

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

CORTLAND GLASS COMPANY, INC.,
and
GERALD A. POLLOCK,
individually, and as Owner, Officer and Shareholder of
CORTLAND GLASS COMPANY, 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 Bath Central
School District in Bath, New York.

DEFAULT
REPORT
&
RECOMMENDATION

Prevailing Rate Case
99-07393A
Case ID: PW02-030017
Steuben County

IN THE MATTER OF

CORTLAND GLASS COMPANY, INC.,
and
GERALD A. POLLOCK,
individually, and as Owner, Officer and Shareholder of
CORTLAND GLASS COMPANY, 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 public work project for the Fallsburg Central
School District in Fallsburg, New York.

Prevailing Rate Case
93-08452A
Case ID: PW02-960002
Sullivan County

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

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on May 20,
2011. 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 Cortland Glass Company, Inc. ("Cortland") and Gerald A. Pollock complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of two public work contracts primarily involving, *inter alia*, preglazed metal window replacement/installation in school buildings for the Bath Central School District (PRC 99-07393A) ("Project 1") and *inter alia*, preglazed metal window replacement/installation and door replacement in school buildings for the Fallsburg Central School District (PRC 93-08452A) ("Project 2").

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito, Marshall H. Day, Senior Attorney, of Counsel. There was no appearance made by, or on behalf of, Cortland or Gerald A. Pollock, although they did file a verified Answer through their attorney, David B. Cotter, Esq. (Hearing Officer Ex. 5)

FINDINGS AND CONCLUSIONS

On April 20, 2011, the Department duly served a copy of the Notice of Hearing on Cortland and Gerald A. Pollock, via regular and certified mail, return receipt requested. A second copy was served on Cortland by service upon the Department of State on May 6, 2011. The Notice of Hearing scheduled a May 20, 2011 hearing and required that the Respondents serve an Answer at least 14 days in advance of the scheduled hearing. Cortland and Gerald A. Pollock filed a verified Answer but failed to appear at the hearing. As a consequence, they are in default in this proceeding.

The Notice of Hearing alleges that Cortland underpaid wages and supplemental benefits to its workers. At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigators and documents describing the underpayments, supporting the Bureau's charges that Cortland willfully underpaid its workers \$72,992.50 in wages and supplemental benefits on Project 1 for the audit period weeks ending June 23, 2001 to September 6, 2003, and \$50,080.43 in wages and supplemental benefits on

Project 2 for the audit period weeks ending December 30, 1994 to November 3, 1995; that, at all relevant times, Gerald A. Pollock was the president of Cortland; that as an officer of the corporation Gerald A. Pollock knowingly participated in the violation of Article 8 of the Labor Law by certifying on its payrolls that all wages and supplemental benefits required to be paid were paid when in fact they were not; and that at all relevant times Gerald A. Pollock was one of the five largest shareholders of Cortland. The Department withdrew its allegation that Cortland falsified its payroll records in connection with the willful underpayments.

The Department issued Notices to Withhold Payment on Project 1 and Project 2 seeking to withhold money on these contracts. The Bureau was advised that no money was withheld on either Project as a result of the notice.

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

RECOMMENDATIONS

Based upon the default of the Respondents in 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 Cortland underpaid its workers \$72,992.50 on Project 1; and

DETERMINE that Cortland underpaid its workers \$50,080.43 on Project 2; and

DETERMINE that Cortland is responsible for interest on the total underpayment at the statutorily mandated rate of 16% per annum from the date of underpayment to the May 20, 2008, which time period abates interest for three years on account of Departmental delay in bringing this matter to hearing; and

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

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

DETERMINE that Gerald A. Pollock is an officer of Cortland, to wit: its president; and

DETERMINE that as an officer of Cortland Gerald A. Pollock knowingly participated in the violation of Article 8 of the Labor Law; and

DETERMINE that Gerald A. Pollock is one of the five largest shareholders of Cortland; and

ORDER that the Bureau compute the total amount due (underpayment determined due, interest at 16% from date of underpayment through May 20, 2008, and 25% civil penalty on Projects 1 and 2); and

ORDER that upon the Bureau's notification, Cortland 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 on the Project, and that any balance of the total amount due shall be forwarded for deposit to the New York State Treasury.

Dated: July 15, 2011
Albany, New York

Respectfully submitted,

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

John W. Scott, Hearing Officer