

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Jose Ramon Sandoval

Case No. 10-0018-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR

Affected contractor Jose Ramon Sandoval, individually and doing business as JS Painting (“Sandoval”), requested review of a Civil Wage and Penalty Assessment (“Assessment”) issued by the Division of Labor Standards Enforcement (“DLSE”) with respect to the Interior Painting – Vacant, Occupied & Common Areas Contract (“Contract”) performed for the Capital Area Development Authority (“CADA”) in Sacramento County. The Assessment determined that \$47,488.95 in unpaid prevailing wages and statutory penalties was due. A hearing on the merits was held on August 16, 2010, in Sacramento, California, before Hearing Officer Nathan D. Schmidt. Ramon Yuen-Garcia appeared for DLSE and Jeremy Millstone appeared for Jose Ramon Sandoval. Now, based on unrebutted evidence showing that Sandoval failed to pay the required prevailing wages to its workers, the Director of Industrial Relations affirms the Assessment.

Facts

Failure to Appear: Millstone, Sandoval’s counsel, informed the hearing officer at the commencement of the hearing that Mr. Sandoval did not intend to appear at the hearing. Millstone explained that Sandoval had contacted him over the weekend and told him that he was leaving for Mexico to take care of some personal business. Millstone admitted that his client had neither a legal nor a factual defense to the Assessment. Millstone relayed Sandoval’s request for leniency on the basis that he could not afford to pay the assessed unpaid wages and penalties. The parties stipulated that the hearing officer should proceed in Sandoval’s absence and recom-

mend whatever decision is warranted by the evidence pursuant to California Code of Regulations, title 8, section 17246, subdivision (a). DLSE's evidentiary exhibits were admitted into evidence without objection, and the matter was submitted on the evidentiary record without testimony.

Assessment: The facts stated below are based on Exhibits 1 through 7 submitted by DLSE, the Assessment, and the other documents in the hearing officer's file.

On or about June 25, 2010, Sandoval entered into a public works contract with CADA to perform painting work. Five workers performed work for Sandoval under the contract between June 30, 2008, and June 29, 2009. The applicable prevailing wage determination is SAC-2008-1 (General Prevailing Wage Determination for Sacramento County), and the applicable job classification for all five affected workers is Painter: Brush, Spray, Paperhanger.

Based on Sandoval's certified payroll records, Sandoval failed to pay a predetermined prevailing wage increase that went into effect on September 1, 2008. In addition, Sandoval improperly reported and paid one worker as an apprentice who was not registered as an apprentice with the Division of Apprenticeship Standards and reported and paid three other workers under the non-existent classification of "pre-apprentice." The total wages due are \$38,013.95, including \$772.52 in unpaid training fund contributions.

DLSE assessed \$9,200.00 in penalties under Labor Code section 1775,¹ at the rate of \$25.00 per violation, for 368 instances of failure to pay the applicable prevailing wages. In addition, DLSE assessed \$275.00 in penalties under section 1813 for 11 instance of failure to pay the proper overtime rate.

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. 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

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

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, 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. Section 1813 prescribes a fixed penalty of \$25.00 for each instance of failure to pay the prevailing overtime rate when due. 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 the service of a civil wage and penalty assessment.

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 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 commenced within 90 days," that the contractor shall be provided with an opportunity to review evidence that DLSE intends to utilize at the hearing.

The contractor "shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect." (*Ibid.*) In this case, the record establishes the basis for the Assessment, and Sandoval presented no evidence to disprove the basis for the Assessment or to support a waiver of liquidated damages under section 1742.1, subdivision (a). Accordingly, the Assessment is affirmed in its entirety.

FINDINGS AND ORDER

1. Affected contractor Jose Ramon Sandoval filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.
2. Unpaid wages are due in the amount of \$37,241.43 in wages.
3. Unpaid training fund contributions are due in the amount of \$772.52.
4. In light of Findings 2 and 3, above, Sandoval underpaid its employees on the Contract in the aggregate amount of \$38,013.95.

5. Penalties under section 1775 are due in the amount of \$9,200.00 for 368 violations at the rate of \$25.00 per violation.

6. Penalties under section 1813 are due in the amount of \$275.00 for 11 violations.

7. Liquidated damages are due in the amount of \$38,013.95, and are not subject to waiver under section 1742.1, subdivision (a).

8. The amounts found remaining due in the Assessment as modified and affirmed by this Decision are as follows:

Wages Due:	\$37,241.43
Training Fund Contributions Due:	\$772.52
Penalties under section 1775, subdivision (a):	\$9,200.00
Penalties under section 1813:	\$275.00
Liquidated damages:	\$38,013.95
TOTAL:	\$85,502.90

Interest shall accrue on all unpaid wages in accordance with section 1741, subdivision (b).

The 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: 8/18/10



John C. Duncan
Director of Industrial Relations