

5. Empire employed numerous workers in the carpenter classification on the project, including: Arnold Nez, Noah Anderson, Jarrod Arstein, Frederick Belingachee, Doug Bruursema, Michael Candelaria, Brock Frates, Ryan Goatson, Francisco Gomez, Kenny Hawkes, Bernell Joe, James Nyberg, Scott Jones, Josh Nyberg, Karl Juneau, Cooper Kouwenhoven, Howard Lackey, Robert Martin, Todd McGraw, Matthew Mikkelson, Kevin Nesbitt, Brandon Nez, McGerald Nez, Colt Van Dewerker, and David Wilson (the Workers).

6. The Workers performed work on the Project from at least March of 2013 through November of 2013.

7. Empire failed to pay the Workers the appropriate prevailing wages.

8. In total, Empire underpaid the workers \$57,117.90 in prevailing wages and fringe benefits.

9. Empire withheld from the paychecks of certain of the Workers \$3,000.77 which was supposed to be paid toward vacation benefits and union dues.

10. While that money was withheld from paychecks, the money was not paid toward vacation benefits and union dues.

11. In auditing Empire's work on the project, DLI incurred audit costs of \$1,820.70.

12. The findings of fact of the DLI Audit are hereby incorporated by reference.

III. CONCLUSIONS OF LAW

Mont. Code Ann. § 18-2-401, et seq., require the payment of prevailing wages and fringe benefits on public works projects in the state of Montana. The Project was a public works project. Therefore, Empire was required to pay prevailing wages for all work.

Mont. Code Ann. § 18-2-407 governs instances where prevailing wages are not properly paid, as is the case here. It requires the payment of all outstanding wages and fringe benefits, as well as forfeitures to DLI and the Workers. Specifically, it requires forfeiture "to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs," and forfeiture to employees "the amount of wages owed plus \$25 a day for each day that the employee was underpaid."

Therefore, Empire must pay the outstanding wages and fringe benefits in the sum of \$57,117.90. Empire must also pay a 20% delinquency penalty on that amount, a total of \$11,423.58. Finally, for the combined 931 underpaid days worked by the Workers, the \$25.00 per day penalty requires a penalty of \$23,275.00. Finally, DLI incurred an audit cost of \$1,820.70.

Mont. Code Ann. § 39-3-204 requires that payment of wages earned must occur within 10 business days after they become due and payable. Mont. Code Ann. § 39-3-206 provides that employers who fail properly to pay wages are guilty of a misdemeanor and “must” be assessed a penalty “not to exceed 110% of the wages due and unpaid.” This penalty provision is clarified by Admin. R. Mont. 24.16.7566. That Rule provides for a 15% penalty if wages are paid by a date certain and a 55% penalty if payment is not made by that date.

Empire withheld \$3,000.77 from the paychecks of its workers, and those amounts were not paid to workers, their union, or to a trust on their behalf. As such, ELP is in violation of Mont. Code Ann. § 39-3-204, and is subject to the penalty provisions of § 39-3-206. A 15% penalty on the withheld amount is \$450.12.

IV. ORDER

IT IS HEREBY ORDERED:

That Empire Lath & Plaster, Inc. pay the following sums to DLI:

1. Empire must pay \$57,117.90 in prevailing wages and fringe benefits.
2. Empire must pay \$11,423.58 in penalties on the underpaid wages and fringe benefits.
3. Empire must pay \$23,275.00 in penalties for the 931 days it underpaid the Workers.
4. Empire must pay \$3,000.77, the amount it improperly withheld from Workers.
5. Empire must pay \$450.12 in penalties based on the improper withholdings.
6. Empire must pay DLI’s audit costs in the amount of \$1,820.70.

7. In total, Empire must pay DLI \$97,088.07. This amount will be apportioned by DLI as required by statute.

DATED this 23rd day of March, 2015.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DAVID A. SCRIMM
DAVID A. SCRIMM
Hearing Officer