

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

BOB BRUNO EXCAVATING, INC.; and
ROBERT BRUNO, as a shareholder
of BOB BRUNO EXCAVATING, INC.;

Prime Contractor

for a determination pursuant to Article 8 of the Labor Law
as to whether prevailing wages and supplements were paid
to or provided for the laborers, workers and mechanics
employed on a public work project for the
City of Auburn, New York.

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DEFAULT
REPORT
&
RECOMMENDATION

Prevailing Wage Rate
PRC No. 2013003173
Case ID: PW07 2014000393
Cayuga County

Prevailing Wage Rate
PRC No. 2012003015
Case ID: PW07 2014006930
Cayuga County

Prevailing Wage Rate
PRC No. 2012003014
Case ID: PW07 2014006932
Cayuga County

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Prevailing Wage Rate
PRC No. 2010004664
Case ID: PW07 2014006933
Cayuga County

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To: Honorable Roberta Reardon
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued on August 9, 2016, a hearing was held on October 13, 2016 by videoconference between Albany and Utica, New York. The purpose of the hearing was to provide all parties an opportunity to be heard on the issues raised in the Notice of Hearing and to establish a record from which the Hearing Officer could prepare this Report and Recommendation for the Commissioner of Labor.

The hearing concerned an investigation conducted by the Bureau of Public Work ("Bureau") of the New York State Department of Labor ("Department") into whether Bob Bruno Excavating, Inc. ("Prime") complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of four public work contracts involving sidewalk replacement ("Projects 1 through 4") for the City of Auburn, New York ("Department of Jurisdiction").

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz (Larissa C. Bates, Senior Attorney, of Counsel). There were no appearances made by, or on behalf of, the Prime or Robert Bruno.

FINDINGS AND CONCLUSIONS

On August 10, 2016, the Department duly served a copy of the Notice of Hearing on the Prime and Robert Bruno, via regular and certified mail, return receipt requested. Signed Return Receipt cards evidencing receipt of the document by both the Prime and Robert Bruno were entered into evidence as Hearing Officer Exhibit 1. The Notice of Hearing scheduled an October 13, 2016 hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

The Prime and Robert Bruno failed to file Answers to the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, they are in default in this proceeding.

The Notice of Hearing alleges that the Prime underpaid wages and supplements to its workers on each of the four projects, that its violations of Labor Law article 8 were willful and involved payroll falsifications.

At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigator and documents describing the underpayments, which supported the Bureau's charges that:

The four Projects were subject to Labor Law article 8; and

The Prime entered into contracts for the four Projects with the Department of Jurisdiction; and

The Prime willfully underpaid \$184,081.74 to its workers on the four Projects; and

The Prime falsified its payroll records in connection with those willful underpayments;
and

Robert Bruno is an officer of Prime who knowingly participated in the violation of Labor Law article 8.

No evidence was offered concerning the stock ownership of the Prime.

On November 18, 2014, the Department issued a Notice to Withhold Payment on Project 1 (PRC No. 2013003173) to the Department of Jurisdiction in the amount of \$31,220.54. The Department of Jurisdiction acknowledged that withholding notice and advised that \$9,294.75, the

amount remaining on the contract, was being withheld. No other withholding notices were offered or received in evidence.

For the foregoing reasons, the findings, conclusions and determinations of the Bureau should be sustained.

RECOMMENDATIONS

Based upon the default of the Respondents in answering or contesting the charges contained in the Department's Notice of Hearing, and upon the sworn and credible testimonial and documentary evidence adduced at hearing in support of those charges, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Prime underpaid its workers \$39,099.50 on Project 1, PRC No. 2013003173; and

DETERMINE that Prime underpaid its workers \$66,110.84 on Project 2, PRC No. 2012003015; and

DETERMINE that Prime underpaid its workers \$67,287.00 on Project 3, PRC No. 2012003014; and

DETERMINE that Prime underpaid its workers \$11,584.40 on Project 4, PRC No. 2010004664; and

DETERMINE that Prime is responsible for interest on the total underpayment at the statutorily mandated rate of 16% per annum from the date of underpayment to the date of payment; and

DETERMINE that on each of the four Projects the failure of Prime to pay the prevailing wage or supplement rate was a separate and distinct "willful" violation of Labor Law article 8; and

DETERMINE that on each of the four Projects the willful violation of Prime involved the falsification of payroll records under Labor Law article 8; and

DETERMINE that Robert Bruno is an officer of Prime who knowingly participated in the violations of Labor Law article 8; and

DETERMINE that Prime be assessed a civil penalty in the Department's requested amount of 25% of the underpayment and interest due; and

ORDER that the Bureau compute the total amount due (underpayment of \$184,081.74, interest at 16% from date of underpayment and 25% civil penalty); and

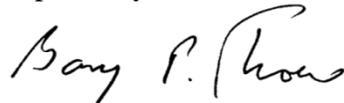
ORDER that Department Of Jurisdiction remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau at: 207 Genesee Street, Room 603B, Utica, NY 13501; and

ORDER that if the withheld amount is insufficient to satisfy the total amount due, Prime, upon the Bureau's notification of the deficit amount, shall immediately remit the outstanding balance, made payable to the Commissioner of Labor, to the Bureau at the aforesaid address; and

ORDER that the Bureau compute and pay the appropriate amount due for each employee on the Project, and that any balance of the total amount due shall be forwarded for deposit to the New York State Treasury.

Dated: October 28, 2016
Albany, New York

Respectfully submitted,



Gary P. Troue, Hearing Officer