penalties for failing to pay the prevailing rate. Section 1742.1, subdivision (a) provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if those wages are not paid within sixty days following service of a Civil Wage and Penalty Assessment under section 1741.

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 the Assessment by filing a Request for Review under section 1742. Subdivision (b) of section 1742 provides in part that “[t]he contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect.”

ICR Failed to Pay Wages at the Proper Prevailing Wage Rate.

The Amended Assessment found that on 123 occasions, ICR failed to pay the required prevailing wages for straight time and overtime and the required training fund contributions when the payments were due and owing. The Amended Assessment found that ICR owed to its workers unpaid straight time and overtime wages in the amount of \$6,097.70. ICR, however, showed that it later paid all the wages and training fund contributions following GAFCON's audit. Thereby, ICR paid the remaining sum owed to its workers in 2013 for their work performed in 2012. Under section 1773, subdivision (c), ICR is entitled to credit for payments made to the workers. Hence, based on the record, ICR carried its burden of proof that the basis of the Amended Assessment as to wages was incorrect, and no wages and no training fund contributions remain to be paid.

DLSE Did Not Abuse Its Discretion by Assessing Penalties Under Section 1775 at the Maximum Rate But the Number of Violations (Calendar Days) Must Be Determined, and Thus, the Issue of the Total Penalty Due Is Remanded.

Section 1775, subdivision (a) states in relevant part:

(a)(1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2)(A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B)(i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the

attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.^[4]

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

A contractor or subcontractor has the same burden of proof with respect to the penalty determination as to the wage assessment. Specifically, “the Affected Contractor or Subcontractor shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty.” (Rule 50(c) [Cal. Code Regs., tit. 8, §17250, subd. (c)].)⁵

Section 1775, subdivision (a)(2) grants the Labor Commissioner the discretion to reduce the statutory maximum penalty per day in light of prescribed factors, but it does not mandate mitigation in all cases. The Director’s review of DLSE’s determination is limited to an inquiry into whether the action was “arbitrary, capricious or entirely lacking

⁴ The reference to subdivision (c) of section 1777.1 is a typographical error in the statute. The correct subdivision is section 1777.1, subdivision (e), which defines a willful violation as one in which “the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or deliberately refuses to comply with its provisions.”

⁵ All further regulatory references are to California Code of Regulations, title 8.

in evidentiary support" (*City of Arcadia v. State Water Resources Control Bd.* (2010) 191 Cal.App.4th 156, 170.) In reviewing for abuse of discretion, however, the Director is not free to substitute her own judgment "because in [her] own evaluation of the circumstances the punishment appears to be too harsh." (*Pegues v. Civil Service Commission* (1998) 67 Cal.App.4th 95, 107.)

The facts show that DLSE considered the prescribed factors for mitigation and determined that the maximum penalty of \$200.00 per violation was warranted in this case. The two statutory factors for mitigation of penalties are: 1) a contractor's good faith error and prompt correction, and 2) no history of prior violations. The Penalty Review documents that DLSE considered both of these factors. Additionally, Lance Grucela the Deputy Labor Commissioner who prepared the Assessment, testified to numerous prior violations by ICR and to ICR's knowledge of its statutory obligations from the beginning of the contract. ICR offered no evidence or argument to show that DLSE abused its discretion in assessing penalties at the maximum rate.

DLSE in the Penalty Review states:

An initial review of the payroll records provided by Contractor immediately revealed significant discrepancies between the CPRs, paystubs, time cards, and cancelled checks. The most obvious issue was that the cancelled checks were almost all cashed at the same time at a single bank on a few dates in 2013 despite being dated to correspond to week ending dates for the Project as far back as 2012.

While arguably a majority of the checks appeared cashed later than the check date, DLSE was not entitled to characterize all payments, both timely and untimely, as violations under section 1771. DLSE must determine the specific calendar days ICR failed to timely pay the prevailing rate of per diem wages for each worker based on the dates the wages were first due.

The record does not establish that ICR carried its burden to show that DLSE abused its discretion in setting the assessment penalties under section 1775 at the maximum rate. However, the total amount of section 1775 penalties cannot be determined on the current record because the DLSE audit, contrary to the evidence, showed no payments made to workers for purposes of calculating penalties under section 1775. The evidence showed that ICR made some timely payments and some untimely

payments. However, DLSE penalized ICR for all payments and then credited ICR for payments, whether timely or untimely, at the end of the audit for purposes of calculating what wages, if any, were still due. While DLSE's frustration with ICR's CPRs is understandable, the contractor's shoddy CPRs does not entitle DLSE to penalize the contractor for each worker for every day.⁶ Therefore, the matter is remanded to DLSE to determine the number of violations in conformity with the Order that follows.

Overtime Penalties Are Due for the Workers Who Were Underpaid for Overtime Hours Worked on the Project.

Section 1813 states, in pertinent part, as follows:

The contractor or any subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25.00) for each worker employed in the execution of the contract by the ... contractor ... for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article.

Section 1815 states in full as follows:

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1½ times the basic rate of pay.

The record establishes that ICR violated section 1815 by paying less than the required prevailing overtime wage rate to its workers on three occasions. Unlike section 1775 above, section 1813 does not give DLSE any discretion to reduce the amount of the penalty, nor does it give the Director any authority to limit or waive the penalty. Accordingly, the assessment of penalties under section 1813 is affirmed in the amount of \$75.00 for three violations.

ICR Failed to Notify Applicable Apprenticeship Committees, Request Apprentices, and Employ Apprentices.

⁶ DLSE did not request penalties under section 1776.

1. ICR failed to notify applicable committees and request apprentices.

The Division of Apprenticeship Standards (DAS) has prepared form DAS 140 that a contractor may use to submit contract award information to an applicable apprenticeship committee that can supply apprentices to the public works site in compliance with the statute. (§1777.5, subd. (e); Cal.Code Regs, tit. 8, §230, subd. (a).) DAS has also prepared a form, DAS 142, that a contractor may use to request dispatch of apprentices from apprenticeship committees. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).)

Pursuant to the latter regulation, a contractor properly requests the dispatch of apprentices by doing the following:

...[R]equest the dispatch of required apprentices from the apprenticeship committees providing training in the applicable craft or trade and whose geographic area of operation includes the site of the public work by giving the committee written notice of at least 72 hours (excluding Saturdays, Sundays, and holidays) before the date on which one or more apprentices are required. If the apprenticeship committee from which apprentice dispatch(es) are requested does not dispatch apprentices as requested, the contractor must request apprentice dispatch(es) from another committee providing training in the applicable craft or trade in the geographic area of the site of the public work, and must request apprentice dispatch(es) from each such committee, either consecutively or simultaneously, until the contractor has requested apprentice dispatches from each such committee in the geographic area. All requests for dispatch of apprentices shall be in writing, sent by first class mail, facsimile or email.

ICR presented no evidence to rebut DLSE's assertion that it failed to submit contract award information to applicable apprenticeship committees. Also, the evidence shows ICR requested no apprentices from at least two of the applicable apprenticeship programs. ICR acknowledged that it failed to provide a DAS 142 to those two applicable apprenticeship programs, the San Diego Associated General Contractors JAC and Southern California Painting and Decorating Contractors of America, UAC. ICR contends that it did provide a DAS 142 to District Council #36 Industrial Painter JACT through GAFCON. However, ICR provides no proof that the DAS 142 was actually submitted and even if it had been submitted, it would not satisfy the requirement because ICR did not receive apprentices from District Council #36 Industrial Painter JACT and did not request apprentices from the other apprenticeship programs.

2. ICR employed no apprentices.

Section 1777.5 and the applicable regulations require the hiring of apprentices to perform one hour of work for every five hours of work performed by journeymen in the applicable craft or trade (unless the contractor is exempt, which is inapplicable to the facts of this case). In this regard, section 1777.5, subdivision (g) provides:

The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

The governing regulation as to this 1:5 ratio of apprentice hours to journeyman hours is section 230.1, subdivision (a), which, in pertinent part, states:

Contractors, as defined in Section 228 to include general, prime, specialty or subcontractor, shall employ registered apprentice(s), as defined by Labor Code Section 3077, during the performance of a public work project in accordance with the required 1 hour of work performed by an apprentice for every five hours of labor performed by a journeyman, unless covered by one of the exemptions enumerated in Labor Code Section 1777.5 or this subchapter.

When DLSE determines that a violation of the apprenticeship laws has occurred, a written Determination of Civil Penalty is issued pursuant to section 1777.7. In the review of a determination as to the 1:5 ratio requirement, "... the affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5." (§ 1777.7, subd. (c)(2)(B).)

ICR did not hire a single apprentice for the Project.

The Penalty for Noncompliance.

If a contractor "knowingly violated Section 1777.5" a civil penalty is imposed under section 1777.7. Here, DLSE assessed a penalty against ICR under the following portion of section 1777.7, subdivision (a)(1):

A contractor or subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) 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.

The phrase quoted above -- "knowingly violated Section 1777.5" -- is defined by regulation 231, subdivision (h) as follows:

For purposes of Labor Code Section 1777.7, a contractor knowingly violates Labor Code Section 1777.5 if the contractor knew or should have known of the requirements of that Section and fails to comply, unless the failure to comply was due to circumstances beyond the contractor's control.

ICR "knowingly violated" the requirement of a 1:5 ratio of apprentice hours to journeyman hours for the category of Painter apprentices and the record establishes that ICR knew or should have known of the requirements. Substantial evidence proved that the Checklist of Labor Law Requirements, provided to ICR at the beginning of the Project, set forth the requirement for contacting the applicable apprenticeship programs and hiring apprentices from those programs. Moreover, ICR had been cited for apprenticeship violations in a previous case. Since ICR knowingly violated the law, a penalty should be imposed under section 1777.7 at \$100.00 per violation. DLSE presented evidence that the failure to use apprentices lasted 480 days, and ICR did not dispute that count. Therefore, ICR did not carry its burden of proof under section 1777.7, subdivision (c)(2)(B) and DLSE properly assessed the penalty for \$48,000.00 for 480 violations.

ICR Is Not Liable For Liquidated Damages.

Section 1742.1, subdivision (a) provides in pertinent part as follows:

After 60 days following the service of . . . a civil wage and penalty assessment under Section 1741 . . ., the affected contractor, subcontractor, and surety . . . shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the . . . assessment . . . subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.

Additionally, if the contractor or subcontractor 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.

ICR does not owe liquidated damages because the assessed back wages did not remain due after serving the Assessment.

FINDINGS

1. Affected contractor Industrial Coating and Restoration, 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 Industrial Coating and Restoration, Inc. failed to pay the required prevailing wages and training fund contributions, but is entitled to a credit for payments later made to the workers such that no prevailing wages and no training fund contributions remain due and owing.
3. Penalties under section 1775, subdivision (a) are set at the maximum rate and the issue is otherwise remanded to determine the number of violations and, based thereon, the total amount of said penalties due.
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 1777.7 are due in the amount of \$48,000.00 for 480 instances of failure to request dispatch of and hire apprentices.
6. This Decision is final as to all issues not specifically subject to the remand Order below. (See § 1742, subd. (c).)

ORDER

The Civil Wage and Penalty Assessment, as amended, is affirmed in part, denied in part, and remanded in part to the Division of Labor Standards Enforcement for redetermination on the sole issue of the total amount of section 1775 penalties, as set forth in the above Findings and as follows:

- a. All recalculations shall be based on the operable prevailing wage determination, enumerated above.
- b. The pay periods and named workers used in the Civil Wage and Penalty Assessment, as amended, shall be used in a second amended assessment based on a revised audit, except as otherwise dismissed or amended pursuant to the terms of the Findings.

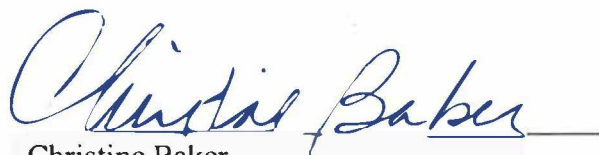
c. Section 1775 penalties due shall be calculated on a worker by worker, pay period by pay period basis. In complying with the remand order, the Division of Labor Standards Enforcement shall only rely on those documents admitted into evidence. If the Division of Labor Standards Enforcement requires the use of other documents for its audit, it shall provide them to ICR at the time it presents the audit. ICR shall be provided an opportunity to supplement the record as well, limited to the correct amount of total penalties under section 1775, should it request a hearing.

d. The Division of Labor Standards Enforcement shall present a revised audit to ICR within 30 days of the date of service of Notice of Findings. ICR shall have 30 days from and including the date of service of the revised audit in which to request a hearing before the hearing officer in order to provide with specificity reasons why the Division of Labor Standards Enforcement's calculations are erroneous.

e. If such a hearing is requested, the scope shall be limited solely to the accuracy of the Division of Labor Standards Enforcement's revised audit. All other issues are final. The burden of proof to show error shall remain on ICR. If no hearing is requested within 30 days from and including the date of service of the revised audit, the revised audit shall become final.

The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: 10/6/2016


Christine Baker
Director of Industrial Relations