

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Requests for Review of:

**Cool Air Supply, Inc.**

Case No.: **12-0256-PWH**

From Civil Wage and Penalty Assessments issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected contractor Cool Air Supply, Inc., requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to a work of improvement identified as "Citrus Continuation High School Mods Phase 2" (Project). Cool Air Supply contracted with the Fontana Unified School District to furnish labor, materials, and associated services as an HVAC contractor.<sup>1</sup> The Amended Assessment determined that \$85,869.30 in unpaid prevailing wages and statutory penalties was due. Hearing Officer John J. Korbol opened the Hearing on the Merits on February 27, 2013 in Los Angeles, California. The matter was adjourned for settlement negotiations, and when these proved fruitless, the Hearing on the Merits was continued on April 8, 2013. Max W. Norris appeared for DLSE. Garo Khajadourian of the Law Offices of Briggs & Alexander appeared for Cool Air Supply. After post-hearing briefs were submitted by both parties, the matter was submitted for decision on May 24, 2013.

The issues for decision are:

- Are the certified payroll records (CPRs) submitted by Cool Air Supply accurate?
- Did Cool Air Supply under-report the number of hours worked by its employees on the Project?

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<sup>1</sup> Heating, Air Conditioning, and Ventilation.

- Did Cool Air Supply fail to pay the full and correct prevailing wages to the workers employed on the Project by Cool Air Supply?
- Whether DLSE's assessment of penalties under Labor Code section 1775<sup>2</sup> at the maximum rate of \$50.00 per alleged violation constituted an abuse of discretion.
- Whether Cool Air Supply is liable for liquidated damages under section 1742.1, subdivision (a).
- Did a third-party labor compliance program determine that Cool Air Supply's CPRs complied with legal requirements, and if so, does such a determination bar DLSE from auditing Cool Air Supply's payroll and time-keeping records and procedures to reach an independent determination that supports the underpayment of wages described in the Assessment?

The Director finds that Cool Air Supply has failed to carry its burden of proving that the Assessment was incorrect as to Cool Air Supply's underreporting of hours worked for the workers employed on the Project, as well as Cool Air Supply's failure to pay in full the fringe benefit component of the prevailing wage rate due to two apprentices employed on the Project. The Director finds that DLSE's assessment of penalties under section 1775 at the rate of \$50 per violation does not constitute an abuse of discretion. Finally, Cool Air Supply has not demonstrated substantial grounds for a waiver of liquidated damages.

### FACTS

On February 18, 2010, Cool Air Supply, Inc. entered into a public works contract with the Fontana Unified School District to carry out HVAC improvements at the Citrus Continuation High School. Twelve workers performed labor for Cool Air Supply under the contract on various dates within the period of October 28, 2010, through September 30, 2011. There is no dispute that the Project is a public work that required the payment of prevailing wages under the California Prevailing Wage Law, sections 1720 through 1861. There is no dispute that the applicable prevailing wage determinations are: (1) SBR 2009-2, with predetermined increases, (General Prevailing Wage Determination for San Bernardino County) with the applicable job classification being Sheet Metal Worker; (2) 2010-1, with

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<sup>2</sup> All further references are to the Labor Code unless otherwise indicated.

predetermined increases, (General Prevailing Wage Determination for parts of Southern California including San Bernardino County), with the applicable job classification being Apprentice Sheet Metal Worker (HVAC); and (3) 2009-2, with predetermined increases, (General Prevailing Wage Determination for parts of Southern California including San Bernardino County), with the applicable job classification being Apprentice Sheet Metal Worker.

The Fontana Unified School District hired School Construction Compliance, LLC, a third-party labor compliance program (LCP), to monitor the Project and assure that prevailing wages were paid to workers employed on the Project by Cool Air Supply. On July 3, 2012, this LCP issued a letter to Cool Air Supply, to the effect that Cool Air Supply is presumed to be compliant with the requirements of section 1776 and California Code of Regulations, title 8, section 16100, subdivision (c)(5),<sup>3</sup> based on the LCP's receipt of "payrolls and source document forms".

#### **EVIDENCE AND TESTIMONY AT THE HEARING**

At the Hearing on the Merits, DLSE's Exhibits 1 through 16 were admitted into evidence. Cool Air Supply's exhibits A, B, F and G were also admitted.

Deputy Labor Commissioner Tony Eguavoen testified that his investigation of the payment of Cool Air Supply's workers on the project was triggered by an anonymous complaint. Two workers, both employed as apprentices on the Project, complained that Cool Air Supply had failed to pay the full fringe benefit component of the prevailing wage rate applicable to apprentice sheet metal workers. Eguavoen contacted the Sheet Metal Workers Union, which confirmed that fringe benefit contributions had not been paid in full by Cool Air Supply on behalf of the apprentices. No other workers complained of underpayment of wages or benefits.

The apprentices, Jonathan Ceballos and Oscar Gonzalez, supported their complaints by producing a set of "Observation Forms" kept by each of them on the Project (DLSE Exhibits 13 and 14). Eguavoen noted that Ceballos and Gonzalez identified their co-workers on the Project on a day-by-day basis. When Eguavoen compared the names of the

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<sup>3</sup> Cool Air Supply's Exhibit A. Regulation 16100(c)(5) obligates public works contractors to maintain and make available for inspection payroll records as mandated by section 1776.

other Cool Air Supply workers named on the Observation Forms, and their dates of employment with the names and dates set forth in the CPRs, he found discrepancies. From these discrepancies, Eguavoen concluded that Cool Air Supply had routinely been underreporting the number of workers and the number of hours worked on the Project, other than Ceballos and Gonzalez. Consequently, Eguavoen conducted an audit of Cool Air Supply's payroll records and, in conjunction with the information gleaned from the Observation Reports, he produced an Assessment alleging that Cool Air Supply had underpaid its workers on the Project by \$89,185.96, later reduced to \$73,219.30. DLSE also assessed \$13,650 in penalties under section 1775 at the rate of \$50 per violation for 273 instances of failure to pay the applicable prevailing wages.

Ceballos, one of the complaining apprentices, was called to testify by DLSE. He is a member of Local 105 of the Sheet Metal Workers Union, and was dispatched by the Union to work for Cool Air Supply on the Project. The Union provided him with the Observation Forms and asked him to fill them out. The Union wanted him to keep track of hours worked on the Project. Ceballos kept the Observation Forms on a clipboard and completed one every day he was on the Project while sitting in his car at the end of the day before leaving the site. He was in the habit of noting the names of co-workers present and working on the Project. When his assignment ended, he turned the Observation Forms over to the Union representative. He identified the documents constituting DLSE Exhibit 14 as the Observation Forms he completed. He did not anticipate that the forms he filled out would be used in legal proceedings. He did not work for the entire duration of the project. On cross-examination, Ceballos admitted that he was not the timekeeper for the Project, was not charged with timekeeping duties by Cool Air Supply, and had no experience keeping payroll records. His supervisor was "George" aka Jora Khanian, the Project Supervisor. George was the only Cool Air Supply employee who would come and go during the work day. All other workers were present on the site all day. Ceballos denied that some workers would arrive for work at mid-day. As an apprentice, he worked with the other journey-level sheet metal workers, and he knew what everybody else was doing on the Project.

DLSE also called the other complaining apprentice, Gonzalez, to testify. As a member of Local 105, he was also dispatched to work on the Project by the Sheet Metal

Workers Union. Like Ceballos, he was furnished with a stack of blank Observation Forms by his union representative. Gonzalez was asked to use the documents to record the dates and hours he worked, the workers he worked with, and where he and his co-workers were working. Gonzalez completed an Observation Form daily, in his car, after he left the Project site. He kept the Observation Forms on a clipboard in his car with a pen. He turned in a set of completed forms to his union representatives about a month into the job, and then again at the end of his employment on the Project. He was told by his union representative, Ryan Collins, that Cool Air Supply was notorious for not paying fringe benefits. Gonzalez identified the documents constituting DLSE Exhibit 13 as the Observation Forms he completed. He had no idea that the documents would ever be used in a legal proceeding. He was never on the Project site with Ceballos, who came to work there later. The names Gonzalez recorded on the Observation Forms were the names of other employees of Cool Air Supply. He learned the names through his personal interactions with his co-workers. On cross-examination, Gonzalez admitted that he was not asked to be a timekeeper by Cool Air Supply and that he lacked experience with payroll records. It took him 20 minutes to drive home from the site to his residence, where he completed the Observation Forms while sitting in his car. He denied that his memory of the day's activities had gone stale by the time he filled out the forms.

The only witness called to testify by Cool Air Supply was Simon Pilibossian, President of Cool Air Supply. Pilibossian testified that the Project was monitored by the Labor Compliance Program hired by the school district. He furnished the LCP with CPRs every week. The LCP would occasionally send someone to the Project site to talk with the workers, the Project manager, and the inspector. Pilibossian stated that the LCP never raised any issues or complaints with him and expressed no problems with the CPRs. He received Exhibit A, the letter from the LCP, and he understood the letter to indicate that the LCP had found his company to be in compliance with the Labor Code. Pilibossian testified that he had been the subcontractor on another public works project, as specified on Cool Air Supply's Exhibit G, a "Notice of Complaint Closed" generated by DLSE. On cross-examination, Pilibossian stated that his Project manager, George, kept the time records for the Project. George was on the job every day. The information on the CPRs was compiled by his bookkeeper. According to Pilibossian, Cool Air Supply complied with the

requirements of section 1776 and the correct wages were paid to Cool Air Supply's workers employed on the Project. On cross-examination, Pilibossian conceded that DLSE had contacted him and requested CPRs before the date of Exhibit A from the LCP (July 3, 2012).

## 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.4<sup>th</sup> 976.)

Awarding bodies have been encouraged to adopt and enforce a labor compliance program approved by the Department of Industrial Relations as a method of meeting their obligation of assuring compliance with payment of the prevailing wage on their public works projects. See section 1771.5. A labor compliance program is required to enforce the payment of prevailing wages as would the Labor Commissioner. (Cal. Code Regs., tit. 8, § 16434, subd. (c)(2).)

Section 1771, subdivision (b) authorizes the Labor Commissioner to intervene and represent the awarding body in any enforcement action undertaken by a labor compliance program. The failure of a labor compliance program to fulfill its duties to enforce the California Prevailing Wage law "shall not of itself constitute a defense to the failure to pay prevailing wages". (Cal. Code Regs., tit. 8, § 16421, subd. (f).)

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 wage 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 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 the contractor shall be provided with an opportunity to review evidence that DLSE intends to utilize at the hearing.

Employers on public works must keep accurate payroll records that reflect, among other things, the work classification, hours worked, and actual per diem wages paid for each employee. (§ 1776, subd. (a).) This is consistent with the requirements for construction employers in general, who are required to keep accurate records of the hours employees work and the pay they receive. (Cal. Code Regs., tit. 8, §11160, subd. 6.) When an employer fails to maintain accurate time records, a claim for unpaid wages may be based on credible estimates from other sources sufficient to allow the decision makers to determine the amount by a just and reasonable inference from the evidence as a whole. In such cases, the employer has the burden to come forward with evidence of the precise amount of work performed to rebut the reasonable estimate. (*Anderson v. Mt. Clemens Pottery Co.* (1945) 328 U.S.680, 687-688 [rule for estimate-based overtime claims under the Federal Fair Labor Standards Act, 29 U.S.C. §§ 201 et. seq.]; and *Hernandez v. Mendoza* (1988) 1999 Cal.App.3d 721, 726-727 [applying the same rule to state overtime wage claims].) This burden is consistent with an affected contractor or subcontractor's burden under section 1742, subdivision (b), providing that the contractor "shall have the burden of proving that the basis for the civil wage and penalty is incorrect."

DLSE Is Not Barred From Prosecuting This Matter By Virtue Of The Alleged Finding Of Compliance By The Labor Compliance Program.

Cool Air Supply argues that, since the LCP allegedly found Cool Air Supply's payroll records to be in compliance with the requirements of the Labor Code, DLSE should have dismissed the complaints of Ceballos and Gonzalez and refrained from prosecuting this action. Cool Air Supply does not, however, articulate a legal theory to support this argument. DLSE responded to Cool Air Supply's argument as a jurisdictional objection, but it could also have been intended to be an estoppel argument. Whichever was the intent, Cool Air Supply has not offered any authority to advance its position.

Factually, the argument rests almost entirely on Exhibit A, the letter from the LCP to Pilibossian stating that the LCP *presumes* that Cool Air Supply is compliant with the legal requirements to maintain and certify payroll records on the Project. Although the document was admitted into evidence, it is entitled to no weight, chiefly because it is hearsay on a threshold issue. The letter lacks probative value because there is no evidence as to what the LCP might have done to reach such a conclusion. The only testimony as to the extent that the LCP may have monitored Cool Air Supply's compliance with the Prevailing Wage Law is from the testimony of Pilibossian, and this was also hearsay. Cool Air Supply might have arranged to have the author of the letter or some other representative of the LCP appear at the Hearing as witness, offer testimony, and be subject to cross-examination, but it did not do so.<sup>4</sup> Cool Air Supply's contention that it was exonerated by the LCP is not tenable.

The Department may, under certain well-defined circumstances, delegate the enforcement of the Prevailing Wage Law to an approved labor compliance program. In doing so, however, the Department does not abdicate its statutory duty to monitor and enforce compliance with prevailing wage requirements. (§ 1771.5.) Indeed, the Department is charged with approving labor compliance programs that meet prescribed criteria, reviewing their conduct, and revoking their approval if necessary. (§ 1771.5 and Cal. Code Regs., tit. 8, §§ 16421 *et seq.*) The Labor Commissioner is expressly authorized to intervene when a labor compliance program has initiated an enforcement action. (§ 1771.6, subd. (b).) If a labor compliance program should fail to adequately enforce the Prevailing Wage Law, a contractor is expressly barred from raising such nonfeasance as a defense to the alleged failure to pay prevailing wages. (Cal. Code Regs., tit. 8, §16421, subd. (f)). Cool Air Supply has not cited to any countervailing authority or offered a legal explanation as to why these statutory and legal strictures should not apply here.

With respect to the Project in this case, the LCP did not have exclusive jurisdiction and was not the sole authority to determine the extent to which Cool Air Supply complied with prevailing wage requirements. DLSE was legally entitled to open its own

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<sup>4</sup> Even if the letter were to be given some probative value despite its hearsay nature, the contents of the letter do not exculpate Cool Air Supply from the deficiencies raised in the Assessment. The letter from the LCP articulates nothing more than a presumption that Cool Air Supply has produced accurate CPRs. It does not purport to make a definitive and comprehensive finding that Cool Air Supply complied with all of the requirements of the Prevailing Wage Law.

investigation, conduct an audit, and serve the Assessment based on its information it developed.

Cool Air Supply Did Not Meet Its Burden of Proving That The Basis For The Assessment Is Incorrect.

At the hearing, DLSE had the initial burden to produce prima facie evidence for the Assessment. DLSE met this burden by eliciting credible testimony from Eguavoen, Ceballos and Gonzalez, and by having Observation Forms compiled by Ceballos and Gonzalez admitted into evidence.

Cool Air Supply attacks the testimony of Ceballos and Gonzalez as being inaccurate, flawed, shaky, biased, and unreliable. This attack rests on multiple grounds, including the fact that Ceballos and Gonzales were not trained or experienced timekeepers, that they did not track the arrival or departure times of their co-workers, and at least two of the Observation Forms are inaccurate. These criticisms cannot overcome the evidentiary value of the Observation Forms. These records were created daily and contemporaneously by two percipient witnesses who were familiar with the other members of Cool Air Supply's workforce and the labor being carried out on the Project. Between the two of them, Ceballos and Gonzalez were present on the Project site for nearly the entire duration of the Project. All of the Observation Forms identified the Cool Air Supply employees by name. The reports by Gonzalez are particularly detailed as to the nature of the labor being performed and by whom. The complaints and Observation Forms kept by Ceballos and Gonzalez do not have to be taken as the "infallible truth" as Cool Air Supply sneeringly asserts; they only need to provide a credible basis for DLSE to open an investigation and conduct an audit. Such evidence is more than sufficient to find that DLSE met its burden of producing prima facie evidence to support the Assessment.

Cool Air Supply also questions Eguavoen's decision to proceed on the basis of Ceballos' and Gonzalez' complaints alone, in light of the fact that no other workers complained of underpayment of wages or benefits. In reality, there are many reasons why workers may be reluctant to step forward to complain about underpayment. Such workers may be ignorant of their legal rights; they may not understand the procedure to lodge such a complaint; they may fear deportation; they may not want to diminish opportunity for further

employment by the contractor; they may have been induced to silence by threats or intimidation; they may have been persuaded to sign releases and think their legal rights foreclosed; there may be family loyalties involved. This is not a complete list. The essential point is that the lack of complaints by some, or even most, of the workers employed on this Project does not mean the complaints of Ceballos and Gonzales are presumptively invalid. DLSE acted reasonably when Eguavoen opened his investigation based on those two complaints.

Cool Air Supply also attempts to discredit the Observation Forms compiled by Ceballos and Gonzalez because their union representative told Gonzalez that Cool Air Supply was notorious for failing to pay prevailing wages. From this, Cool Air Supply asserts that the Department must infer that Ceballos and Gonzalez were biased against Cool Air Supply and not acting in good faith when they recorded data on their Observation Forms.

The “notorious” comment by the union representative was freely admitted by Gonzalez on direct examination. The comment does explain Gonzalez’ motive for logging information onto the blank Observation Forms he was provided by the union. But taken in conjunction with the oral testimony of the two apprentices, the comment alone does not ascribe an *improper* motive on the part of Gonzalez,<sup>5</sup> and it does not support an inference that the Observation Forms are unreliable.

With DLSE having met its initial burden to produce a quantum of evidence to provide prima facie support for the Assessment, the burden of proving the Assessment to be incorrect fell to Cool Air Supply. Cool Air Supply did not meet this burden of proof. It is conceivable that Cool Air Supply might have met this burden had it called witnesses other than Pilibossian. For example, a knowledgeable person from the LCP might have testified to the LCP’s monitoring and audit procedures on the Project, if any. “George” aka Jora Khanian, Cool Air Supply’s Project manager, might have been called to testify about the way he kept track of the presence of workers on the projects and the hours of work for those workers. Some of the other Cool Air Supply workers might have been able to testify as to alleged discrepancies and inaccuracies in the Observation Forms. As Cool Air Supply’s

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<sup>5</sup> Much less Ceballos, when there was no evidence that a similar comment was directed to him.

sole witness, Pilibossian was unable to offer any first-hand testimony about the LCP's procedures, the timekeeping procedures George may have followed, or even the preparation of the CPR. The second-hand testimony of Pilibossian and the few documentary exhibits produced by Cool Air Supply fell far short of rebutting DLSE's prima facie case.

Cool Air Supply Underreported the Number of Workers Employed On The Project, As Well As The Hours Worked.

The resolution of this case rests on the question of whether Cool Air Supply's CPRs were accurate and complete, or whether they were falsified to understate the number of workers employed on the Project as well as the number of hours worked. DLSE presented credible evidence to invalidate the figures used on Cool Air Supply's CPRs. This evidence was primarily in the form of discrepancies between the Observation Forms kept by Ceballos and Gonzales and the CPRs submitted by Cool Air Supply. These discrepancies led DLSE to re-calculate the hours worked on the Project, and those figures yield another set of figures representing underpayment of wages, as set forth on the Assessment. The counter-evidence offered by Cool Air Supply is accorded little or no weight, as described above, and is insufficient to prove that the CPRs were complete and correct. A preponderance of the evidence substantiates DLSE's Conclusion that Cool Air Supply underreported the number of workers and hours worked and underpaid the wages due to Cool Air Supply's workers employed on the Project.

DLSE's Penalty Assessment Under Section 1775 is Appropriate.

DLSE assessed Cool Air Supply a penalty of \$50.00 per day for each instance that one of Cool Air Supply's workers was underpaid on the Project, pursuant to section 1775. The Director's review of DLSE's determination is limited to an inquiry into whether it was "arbitrary, capricious, or entirely lacking 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.)

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)].)

In this case, DLSE assessed penalties at the maximum rate of \$50.00 per violation.<sup>6</sup> Given that Cool Air Supply’s underreporting of hours and workers could only have been done intentionally, Cool Air Supply’s conduct can fairly be characterized as a willful violation of the prevailing wage laws warranting a penalty of \$50.00 per violation in this case. The Director is not free to substitute her own judgment. Cool Air Supply has not shown an abuse of discretion, and the assessment of penalties at the rate of \$50.00 per violation is affirmed.

Cool Air Supply is 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 liquidated damages with respect to that portion of the unpaid wages.

Absent waiver by the Director, Cool Air Supply is liable for liquidated damages in an amount equal to any wages that remained unpaid 60 days following service of the Assessment. Cool Air Supply’s claim of entitlement to a waiver of liquidated damages in this case is tied to Cool Air Supply’s position on the merits and specifically whether, within the 60 day period after service of the Assessment, it had “substantial grounds for appealing

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<sup>6</sup> The version of section 1775, subdivision (a)(2)(B)(iii) in effect for this Project provides that the penalty for each calendar day, for each worker paid less than the prevailing wage rates , may be up to \$50.00 per day but not less than \$30.00 if the violation was willful as defined in subdivision (c) of section 1777.1. Section 1777.1, subdivision (c) 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 refuses to comply with its provisions.”

the assessment . . . with respect to a portion of the unpaid wages covered by the assessment . . .” Cool Air Supply argues that the compliance letter from the LCP gave Cool Air Supply a reasonable subjective belief that the Assessment was in error. Given that the underreporting of the number of hours and workers was intentional, however, such belief cannot be characterized as “reasonable”. And by deliberately submitting an incomplete and inaccurate set of CPRs, Cool Air Supply cannot plausibly assert that it had an objective factual basis for claiming the Assessment was erroneous. (Cal. Code Regs., tit. 8, § 17251, subd. (b).) Consequently, there are no grounds for waiving the liquidated damages as measured by the difference between the applicable prevailing wage rate and the actual wages paid to Cool Air Supply’s workers. Because the assessed unpaid wages remain due and owing more than 60 days after service of the Assessment, Cool Air Supply is liable for liquidated damages.

### FINDINGS

1. Affected contractor Cool Air Supply, Inc. filed a timely request for review of the Notice of Withholding issued by the City of Los Angeles with respect to the Project.

2. Cool Air Supply, Inc. did not maintain accurate payroll records and underreported both the daily number of workers and the daily number of hours worked on its certified payroll records. Cool Air Supply underpaid its workers by paying them a daily lump sum amount below the required prevailing hourly wage rate, comprising 273 violations of section 1775 and resulting in underpayment of prevailing wages in the aggregate amount of \$73,219.30.

3. DLSE did not abuse its discretion in setting section 1775, subdivision (a) penalties at the rate of \$50.00 per violation and the resulting total penalty of \$13,650, as assessed, for 273 violations on the Project is affirmed in light of appropriate factors and the other findings in this Decision.

4. The unpaid wages found due in Finding No. 2 remained due and owing more than sixty days following the issuance of the Assessment and there are insufficient grounds to waive payment of liquidated damages on those unpaid wages. Cool Air Supply, Inc. is therefore liable for liquidated damages under section 1742.1 in the amount of \$73,219.30.

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

Wages Due:	\$73,219.30
Penalties under section 1775, subdivision (a):	\$13,650.00
Liquidated Damages under section 1742.1, subdivision (a):	\$73,219.30
<b>TOTAL:</b>	<b>\$160,088.60</b>

In addition, interest is due and shall continue to accrue on all unpaid wages as provided in section 1741, subdivision (b).

**ORDER**

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

Dated:

7/16/2014



Christine Baker,  
Director of Industrial Relations