

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

R Brothers Inc.

Case No. 25-0037-PWH

From a Notice of the Withholding of Contract Payments issued by:

Los Angeles Unified School District

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor R Brothers Inc. (R Brothers) requested review of a Notice of the Withholding of Contract Payments (Notice) issued by the Los Angeles Unified School District (LAUSD) on October 28, 2024. Pursuant to California Code of Regulations, title 8, section 17227,¹ on March 24, 2025, the appointed Hearing Officer, Steven A. McGinty, served an Order to Show Cause Why Request for Review Should Not Be Dismissed as Untimely under Labor Code section 1742, subdivision (a) (OSC).² Section 1771.6, subdivision (b), indicates that a Notice is reviewable under section 1742 in the same manner as a civil penalty order of the Labor Commissioner. Section 1742 mandates that a request for review be transmitted within 60 days after service of the Notice.

For the reasons stated below, I find that the time limit for requesting review is mandatory and jurisdictional, and that R Brothers's Request for Review was not filed timely. Accordingly, the Request for Review must be dismissed.

FACTS

LAUSD issued the Notice against R Brothers on October 28, 2024. (Proof of Service and Certificate of Service attached to Notice dated October 28, 2024.)

¹ For ease of reference, individual sections of the Department of Industrial Relations prevailing wage hearing regulations found at California Code of Regulations, title 8, section 17201 et seq., are referred to as "Rules" using only their last two digits. (Rule 01, subd. (d).)

² All statutory references are to the Labor Code unless specified otherwise.

R Brothers filed a Request for Review on February 14, 2025, according to the date on the letter requesting review and the email of the same date addressed to Amy Luc and Jennifer Tran of LAUSD attaching the letter. One hundred and nine days elapsed between the date LAUSD issued the Notice and the date R Brothers filed the Request for Review.

Notice of the right to seek review is found at the top of page three of the Notice. The notice states in part:

Notice of Right to Obtain Review – Formal Hearing

In accordance with Labor Code sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments by transmitting a written request to the office of the Labor Compliance Department that appears below within 60 days after service of the notice. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

Jessica Tam, Labor and Contract Compliance Administrator
Los Angeles Unified School District
Facilities Services Division
Labor Compliance Department
P. O. Box 513307
Los Angeles, CA 90051-1307

The Hearing Officer provided the parties 10 days to file a response in writing to the OSC and five days to reply to any submission by any other Party. LAUSD filed a response to the OSC on June 25, 2025. In the response, a Declaration signed by LAUSD attorney, Lillian Ma, LAUSD indicated that R Brothers received the Notice on October 30, 2024, as evidenced by a completed USPS Domestic Return Receipt card. (Lillian Ma Declaration, ¶ 4 and Exhibit B attached thereto.) R Brothers sent a written request for review via email to LAUSD on February 14, 2025, as evidenced by email correspondence and the Request for Review. (Lillian Ma Declaration, ¶ 6 and Exhibit C attached thereto.) Thus, LAUSD asserted that R Brothers's Request for Review was untimely, and the Notice became final. R Brothers did not file a response to the OSC or a reply to LAUSD's submission.

DISCUSSION

A Notice issued under section 1771.6 is reviewable under section 1742 in the same manner as a civil penalty order of the Labor Commissioner. (§ 1771.6, subd. (b).) Section 1742 mandates that a request for review be transmitted within 60 days after service of the Notice. If no hearing is requested within that period, “the assessment shall become final.” (§ 1742, subd. (a).) Rule 22, subdivision (a), restates the 60-day filing requirement, and expressly provides that, “Failure to request review within 60 days shall result in. . . the Withholding of Contract Wages [*sic*] becoming final and not subject to further review under these Rules.”

Rule 27 governs the early disposition of a request for review that appears untimely. Under the rule, the hearing officer issues an order to show cause why the request for review should not be dismissed as untimely under section 1742. The order is served on all parties and provides the parties an opportunity to respond to the order and to reply to any submission by any other party. Evidence in support or opposition to the order is submitted by affidavit or declaration. (Rule 27, subds. (a) and (b).) There is no right to an oral hearing under the rule. (*Id.* subds. (b) and (c).) The rule expressly authorizes the Director to dismiss a Request for Review that is untimely under section 1742. (*Id.* subds. (c) and (d).)

This case proceeded under Rule 27. The Hearing Officer issued an OSC. LAUSD filed a response. R Brothers did not file a response or a reply.

The evidence in the record established that the last day to transmit a written request for review in this matter was January 2, 2025.³ The Notice became final on January 2, 2025. Therefore, under section 1742, R Brothers’s Request for Review transmitted on February 14, 2025, was untimely. The Director is without jurisdiction to

³ The Notice issued on October 28, 2024. The sixtieth day following service of the Notice was December 27, 2024. When service of the Notice is by first class mail, the right to request review is extended by five days. (Rule 03, subd. (c).) The 65th day after October 28, 2024, was January 1, 2025. Since Wednesday, January 1, 2025, was a holiday, the last day to transmit the Request for Review was extended to the next Working Day, Thursday, January 2, 2025. (Rule 03, subd. (a).)

proceed on the untimely Request for Review. (§ 1742, subd. (a); Rule 22, subd. (a); see also *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831 [where the time for filing is mandatory and jurisdictional, a late filing may not be excused on the grounds of mistake, inadvertence, or excusable neglect]; *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489 [same].)

Had R Brothers filed a Request for Review timely, it would have vested the Director with jurisdiction to review the Notice and to conduct a hearing as necessary. R Brothers failed to do so. The time limit is mandatory and jurisdictional, and accordingly, the Notice is final. (§ 1742, subd. (a).)

Based on the foregoing, the Director makes the following findings:

FINDINGS

1. R Brothers Inc. did not timely request review of the Notice of Withholding Contract Payments issued October 28, 2024.
2. The Notice became final on January 2, 2025.
3. The Director has no jurisdiction to proceed on the untimely Request for Review filed by R Brothers Inc.

ORDER

R Brothers Inc.'s Request for Review is dismissed. The Hearing Officer shall issue a Notice of Findings that shall be served with this Decision on the parties.

Dated: 10/20/2025



Jennifer Osborn, Director
California Department of Industrial Relations