

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Southland Construction

Case No. 12-0116-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor Southland Construction (Southland) submitted a timely request for review of the Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to the Hiltscher Trail Improvements (Project) in Orange County. The Assessment determined that \$35,100.00 in statutory penalties under Labor Code Section 1776¹ was due. A Hearing on the Merits was conducted on September 13, 2012, in Los Angeles, California, before Hearing Officer Makiko I. Meyers. Reza Mohamedi appeared for Southland, and David Cross appeared for DLSE. The parties were given until October 12, 2012 to submit trial briefs. Southland submitted its trial brief on October 8, 2012. No trial brief was submitted by DLSE. Accordingly, the matter was submitted for decision on October 12, 2012.

The sole issue for decision is:

- Whether Southland Construction failed to produce Certified Payroll Records (CPRs) regarding the Project within ten days of receipt of a written request by DLSE.

The Director finds that Southland has disproven the basis of the Assessment by proving that it never received DLSE's written request to produce CPRs on the Project. Therefore, the Director issues this Decision dismissing the Assessment.

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

FACTS

DLSE issued a written Request for Certified Payroll Records (Request) regarding the Project on February 14, 2012. The Request was mailed to Southland at P.O. Box 60592, Irvine, CA 92602 via certified mail. DLSE mailed the Request to that Post Office Box address because it was shown as Southland's address in the Contractors State License Board records. Southland documented, however, that it had been using 3943 Irvine Bl., #405, Irvine, CA 92602 as its business address as early as December 2011, and that the Deputy Labor Commissioner investigating Southland's work on the Project had knowledge of that address in connection with other investigations at the time the Request was mailed. The certified mail sent to the Post Office Box address was never claimed by Southland and was ultimately returned to DLSE by the U.S. Postal Service.

No evidence was presented to show if or when Southland received the Request. Southland produced the requested CPRs on April 11, 2012.

DLSE issued the Assessment in the amount of \$35,100.00 on the basis that Southland failed to timely produce the requested CPRs. The amount of the penalties was calculated from March 2, 2012, to April 10, 2012, i.e. 42 days, at \$100 per day for eight workers per day.

DISCUSSION

Section 1776, subdivision (a) mandates each contractor and subcontractor who performs public works to keep accurate payroll records showing the name, classification, hourly wage, wage paid, etc. These payroll records must be verified under penalty of perjury. (*Id.*) "The payroll records ... shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor ..." (Section 1776, subdivision (b).) "A certified copy of all payroll records ... shall be made available for inspection or furnished upon request to ... the Division of Labor Standards Enforcement ..." (Section 1776, subdivision (b)(2).)

The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records... In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract

is made or awarded, forfeit on hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. . . .”

(Section 1776, subdivision (h).)

Southland Did Not Receive The Written Request For CPRs Issued By DLSE; Thus, It Is Not Liable For Any Penalties For Failure To Produce.

Southland argues that DLSE sent the Request to a P.O. Box Southland rarely checked despite the Deputy Labor Commissioner’s knowledge of Southland’s correct mailing address which had been provided to DLSE in connection with other prevailing wage matters. DLSE argues that the service of the written Request was appropriate, as it was mailed to Southland’s address of record per the Contractors State Licensing Board.

Section 1776, subdivision (h) obligates a contractor or subcontractor to produce CPR within 10 days of “receipt of a written request.” It is a well established rule of statutory construction that the statutory language is given a plain and commonsense meaning. (*LACMTA v. Alameda Produce Market* (2011) 52 Cal.4th 1100, 1106-1107.) “The word ‘receive’ in its commonly accepted meaning, carries with it the concept that something has been physically delivered, or placed *in the hands of the recipient*.” (*Id.* (emphasis in original, citing *Labarthe v. McRae* (1939) 35 Cal.App2d 734, 737).) Therefore, when a statute provides that a certain period runs from “receipt” of notice, such a period does not start to run until after physical delivery of notice. (*Labarthe v. McRae* (1939) 35 Cal.App.2d 734, 739.)

It is undisputed that the written Request issued on February 14, 2012, by DLSE, and sent via certified mail, was not claimed by Southland and was returned to DLSE. As Southland did not receive, i.e. was never physically in possession of, the Request, the 10 day period for compliance prescribed by section 1776, subdivision (h) never started to run.

Therefore, Southland did not violate section 1776 and the Assessment was erroneously issued. On that basis, the Assessment is dismissed.

FINDINGS

1. Affected contractor Southland Construction filed a timely Request for Review of the Civil Wage and Penalty Assessment issued by DLSE with respect to the

Project.

2. Southland never received the written request to produce Certified Payroll Records issued by DLSE on February 14, 2012.

3. In light of Findings 2, Southland did not fail to produce its Certified Payroll Records within 10 days of receipt of the Request.

ORDER

The Civil Wage and Penalty Assessment is dismissed 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: 11/6/2012



Christine Baker
Director of Industrial Relations