

STATE OF NEW YORK      DEPARTMENT OF LABOR

IN THE MATTER OF

LARSEN CONSTRUCTION CORP.

ROY E. LARSEN

as one of the five largest shareholders and/or owner of in  
excess of 10% of the shares of the corporation  
and

STEPHEN KNIGHT

as one of the five largest shareholders and/or owner of in  
excess of 10% of the shares of the corporation  
Prime Contractor

and

INFINITE ELECTRIC OF NEW YORK, INC.

and

JOHN LAKIS

Individually and as President and Chief Executive Officer of  
the corporation, and as one of the five largest shareholders  
and/or owner of in excess of 10% of the shares of the  
corporation  
Subcontractor

A proceeding pursuant to Article 8 of the Labor Law to  
determine whether a contractor paid the rates of wages or  
provided the supplements prevailing in the locality to  
workers employed on a public work project.

**DEFAULT  
REPORT  
&  
RECOMMENDATION**

Prevailing Rate Case  
02-003086  
99-06778 Kings County

To:    Honorable Colleen C. Gardner  
         Commissioner of Labor  
         State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on March 10 and 11, 2010. 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 Infinite Electric of New York, Inc. ("Subcontractor") a subcontractor of Larsen Construction Corp.

(“Prime Contractor”) complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of a public work contract involving the construction of an addition to the Neonatal Intensive Care Unit, referred to in the Notice of Hearing as “Project 1”, and the rehabilitation of the Labor and Delivery Site, referred to in the Notice of Hearing as “Project 2”, at the SUNY Health Services Center-Brooklyn (referred to herein as “Project 1”, “Project 2” or cumulatively as “Project”) for State University Construction Fund (“SUCF” or “Department of Jurisdiction”).

### **APPEARANCES**

The Bureau was represented by Department Counsel, Maria Colavito (Louise G. Roback, Senior Attorney, of Counsel)

There were no appearances made by, or on behalf of the Subcontractor or the Prime Contractor.

### **HEARING OFFICER**

John W. Scott was designated as Hearing Officer and conducted the hearing in this matter.

### **FINDINGS AND CONCLUSIONS**

On February 5, 2010, the Department duly served a copy of the Notice of Hearing (Hearing Officer Ex. 1) on the Subcontractor and the Prime Contractor, via regular and certified mail, return receipt requested. (Hearing Officer Ex. 2) Although there was no evidence offered indicating that either the Subcontractor or the Prime Contractor received the Notice of Hearing by certified mail, the regular mail was not returned to the Department (T. 81-82). The Notice of Hearing scheduled a hearing for March 10 and 11, 2010 and required that the Respondents serve an Answer at least 14 days in advance of the scheduled hearing.

The Notice of Hearing alleges that the Subcontractor underpaid wages and supplements to its workers, and that the Prime Contractor is responsible for its Subcontractor’s underpayment pursuant to Labor Law § 223.

The Subcontractor and the Prime Contractor failed to file an Answer 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.

At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigator and documents supporting the Bureau's charges that the Subcontractor willfully underpaid \$125,518.34 in wages and supplemental benefits to its workers on Project 1 for the audit period weeks ending 4/3/2003 to 3/23/2005 (Dept. Exs. 11, 12), and \$30,567.96 in wages and supplements to its workers on Project 2 for the audit period weeks ending 6/5/2003 to 11/6/2003 (Dept. Exs. 27, 28). Furthermore, the Department produced substantial and credible evidence supporting the Bureau's finding that the Subcontractor falsified its payroll records in connection with that willful underpayment; that John Lakis is an officer of the Subcontractor (Dept. Exs. 9, 16, 34); and that John Lakis knowingly participated in the violation of Article 8 of the Labor Law.

The Bureau received complaints from three of the Subcontractor's employees on April 26, 27 and 28, 2005 (Project 1) (Dept. Ex. 1), and from two of the Subcontractor's employees on April 22 and 26, 2005 (Project 2) (Dept. Ex. 18). The nature of the complaints from all of these employees on both Projects included claims for the underpayment of wages, non-payment of wages, failure to contribute to the employees' retirement fund, and failure to provide supplemental benefits, specifically including medical coverage, during the term of the Project. (T. 41, 87-95) In response to these complaints, the Bureau served Payroll Records Request Notices dated 4/25/05 (Dept. Ex. 2) and 4/28/05 (Dept. Ex.19) on the Subcontractor, Prime Contractor, and SUCF, requesting, among other documents, the contracts, certified payroll records, daily time records, cancelled checks for supplemental benefits, and cancelled payroll checks. (T. 42-43, 95-96) The Department did not receive any records from the Subcontractor other than cancelled checks and subpoenaed information regarding supplemental benefits. (T.44, 96, 107, 108; See, Dept. Ex. 36) The following records were received from the Prime Contractor: on Project 1: project specifications (Dept. Ex. 3; T. 96-97), the prime contract (Dept. Ex. 4; T. 98), certified payroll records signed by John Lakis as President (Dept. Ex. 9; T. 103), and sign-in sheets (Dept. Ex. 10; T. 106-107); and on Project 2: project specifications (Dept. Ex. 20; T. 44), the prime contract (Dept. Ex. 21; T. 45), certified payroll records signed by John Lakis as President (Dept. Ex. 25; T. 48-49), and sign-in sheets (Dept. Ex. 26; T. 51).

In conducting the audit, the Bureau determined that the Subcontractor's certified payroll records were not accurate with respect to the hourly rates and supplemental benefits paid to the employees. The Bureau compared the hourly rates and supplemental benefits listed in the certified payroll records with the information provided by the employees, including cancelled payroll checks, and found that these rates did not match. The Bureau determined that the certified payroll records were falsified in both Project 1 and Project 2 in that the wages and supplemental benefits as set forth in the certified payroll records were overstated. (T. 49, 122-126, 129-130) The Bureau determined that the Subcontractor underpaid its employees on both Project 1 and 2 and that these underpayments were willful. The Subcontractor knew the amounts that were required to be paid to the employees on the Project as evidenced by the entries in the certified payroll records, but paid the employees less as reflected in the payroll checks and pay stubs. Furthermore, John Lakis knowingly participated on the violation of Article 8 of the Labor Law as evidenced by his certifying the payroll records as the President of the Subcontractor. The Bureau further determined that the days listed in the certified payroll records were not accurate when compared to the complaints and the sign-in sheets. (T. 111) The certified payroll records indicated that the employees worked seven hour days and the foreman, Carmine Soldiviero, worked eight hour days, and the Bureau accepted these hours. (T. 110) However, the Bureau relied on the sign-in sheets to determine what days the employees worked. (T. 50-52, 112) The Bureau classified the employees as electricians pursuant to the information contained in the complaints. (T. 58, 113)

The Subcontractor was credited for the wages actually paid to the employees as indicated on the cancelled checks and for supplemental benefits that were calculated based upon an annualization formula contained in 12 NYCRR §220.2 using the benefit information received from the Subcontractor in response to a subpoena. (T. 114-115; See, Dept. Ex. 36) Finally, the Bureau relied on the applicable Prevailing Wage Rate Schedules (Dept. Exs. 5, 5a, 6, 7, 8, 22, 23, and 24) to determine the wages and supplemental benefits the employees should have been paid. Relying on the information received in the investigation and the methodology outlined at the hearing and herein, the Bureau calculated a total underpayment of wages and supplements on Project 1 of \$125,518.34 (Dept. Ex. 12), and on Project 2 of \$30,562.96. (Dept. Ex. 28)

On 5/9/2005, the Department issued a Notice to Withhold Payment on Project 1 to the Department of Jurisdiction in the amount of \$100,000.00 and the Department of Jurisdiction

acknowledged a withholding on this Project 1 in the amount of \$100,000.00 (Dept. Exs. 13, 14, 33).

On 12/7/2005, the Department issued a Notice to Withhold Payment on Project 2 to the Department of Jurisdiction in the amount of \$33,359.35 and the Department of Jurisdiction acknowledged a withholding on this Project 2 in the amount of \$6,664.50 (Dept. Exs. 29, 33).

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 the Subcontractor underpaid its workers \$125,518.34 on Project 1, PRC No. 0203086; and

DETERMINE that the Subcontractor underpaid its workers \$30,562.96 on Project 2, PRC No. 9906778; and

DETERMINE that Subcontractor 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 the failure of Subcontractor to pay the prevailing wage or supplement rate was a willful violation of Article 8 of the Labor Law; and

DETERMINE that the willful violation of Subcontractor involved the falsification of payroll records under Article 8 of the Labor Law; and

DETERMINE that John Lakis is an officer of the Subcontractor; and

DETERMINE that John Lakis knowingly participated in the violation of Article 8 of the Labor Law; and

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

DETERMINE that Prime Contractor is responsible for the underpayment, interest and civil penalty due pursuant to its liability under Article 8 of the Labor Law; and

ORDER that the Bureau compute the total amount due (underpayment of wages and supplemental benefits, interest at 16% from date of underpayment and 25% civil penalty); and

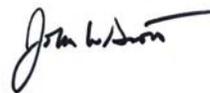
ORDER that the Department of Jurisdiction remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau 75 Varick Street, 7<sup>th</sup> Floor, New York, NY 10013; and

ORDER that if the withheld amount is insufficient to satisfy the total amount due, Subcontractor, 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: June 16, 2010  
Albany, New York

Respectfully submitted,



John W. Scott, Hearing Officer