

IN THE MATTER OF
CONKLIN'S TECH-MECHANICAL, INC.;;
and
WILLIAM CONKLIN,
as officer and/or shareholder of
CONKLIN'S TECH-MECHANICAL, INC.;;
and its successor or substantially owned- affiliated entity
TECH-MECHANICAL FAB D.C. 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 Northeast
Webutuck Central School District, in Amenia, New York.

IN THE MATTER OF
CONKLIN'S TECH-MECHANICAL, INC.;;
and WILLIAM CONKLIN,
as an as officer and/or shareholder of
CONKLIN'S TECH MECHANICAL , INC.;;
and its successor or substantially owned- affiliated entity
TECH-MECHANICAL FAB D.C. 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 Spackenkill
UFSD in Poughkeepsie, New York.

**REPORT
&
RECOMMENDATION**

Prevailing Rate Case
PRC No. 2008007131
Case ID: PW01 2008011155
Dutchess County

Prevailing Rate Case
PRC No. 2007004799
Case ID: PW012008011153
Dutchess County

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

AMERESCO INC.; and GEORGE P SAKELLARIS,
as a shareholder of
AMERESCO INC.

Prime Contractor

and

TECH-MECHANICAL FAB D.C., INC ;
and
WILLIAM CONKLIN,
as an officer and shareholder of
TECH-MECHANICAL FAB D.C., INC ;
and its successor or substantially owned-affiliated entity
CONKLIN'S TECH-MECHANICAL, INC.

Subcontractor

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 Schoharie Central
School District, in Schoharie, New York.

Prevailing Rate Case
PRC No. 2010002963
Case ID: PW01 2012005932
Schoharie County

To: Honorable Peter M. Rivera
 Commissioner of Labor
 State of New York

Pursuant to a Notice of Hearing issued August 8, 2013, a hearing was held on January 23, 2014 in Albany, 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 Conklin's Tech-Mechanical, Inc.; and William Conklin, as an as officer and/or shareholder of Conklin's Tech Mechanical , Inc.; and its successor or substantially

owned- affiliated entity Tech-Mechanical Fab D.C. Inc., and William Conklin, as an officer and/or shareholder of Tech-Mechanical Fab D.C. Inc., (“Conklin”) a prime contractor on two public work projects and as a subcontractor of Ameresco Inc.; and George P. Sakellaris, as a shareholder of Ameresco Inc., (“Prime”) on a third public work project, complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*).

APPEARANCES

The Bureau was represented by Acting Department Counsel, Pico Ben-Amotz, (Elina Matot, Senior Attorney, of counsel).

There was no appearance made by, or on behalf of Conklin.

Prime was represented by Paul M. Dello Iacono, Esq., Vice President and Assistant General Counsel of Prime.¹

FINDINGS AND CONCLUSIONS

On August 8, 2013, the Department duly served a copy of the Notice of Hearing on Prime and Conklin, via regular and certified mail, return receipt requested. Signed Domestic Return Receipts evidencing receipt of the document by Ameresco, Inc. and William Conklin were entered into evidence as Hearing Officer Exhibits 4 and 9. The Notice of Hearing scheduled an October 2, 2013 hearing, later adjourned to January 23, 2014, and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

Prime and Conklin failed to file an Answer to the charges contained in the Notice of Hearing. Prime submitted a letter and supporting affidavit in support of its request that it not be found subject to any penalty applied to Conklin (HO 10, 11). Counsel for Prime appeared at the hearing, but Conklin failed to appear at the hearing. As a consequence, Conklin is in default in this proceeding.

¹ Mr. Dello Iacono appeared at the hearing for only that portion which dealt with the project on which his client was the prime contractor.

The Notice of Hearing alleges that Conklin underpaid wages and supplements to its workers on three separate projects and that Prime is responsible for Sub's underpayment on one of the projects pursuant to Labor Law § 223.

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 three projects involved public work performed by Conklin at

1. The Spackenkill Union Free School District ("Project 1");
2. The Webetuck School District ("Project 2"); and
3. The Schoharie Central School District, on which Conklin was a subcontractor to Prime ("Project 3").

All three Projects were subject to Labor Law article 8; and

On Project 1 and Project 2 Conklin entered into contracts for the Projects with the Departments of Jurisdiction; on Project 3 Prime entered into a contract for the project with the Department of Jurisdiction and Conklin entered into a contract with Prime for work on Project 3; and

Conklin willfully underpaid wages and supplements to its workers on each of the Projects as follows:

For Project 1, for the audit period weeks ending January 9, 2005 through September 14, 2008 underpaid wages and supplements in the amount of \$51,932.96; and

For Project 2, for the audit period weeks ending January 9 2005 through February 11, 2007, underpaid wages and supplements in the amount of \$3,048.27; and

For Project 3, for the audit period weeks ending December 22, 2011 through January 26, 2012, underpaid wages and supplements in the amount of \$26,605.08; and

Conklin falsified its payroll records on each of the Projects in connection with the willful underpayments found thereon; and

William Conklin is an officer of Conklin; and

William Conklin is a shareholder of Conklin who owned or controlled at least ten per centum of its outstanding stock;

William Conklin knowingly participated in the violation of Labor Law article 8.

Tech Mechanical Fab D.C., Inc., is a substantially owned-affiliated entity of Conklin;

On July 6, 2012, the Department issued a Notice to Withhold Payment to the Department of Jurisdiction in Project 3 in the amount of \$41,058.56.

Prime submitted an affidavit which met the standard set forth in 12 NYCRR §221.

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

RECOMMENDATIONS

Based upon the default of Respondent Conklin 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 Conklin underpaid its workers \$51,932.96 on Project1, PRC No. 2007004799; and

DETERMINE that Conklin underpaid its workers \$3,048.27 on Project 2, PRC No. 2008007131; and

DETERMINE that Conklin underpaid its workers \$26,605.08 on Project 3, PRC No. 2012005932; and

DETERMINE that Conklin 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 Conklin to pay the prevailing wage or supplement rate on each Project was a "willful" violation of Labor Law article 8; and

DETERMINE that each willful violation of Conklin involved the falsification of payroll records under Labor Law article 8; and

DETERMINE that Tech Mechanical Fab D.C., Inc., is a substantially owned-affiliated entity of Conklin;

DETERMINE that William Conklin is an officer of Conklin; and

DETERMINE that William Conklin is a shareholder of Conklin who owned or controlled at least ten per centum of its outstanding stock; and

DETERMINE that William Conklin knowingly participated in the violation of Labor Law article 8; and

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

DETERMINE that, in Project 3, Prime is responsible for the underpayment and interest due pursuant to its liability under Labor Law article 8; and

DETERMINE that, pursuant to the showing by Prime that it has met the standard set forth in 12 NYCRR §221, Prime shall not be responsible for the payment of any civil penalty; and

ORDER that the Bureau compute the total amount due on each Project, plus interest at 16% from date of underpayment and 25% civil penalty; and


ORDER that Schoharie Central School District 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: State Office Building Campus, Bldg. 12, Room 130, Albany, NY 12240; and 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, for Projects 1 and 2, upon the Bureau's notification, Conklin shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at : State Office Building Campus, Bldg. 12, Room 130, Albany, NY 12240; 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: March 24, 2014
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerome Tracy", with a long horizontal flourish extending to the right.

Jerome Tracy, Hearing Officer