

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Pac West Corp.,

Case No. 13-0258-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

DECISION OF THE DIRECTOR

Affected contractor Pac West Corporation (aka Pacwest Corporation) (Pac West) requested 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 Howard Cattle Elementary project (Project) performed for the Chino Valley Unified School District (District) in the County of San Bernardino. The Assessment determined that \$52,435.45 in unpaid prevailing wages and statutory penalties was due. Pursuant to written notice, a Hearing on the Merits was held on March 4, 2014, in Los Angeles, California, before Hearing Officer Harold L. Jackson. Max Norris appeared for DLSE and there was no appearance for Pac West. Pac West similarly did not appear for the two scheduled prehearing conferences. Calls to Pac West's telephone numbers on file produced messages that they were disconnected and Pac West provided no other telephone number where it could be reached.

In a companion case concerning a request for review of the Assessment filed by Ohio Casualty Insurance Company (Ohio Casualty), surety for Pac West (Case No. 13-0257-PWH), the parties settled the issues related to unpaid prevailing wages and unpaid training fund contributions under the Assessment, leaving only the issue of statutory penalties in the case instituted by Pac West's request for review. Now, based on un rebutted evidence showing that Pac West failed to pay the required prevailing wages, the Director affirms the Assessment.

Facts

Failure to Appear: According to the Request for Review filed by George Halablian on behalf of Pac West, Pac West's telephone number is (818) 764-4820 and a second telephone number was also listed in the file. Pac West's Request for Review also listed Pac West's mailing address as 1303 N. San Fernando Rd., Suite 206, Burbank, CA 91504. On October 24, 2013, and November 12, 2013, notices of prehearing conference were mailed to Pac West at that address, giving Pac West notice that the Hearing Officer would be conducting a telephone prehearing conference on November 5, 2013, and December 17, 2013, respectively. On those dates, the Hearing Officer attempted to contact Pac West at its telephone numbers, but found that both numbers had been disconnected. Notices of the Hearing on the Merits were provided to Pac West at its address of record on November 12, 2013, December 17, 2013, and January 21, 2014. DLSE served its witness list on Pac West on February 13, 2014, and served its proposed joint statement of issues on Pac West on February 25, 2014. Pac West submitted no witness list and did not respond to DLSE's proposed joint statement of issues.

Pac West did not appear at the Hearing on the Merits. Pursuant to notice, the Hearing Officer proceeded to conduct the Hearing on the Merits on March 4, 2014, 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, Yoon-mi Jo.

Assessment: The facts stated below are based on Exhibits 1 through 15 submitted by DLSE at the Hearing on the Merits, including the Assessment and other documents in the Hearing Officer's file.

On or about April 4, 2011, District advertised the Project for bid for construction of a classroom wing at Cattle Elementary School. District accepted the bid of Pac West and the two entered an agreement dated June 23, 2011 (Agreement). Pac West subcontracted for certain electrical work with Juno Electrical System, Inc. (Juno), which supplied fourteen workers who performed work under the subcontract from November 5, 2011, through August 25, 2012. The

applicable prevailing wage determination in effect on the bid advertisement date was:
Electrician, Inside Wireman (SBR-2001-1).

Based on Juno's certified payroll records (CPRs) and employee questionnaires, the Assessment and attached audit worksheets found that Juno failed to pay the required prevailing wages to twelve workers employed on the Project in one classification and failed to pay training fund contributions for all fourteen of the workers. The wage underpayments appear to have resulted from a combination of misclassifying workers as laborers when they were performing work within the scope of Electrician-Inside Wireman and not reporting all hours worked on the CPRs.

Based on the unrebutted evidence and testimony regarding the nature of the work performed, the number of hours worked, and the amount paid, the record shows that Juno failed to pay the required prevailing wages. There also is no evidence that Juno paid training fund contributions as required by the applicable prevailing wage determinations. In addition, DLSE assessed \$10,950.00 in penalties under Labor Code section 1775 for 365 instances of failure to pay the applicable prevailing wages.¹ Penalties under section 1775 were assessed at the mitigated rate of \$30.00 per violation based on DLSE's records regarding past allegations of section 1775 violations against Juno and DLSE's opinion that the current violations were willful. DLSE also assessed \$300.00 in penalties under section 1813 for 12 instances 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 the expense of their workers by failing to comply with minimum labor standards." (§ 90.5, subd. (a); see, too *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

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

prescribes penalties for failing to pay the prevailing rate. During the relevant period, the penalty under section 1775 was a maximum of \$50 for each calendar day for each worker paid less than the prevailing wage. The penalty is a minimum of \$30 for each calendar day for each worker paid less than the prevailing wage where it is determined that the violation is willful. 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.

Under section 1775, an affected contractor and subcontractor are jointly and severally liable for section 1775 penalties unless the contractor can prove it had no knowledge of a subcontractor's failure to pay prevailing wages to its workers and that it meets four specific requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813. (§1775, subd. (b).)

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

At the hearing the contractor "shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect." (§ 1742, subd. (b).) DLSE's determination "as to the amount of the penalty shall be reviewable only for abuse of discretion." (§ 1775, subd. (a)(2)(D).) In this case, the record establishes the bases for the Assessment and Pac West's liability therefor. Pac West has presented no evidence to disprove those bases. Nor has Pac West shown that DLSE's determination on the amount of section 1775 penalties constituted an abuse of discretion. Accordingly, the Assessment is affirmed. Because DLSE voluntarily settled the issues other than penalties in connection with the Request for Review filed by Ohio Casualty in Case No. 13-0257, there is no need for a finding as to Pac West's liability for unpaid prevailing wages and training fund contributions.

FINDINGS AND ORDER

1. Affected contractor Pac West Corporation filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.
2. Penalties under section 1775 are due in the amount of \$10,950.00 for 365 violations at the maximum rate of \$30.00 per violation.
3. Penalties under section 1813 are due in the amount of \$300.00 for 12 violations.
4. The amounts found remaining due in the Assessment, as affirmed by this Decision, are as follows:

Penalties under section 1775, subdivision (a):	\$10,950.00
Penalties under section 1813:	\$300.00
TOTAL	\$11,250.00

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: 7/7/2014


Christine Baker
Director of Industrial Relations