

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

La Jolla Electric, Inc.

Case No. 14-0120-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected subcontractor La Jolla Electric, Inc. (La Jolla), 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 Palmquist Elementary School Modernization and New Construction Project (Project) performed for the Oceanside Unified School District (District) in San Diego County. The Assessment determined that \$38,150.16 in unpaid prevailing wages and \$170,990.00 in statutory penalties was due. A Hearing on the Merits was held on August 11, 2015, in Los Angeles, California, before Hearing Officer Jessica L. Pirrone. Max D. Norris appeared for DLSE. There was no appearance for La Jolla. Now, based on un rebutted evidence showing that La Jolla failed to pay the workers the required prevailing wages, the Director of Industrial Relations affirms the Assessment.

FACTS

Settlement with Prime Contractor. On August 5, 2015, counsel for affected contractor Echo Pacific Construction, Inc. (Echo), the prime contractor on the Project, filed a request to withdraw its separate Request for Review¹ stating that "all issues had been resolved." Echo's settlement did not, however, resolve the issues of Labor Code section 1775 and 1813² penalties as to La Jolla. Accordingly, the Hearing on the Merits remained on calendar.

¹ Case number 14-0119-PWH.

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

Failure to Appear: In a September 25, 2014 letter to the Hearing Officer and DLSE, La Jolla's former counsel stated that all correspondence to La Jolla should be addressed to John Glinatsis, President, La Jolla Electric, Inc., 665 Opper Street, Escondido CA 92029 and that Glinatsis could be reached by telephone at (760) 747-7663. Following that letter, all Notices, Minutes and Orders, including the Order Setting the Hearing on the Merits, were served on the address provided in the September 25 letter.

The first telephonic Prehearing Conference was held on November 20, 2014. At that time, DIR discovered that the telephone number for Glinatsis in the September 2014 letter was a nonworking number. No working number for Glinatsis was ever provided. Accordingly, the Hearing Officer conducted the November 20 Prehearing Conference and the two that followed without Glinatsis.

On August 11, 2015, the Hearing Officer conducted the duly noticed Hearing on the Merits in La Jolla'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). DLSE's evidentiary exhibits were admitted into evidence without objection, and the matter was submitted on the evidentiary record. No testimony was taken.

Assessment: The facts stated below are based on Exhibits 1 through 33 submitted by DLSE, and other documents in the Hearing Officer's file.

In April 2012, Echo, entered into a public works contract with the District regarding the Project and later subcontracted with La Jolla to perform electrical work. The applicable prevailing wage determination is SDI-2012-1 (General Prevailing Wage Determination for San Diego County) and the applicable classifications are Inside Wireman and Apprentice Electrician.

According to the Assessment, La Jolla failed to pay the required prevailing wages to 26 of its workers on the Project in the aggregate amount of \$38,150.16. In addition, DLSE assessed \$169,440.00 in penalties under section 1775 at the mitigated rate of \$120.00 per day for 1,412 instances of failure to pay the applicable prevailing wages. DLSE also assessed \$1,550.00 in penalties under section 1813 for 62 instances of failure to pay the proper overtime rate.

Echo settled the full amount of the unpaid prevailing wages and attendant liquidated damages. The only remaining issues for hearing are the section 1775 and 1813 penalties.

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 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.

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. The contractor “shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect.” (§1742, subd. (b).)

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

FINDINGS AND ORDER

1. Affected subcontractor La Jolla Electric, 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 Echo Pacific Construction, Inc. settled the issue of unpaid wages and liquidated damages before the Hearing.

3. Penalties under section 1775 are due in the amount of \$169,440.00 for 1,412 violations.

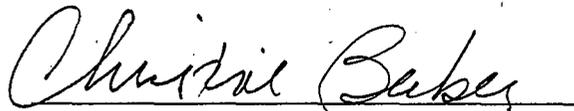
4. Penalties under section 1813 are due in the amount of \$1,550.00 for 62 instances of failure to pay the proper overtime rate.

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

Penalties under section 1775, subdivision (a):	\$169,440.00
Penalties under section 1813:	<u>\$1,550.00</u>
TOTAL:	\$170,990.00

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: 8/18/2015



Christine Baker
Director of Industrial Relations