

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

TILCON NEW YORK, INC. and CHARLES C. MORRIS and
JOHN T. COONEY, JR. as officers and/or shareholders of
TILCON NEW YORK, INC.,

Prime Contractor,

and

CORRAO TRUCKING, INC., and VINCENT CORRAO as an
officer and/or shareholder of CORRAO TRUCKING, 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 Orange County, in the State of New York.

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

Pursuant to a Notice of Adjournment and Rescheduled Hearing issued by the
Administrative Adjudication Unit on March 28, 2024, a videoconference hearing was held on
July 17, 2024, in Albany, New York with participating parties and/or witnesses appearing
remotely at various other locations. 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.

DEFAULT REPORT &

RECOMMENDATION

Prevailing Wage Rate
PRC No. 2012003979
Case ID: PW11 2013001396
Orange County

The hearing concerned an investigation conducted by the Bureau of Public Work ("Bureau") of the New York State Department of Labor ("Department") into whether Corrao Trucking, Inc., and Vincent Corrao, as an officer and shareholder of Corrao Trucking, Inc., ("Corrao"), a subcontractor to Tilcon New York, Inc., ("Tilcon"), (all "Respondents") complied with the requirements of Article 8 of the Labor Law (§§ 220 et seq.) to pay or provide the prevailing rates of wages and supplements to laborers, workers or mechanics employed in the performance of a public work contract it was involved in. The matter involved a contract between Tilcon and the New York State Department of Transportation ("Department of Jurisdiction") to furnish materials, labor, tools and equipment necessary for the asphalt concrete resurfacing on Routes 52, 202, and 300 in Dutchess, Westchester and Orange Counties, in the State of New York, in which Tilcon subcontracted with Corrao to perform all hauling, milling and trucking operations for the work performed on Route 300 in Orange County, State of New York under PRC #: 2012003979 ("Project").

HEARING OFFICER

Marshall H. Day was designated as Hearing Officer and conducted the hearing in this matter.

APPEARANCES

The Bureau was represented by Department General Counsel, Jill Archambault (Rian Vernon, Senior Attorney, of Counsel).

Respondent, Tilcon, appeared through its attorneys, Knuckles and Manfro, LLP (Gregg Verrilli, Esq., of counsel).

There was no appearance made by, and on behalf of the Respondent, Corrao.

FINDINGS AND CONCLUSIONS

On November 30, 2023, the Department duly served a copy of the Notice of Hearing on all Respondents, via regular and certified mail, return receipt requested (Hearing Officer Exs. 1, 2). The Notice of Hearing scheduled a hearing on March 13, 2024, and required the Respondents to serve an Answer at least fourteen days in advance of the scheduled hearing. At the request of the participating parties that hearing was later adjourned until July 17, 2024.

Respondent, Corrao, failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. Consequently, Respondent, Corrao, is in default in this proceeding.

The Notice of Hearing alleges that Respondent, Corrao, willfully failed to pay prevailing wages and supplemental benefits to its laborers, workers and mechanics employed in the performance of the public work contract with the Department of Jurisdiction during the said claim period, and that Respondent Prime, Tilcon, is responsible for Corrao's, underpayment pursuant to Labor Law § 223.

Prior to the hearing, Tilcon entered into a stipulation with the Department wherein it agreed to make restitution on behalf of Corrao for all underpaid wages and supplements owed to Corrao's workers together with interest at a rate of 10% per annum and a 20% civil penalty. The fully executed stipulation was forward the Administrative Adjudication Unit on July 17, 2024, and has been made part of the record (Hearing Officer Ex. 6).

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

The Project was subject to Labor Law Article 8; and

Tilcon entered into a public work contract with the Department of Jurisdiction to provide the labor, material and/or services necessary to complete the Project under the terms of that agreement; and

Corrao entered into a subcontract agreement with Tilcon to perform work and/or services as requested by Tilcon on the Project; and

Corrao failed to pay or provide the proper prevailing wages and supplemental benefits to its laborers, workers and mechanics on the Project; and

Corrao willfully underpaid \$1,195.99 in wages and supplemental benefits to its workers for the audit period from week ending October 25, 2012 through week ending November 15, 2012; and

Corrao falsified its payroll records in connection with that willful underpayment; and

Corrao is an incorporated business owned by Vincent Corrao, who is an officer (President) and shareholder of Corrao; and

Vincent Corrao is a shareholder of Corrao who owned or controlled at least ten per centum of its outstanding stock; and

Vincent Corrao knowingly participated in the violation of Labor Law article 8, and this violation included the falsification of payroll records on the Project.

The Bureau used trucking tickets, payroll records and certified payrolls to determine the days and hours worked, and wage and supplement rates paid for each employee, and compared these rates with the prevailing wage schedule applicable in the county at issue for the rates that should have been paid, to ultimately determine the amount of unpaid prevailing wages and supplements due to the workers.

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

RECOMMENDATIONS

Based upon the default of Corrao 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, and based upon the weight of the evidence set forth in the record as a whole, I recommend that the Commissioner of Labor adopt

the within findings of fact and conclusions of law, and make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Corrao, underpaid prevailing wages and supplemental benefits to its laborers, workers and mechanics in the amount of \$1,195.99 on the Project for the audit period weeks ending October 25, 2012, through week ending November 15, 2012; and

DETERMINE that Vincent Corrao is an officer and shareholder of Corrao who owned or controlled at least ten per centum of the outstanding stock of Corrao; and

DETERMINE that Vincent Corrao is an owner and officer of Corrao who knowingly participated in the violation of Labor Law Article 8 on the Project at issue; and

DETERMINE that the failure of Corrao to pay the prevailing wages and supplement rates on the Project was a “willful” violation of Labor Law Article 8; and

DETERMINE, that as a result of the Corrao’s knowing willful participation in the falsification of payroll records within the meaning of Section 220-b(3)(b) of the Labor Law on the Project, that both the entity (Corrao Trucking, Inc.) and the individual (Vincent Corrao) are ineligible to submit a bid on or be awarded any public work contract with the state, any municipal corporation or public body for a period of five years from the issuance of the Order & Determination associated with this report; and

DETERMINE that Corrao is responsible for any underpayment of wages or supplemental benefits determined to be owed on the Project; and

DETERMINE that based on the statutory factors set forth in Labor Law Article 8, Corrao is responsible for interest on the total underpayments on the Project at the statutorily mandated rate of 16% per annum from the date of underpayment to the date of payment; and

DETERMINE that based on the statutory factors set forth in Labor Law Article 8, Corrao is assessed a civil penalty in the amount of 25% of the underpayment and interest due on this Project; and

DETERMINE that Tilcon, as prime contractor on the Project, is vicariously liable for non-compliance or evasion by Corrao of its obligation to properly pay wages and supplemental benefits pursuant to Labor Law Section 223; and

DETERMINE that Tilcon stipulated to, and has fully paid, the total sum of \$3,114.92, which sum represents total prevailing wages, supplements, interest at the rate of ten percent (10%) per annum and a twenty percent (20%) civil penalty calculated by the Bureau, to be due by Tilcon, in complete satisfaction of their liability under Labor Law Section 223; and

ORDER that the Bureau compute the total amount due (underpayment of \$1,195.99) with interest at 16% from date of underpayment to the date of payment and 25% civil penalty; and

ORDER that Carrao shall receive a credit for the \$3,114.92 paid by Tilcon, however is responsible for the balance due as recalculated by the Bureau in the prior Ordered paragraph; and

ORDER that the Carrao shall immediately remit payment of the total amount calculated by the Bureau to be due. The remittance should be made payable to the Commissioner of Labor, and sent to the Bureau at: Bureau of Public Work, New York State Department of Labor, Harriman State Office Campus, Building 12, 1st Floor, Room 130, Albany, New York 12226; and

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

Dated: September 5, 2024
Albany, New York

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marshall H. Day".

Marshall H. Day, Hearing Officer