

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

CORTLAND GLASS COMPANY, INC.,  
and  
GERALD A. POLLOCK, individually,  
and as 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 Dover Union  
Free School District, Dover, New York.

**DEFAULT  
REPORT  
&  
RECOMMENDATION**

Prevailing Rate Case  
PRC No. 96-000239 A  
Case ID: PW04-970039  
Dutchess 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 June 23, 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 a public work contract involving the installation of preglazed metal windows in school buildings ("Project") for Dover Plains Union Free School District in Dutchess County, New York.

## **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 submitted a verified Answer through their attorney, David B. Cotter, Esq.

## **FINDINGS AND CONCLUSIONS**

On April 22, 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 June 23, 2011 hearing. Cortland and Gerald A. Pollock 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 supplements to its workers. At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigator and documents describing the underpayments, supporting the Bureau's charges that Cortland willfully underpaid \$27,748.16 to its workers for the audit period weeks ending March 7, 1997 to January 16, 1998; that Cortland falsified its payroll records in connection with that willful underpayment; that, at all relevant times, Gerald A. Pollock was the president of Cortland; and that as an officer of the corporation Gerald A. Pollock knowingly participated in the violation of Article 8 of the Labor Law by certifying that all supplemental payments required to be made were paid when in fact they were not.

On or about October 5, 2004, the Department issued a Notice to Withhold Payment to the State University Construction Fund for a cross-withholding against Cortland on another project in the amount of \$65,222.46. The sum of \$20,628.00 is being withheld as a result of that 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 \$27,748.16 on the Project;

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 June 30, 2008, which time period abates interest for three years on account of departmental delay in bringing this matter to hearing;

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;

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

DETERMINE that at all relevant times Gerald A. Pollock was an officer of Cortland, to wit: its president;

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

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

ORDER that the Bureau compute the total amount due (underpayment of \$27,748.16, interest at 16% from date of underpayment through June 30, 2008, and 25% civil penalty);

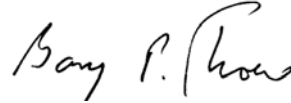
ORDER that State University Construction Fund remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau 400 Oak Street, Suite 101, Garden City, NY 11530-6551;

ORDER that if the withheld amount is insufficient to satisfy the total amount due, Cortland, 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 400 Oak Street, Suite 101, Garden City, NY 11530-6551

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 27, 2011  
Albany, New York

Respectfully submitted,

A handwritten signature in cursive script that reads "Gary P. Troue". The signature is written in black ink and is positioned above the printed name of the signatory.

Gary P. Troue, Hearing Officer