

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Consolidated Drywall, Inc.

Case No. 14-0642-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected subcontractor Consolidated Drywall, Inc. (Consolidated Drywall) requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to the Pleasant Hill Community Center Building Project (Project) performed for the Pleasant Hill Recreation & Park District (District). The Assessment determined that \$33,286.77 in unpaid prevailing wages and statutory penalties was due. DLSE assessed penalties against Consolidated Drywall under Labor Code sections 1775.¹

A hearing on the merits was held on August 5, 2015, in Oakland, California, before Hearing Officer Ed Kunnes. Galina Velikovich appeared for DLSE. There was no appearance for Consolidated Drywall. At the hearing on the merits, DLSE moved to amend the Assessment (Amended Assessment) for unpaid prevailing wages and statutory penalties downward to a total amount due of \$22,390.71. The Hearing Officer granted the motion, there being neither opposition nor prejudice to Consolidated Drywall.

The issues for decision are:

1. Whether Consolidated Drywall's workers were properly compensated for travel time;
2. Whether Consolidated Drywall's workers were properly compensated for travel mileage; and

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

3. Whether Consolidated Drywall's workers were compensated at the correct holiday rate for work on the Labor Day Holiday (celebrated on Monday, September 2, 2013).

Now, based on un rebutted evidence showing that Consolidated Drywall failed to pay the required prevailing wages to its workers, the Director of Industrial Relations affirms the Amended Assessment.

FACTS

Failure to Appear: Julie Crytzer appeared by telephone as the representative for Consolidated Drywall at prehearing conferences on April 13, 2015 and on June 1, 2015. The Hearing Officer continued the prehearing conference from June 1, 2015 to June 22, 2015 by mutual consent of the parties so that they could continue to work informally on a settlement. On June 10, 2015, the Hearing Officer caused notification of the continued prehearing conference to be served on parties. On June 22, 2015, Galina Velikovich, representing DLSE, appeared by telephone and Consolidated Drywall did not appear at the prehearing conference. The Hearing Officer was directed by the person answering the phone at Consolidated Drywall to telephone Julie Crytzer at a different phone number. The Hearing Officer left a message, including a return phone number, for Julie Crytzer at that number provided by Consolidated Drywall. The Hearing Officer did not receive any return communication from Consolidated Drywall. Thereafter, the Hearing Officer set the hearing on the merits for August 5, 2015, and caused the Minutes of Prehearing Conference and Order Setting Hearing on the Merits to be served on July 7, 2015.

Pursuant to notice, the Hearing Officer proceeded to conduct the Hearing on the Merits as scheduled 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 based on the testimony of DLSE's Deputy Labor Commissioner Kathleen Hansen.

Amended Assessment: The facts stated below are based on the testimony of Hansen, Exhibits 1 through 21 submitted by DLSE, the Assessment, the Amended Assessment, and other documents in the Hearing Officer's file.

On or about July 26, 2012, D.L. Falk Construction Inc. entered into a public works contract with the District as the general contractor for the Project and hired Consolidated Drywall as a subcontractor for the Project. Consolidated Drywall workers performed work on the Project between approximately June 18, 2013, and June 10, 2014. The applicable prevailing wage determinations and classifications are NC-31-X-16-2012-1 (Drywall Installer, Area 1) and CON-2012-1 (Taper and Taper Cleanup).

The evidence establishes that Consolidated Drywall failed to pay the required prevailing wages to its workers on the Project in the aggregate amount of \$14,870.71. In addition, DLSE assessed \$7,520.00 in penalties under section 1775, at the mitigated rate of \$80.00 per violation, for 94 instances of failure to pay the applicable prevailing wages. At the hearing, Hansen provided detailed testimony of the failure by Consolidated Drywall to pay the full straight time prevailing wages, additional amounts for holiday time accrued for work on Labor Day 2013, and travel and subsistence per diems owed to its workers on the Project.

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, 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. The prevailing rate of per diem wage includes travel and subsistence pay pursuant to Section 1773.1. 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 Amended Assessment, and Consolidated Drywall presented no evidence to disprove the basis for the Amended Assessment or to support a waiver of liquidated damages under section 1742.1, subdivision (a). Accordingly, the Amended Assessment is affirmed in its entirety.

FINDINGS

1. Affected subcontractor Consolidated Drywall, Inc. filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.
2. Consolidated Drywall, Inc. underpaid its workers on the Project in the aggregate amount of \$14,870.71 in prevailing wages.
3. Penalties under section 1775 are due in the amount of \$7,520.00 for 94 violations at the mitigated rate of \$80.00 per violation.
4. Because none of the unpaid wages were paid within 60 days after service of the Assessment, liquidated damages are due in the full amount of the unpaid wages, \$14,870.71, and are not subject to waiver under section 1742.1, subdivision (a).
5. The amounts found remaining due in the Amended Assessment as affirmed by this Decision are as follows:

Wages due:	\$14,870.71
Penalties under section 1775, subdivision (a):	\$7,520.00
Liquidated damages:	<u>\$14,870.71</u>
TOTAL:	\$37,261.42

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

ORDER

The Civil Wage and Penalty Assessment, as amended at the hearing on the merits, is affirmed. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: 9/10/2015



Christine Baker
Director of Industrial Relations