

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

CRAIN CONSTRUCTION, COMPANY, INC,  
AND  
WILLIAM PALMADESSA, ANTHONY T. RINALDI,  
JOSEPH A. MARINO, FAITH CONNELLY  
AND  
JOHN SAN SEVERE,  
as officers and shareholders of  
CRAIN CONSTRUCTION COMPANY, INC.  
and its successors or substantially owned-affiliated entities  
CRAIN CONSTRUCTION OF NEW YORK, INC.,  
AND  
CRAIN CONSTRUCTION OF NEW JERSEY, INC.,,  
Prime Contractor,

For a determination pursuant to Article 8 of the Labor Law whether prevailing wages and supplements were paid to or provided for the laborers, workers and mechanics employed on a public work project known as the Middle School Renovation and Addition in the Highland Falls- Fort Montgomery Central School District at Highland Falls, New York.

**Recommendation on  
Motion to Reopen  
Hearing**

Prevailing Rate Case No.  
00-3264

Orange County

To: Hon. Colleen Gardner  
Commissioner of Labor  
State of New York

Respondents move to reopen the hearing in this matter in which a Default Determination and Order was entered on October 23, 2008 (“Default Order”). The Default Order was based on the Respondents’ failure to answer the allegations contained in the Department’s Notice of Hearing or appear at the September 12, 2008 hearing to contest those allegations.

The Respondents request that the hearing be reopened on the grounds that: (1) they never received notice of the hearing and therefore have a reasonable excuse for their default in appearing; (2) they have a meritorious defense to the willful determination made in the Default Order in that, to the extent that an underpayment may be found, they had relied on the advice of their attorney, who actually administered the corporate

payroll, which reliance has been held to be a defense to a finding of willfulness; and, (3) they have a meritorious defense to the alleged underpayments in that the company paid union benefits on a subcontractor's behalf directly to several locals to rectify any alleged misconduct on the Highland Falls project by that subcontractor.

In support of their request Respondents have submitted required affidavits of excuse and merit that establish that:

(1) they did not conduct business at any of the addresses where the Department served the Notice of Hearing, as established by deeds of conveyance of those properties, copies of which are attached to their motion papers;

(2) they do not know who the individuals are that signed the Notice of Hearing certified mailing receipts, but in any event they were not individuals authorized to sign on Respondents' behalf;

(3) they inadvertently failed to update the corporate address on file with the Department of State, which resulted in their not receiving the copy of the Notice of Hearing served upon the Department of State, which failure the New York State Court of Appeals has found not to be a *per se* impediment to establishing "reasonable excuse" for a default;

(4) Respondents were unaware of the default until advised by a bonding company when bidding a public work project nearly two years after the Default Order, after which they promptly made a FOIL request for the Department's records, reviewed nearly 1,000 pages of records, and engaged in months of back and forth discussions with the Department in an effort to resolve the matter until advised in January 2011 that the Department could not resolve the matter with them unless the matter was reopened for hearing;

(5) the company's former labor attorney, Steve Coren, Esq., established the company's ERISA trust through which it ran its entire payroll, that Mr. Coren independently managed and maintained the company's payroll, and that its good faith reliance on its attorney is a recognized defense to a finding of willfulness;

(6) within the nearly 1,000 pages of documents produced by the Department in response to the FOIL request are union shop steward and other reports from Locals #417

(Structural Iron Workers), #17 (Laborers) and #19 (Carpenters) that show proper union benefits paid to each of the respective locals on the Highland Falls project; and

(7) the alleged underpayment of prevailing wages on the project was the result of one delinquent subcontractor whose work the company made a good faith effort to take over and lawfully complete.

None of these averments is directly addressed or contravened in the June 1, 2011 Affirmation in Opposition to the Motion to Reopen submitted by the Department.

In view of the foregoing, it appears that the Respondents have established a reasonable excuse for their default and meritorious defenses sufficient to warrant a reopening of the hearing for a final determination on the merits.

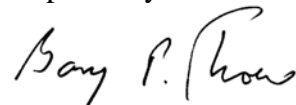
On that basis, I RECOMMEND that the Commissioner:

- (1) Grant the Respondent's request to reopen the hearing in this matter;
- (2) Vacate the prior Default Order;
- (3) Direct that any debarment based on either the finding of willfulness or the falsification of payroll records in the vacated Default Order be rescinded; and
- (4) Direct that any and all effort to collect the sums determined due pursuant to the vacated Default Order ceased.

Dated: July 7, 2011


Albany, New York

Respectfully submitted,



Gary P. Troue,  
Hearing Officer

SO ORDERED



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Commissioner of Labor

