

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

V.M.K. Corp.; and RICHARD MACONE as officer
and/or shareholder of V.M.K. Corp.;

Prime Contractor,

and

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
New York State Office of General Services.

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In the Matter of

V.M.K. Corp.; and RICHARD MACONE as officer
and/or shareholder of V.M.K. Corp.;

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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
Dormitory Authority – State of New York.

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DEFAULT
REPORT
&
RECOMMENDATION

Prevailing Rate Case
No. 2007008786
Case ID: PW02 2009003056
Chemung County

Prevailing Rate Case
No. 2009002122
Case ID: PW02 2009010909
Ulster County

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In the Matter of

V.M.K. Corp.; and RICHARD MACONE as officer
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to or provided for the laborers, workers and mechanics
employed on a public work project for the
New York State Office of General Services.

Prevailing Rate Case
No. 2007007635
Case ID: PW02 2009007134
Orange County

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In the Matter of

V.M.K. Corp.; and RICHARD MACONE as officer
and/or shareholder of V.M.K. Corp.;

Prime Contractor,

and

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
New York State Office of General Services.

Prevailing Rate Case
No. 0407615
Case ID: PW02 2009006631
Sullivan County

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

Pursuant to a Notice of Hearing issued on June 12, 2017, a hearing was held on August 14, 2017 in Albany, New York and by videoconference with Glendale, 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 V.M.K. Corp. ("V.M.K. Corp.", "Respondent") complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of public work contracts involving four projects, to wit: furnishing labor, tools, and equipment necessary for roofing construction work at the Elmira Correctional Facility located in Chemung County, New York (PRC No. 2007008786) ("Project No. 1") for New York State Office of General Services ("Department of Jurisdiction 1"); furnishing labor, tools, and equipment necessary for the College/Shango Hall roof removal and installation of a new single ply membrane roof system located in Ulster County, New York (PRC No. 2009002122) ("Project No. 2") for Dormitory Authority – State of New York ("DASNY", "Department of Jurisdiction 2"); furnishing labor, tools, and equipment necessary for the roof replacement at Mid-Orange Correctional Facility located in Orange County, New York (PRC No. 2007007635) ("Project No. 3") for New York State Office of General Services ("Department of Jurisdiction 3"); and furnishing labor, tools, and equipment necessary for the EPDM Roof System at the Sullivan Correctional Facility located in Sullivan County, New York (PRC No. 0407615) ("Project No. 4") for New York State Office of General Services ("Department of Jurisdiction 4").

HEARING OFFICER

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

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz, (Larissa Bates, Senior Attorney, of Counsel)

There was no appearance made by, or on behalf of V.M.K. Corp.

FINDINGS AND CONCLUSIONS

On June 19, 2017, the Department duly served a copy of the Notice of Hearing on V.M.K. Corp., via regular and certified mail, return receipt requested (Hearing Officer Ex. 2).

The regular mail envelope was not returned to the Department. In addition, on July 13, 2017, the Department personally served a copy of the Notice of Hearing on V.M.K. Corp. by service on the New York State Department of State (Hearing Officer Ex. 4). The Notice of Hearing scheduled a hearing on August 14, 2017 and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

V.M.K. Corp. failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, V.M.K. Corp. is in default in this proceeding.

The Notice of Hearing alleges that V.M.K. Corp. underpaid wages and supplements to its workers in all four projects.

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:

Project No. 1

Project 1 was subject to Labor Law article 8; and

V.M.K. Corp. entered into a contract for Project 1 with Department of Jurisdiction 1; and

V.M.K. Corp. willfully underpaid \$114,229.66 to its workers for the audit period weeks ending 06/04/2008 to 10/28/2009; and

V.M.K. Corp. falsified its payroll records in connection with that willful underpayment; and

Richard Macone is an officer of V.M.K. Corp.; and

Richard Macone knowingly participated in the violation of Labor Law article 8.

Project No. 2

Project 2 was subject to Labor Law article 8; and

V.M.K. Corp. entered into a contract for the Project 2 with Department of Jurisdiction 2; and

V.M.K. Corp. willfully underpaid \$147,797.49 to its workers for the audit period weeks ending 06/24/2009 to 10/28/2009; and

V.M.K. Corp. falsified its payroll records in connection with that willful underpayment;
and

Richard Macone is an officer of V.M.K. Corp.; and

Richard Macone knowingly participated in the violation of Labor Law article 8.

Project No. 3

Project 3 was subject to Labor Law article 8; and

V.M.K. Corp. entered into a contract for the Project 3 with Department of Jurisdiction 3;
and

V.M.K. Corp. willfully underpaid \$66,918.21 to its workers for the audit period weeks
ending 04/30/2008 to 09/17/2008; and

V.M.K. Corp. falsified its payroll records in connection with that willful underpayment;
and

Richard Macone is an officer of V.M.K. Corp.; and

Richard Macone knowingly participated in the violation of Labor Law article 8.

Project No. 4

Project 4 was subject to Labor Law article 8; and

V.M.K. Corp. entered into a contract for the Project 4 with Department of Jurisdiction 4;
and

V.M.K. Corp. willfully underpaid \$809,332.85 to its workers for the audit period weeks
ending 05/03/2006 to 10/31/2007; and

V.M.K. Corp. falsified its payroll records in connection with that willful underpayment;
and

Richard Macone is an officer of V.M.K. Corp.; and

Richard Macone knowingly participated in the violation of Labor Law article 8.

General

The Department did not offer evidence establishing that Respondent was an experienced public work contractor with a history of failures to pay prevailing wages. However, I will take judicial notice that this case is just one of several cases decided by the Commissioner of Labor that involved Respondent's willful failure to pay prevailing wages to its many employees on public work projects. Furthermore, I find that Respondent's failure to pay prevailing wages to the multitude of employees in these four cases, when it knew all four projects were public work projects, constituted serious violations of Labor Law article 8. Additionally, Respondent's falsification of the payroll documents is clearly a failure to comply with recordkeeping requirements. Finally, Respondent's failure to cooperate and participate in this hearing are indicia of bad faith. I find the totality of the evidence sufficient to support the Department's request that the Commissioner assess a 25% civil penalty.

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

RECOMMENDATIONS

Based upon the default of the Respondent 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 V.M.K. Corp. underpaid its workers \$114,229.66 on Project 1, PRC No. 2007008786; and

DETERMINE that V.M.K. Corp. underpaid its workers \$147,797.49 on Project 2, PRC No. 2009002122; and

DETERMINE that V.M.K. Corp. underpaid its workers \$66,918.21 on Project 3, PRC No. 2007007635; and

DETERMINE that V.M.K. Corp. underpaid its workers \$809,332.85 on Project 4, PRC No. 0407615; and

DETERMINE that V.M.K. Corp. is responsible for interest on the total underpayments in these four projects 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 V.M.K. Corp. to pay the prevailing wage or supplement rates in these four projects was a “willful” violation of Labor Law article 8; and

DETERMINE that the willful violation of V.M.K. Corp. in all four projects involved the falsification of payroll records under Labor Law article 8; and

DETERMINE that Richard Macone is an officer of V.M.K. Corp.; and

DETERMINE that Richard Macone knowingly participated in the violation of Labor Law article 8 in all four projects; and

DETERMINE that V.M.K. Corp. be assessed a civil penalty in the Department’s requested amount of 25% of the underpayment and interest due in each of the four projects; and

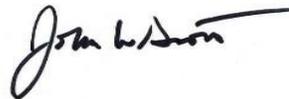
ORDER that the Bureau compute the total amount due (underpayments of \$114,229.66 in Project 1, \$147,797.49 in Project 2, \$66,918.21 in Project 3, and \$809,332.85 in Project 4, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that upon the Bureau’s notification, V.M.K. Corp. shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at: State Office Building, 44 Hawley Street, Room 908, Binghamton, NY 13901; and

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

Dated: September 12, 2018
Albany, New York

Respectfully submitted,



John Scott, Hearing Officer