

STATE OF NEW YORK: DEPARTMENT OF LABOR

-----X

In the Matter of

BEN CICCONE, INC. and  
BRANDON CICCONE, SR., as an officer, director,  
and/or Managing member of BEN CICCONE, INC.,

Prime Contractor,  
and

DEANCO SERVICES INC., and  
ANDREW DIPPAUL, as an officer, director, and/or managing  
member of DEANCO SERVICES, INC., and  
CONSOLIDATED INDUSTRIAL SERVICES, INC.,  
as a substantially owned-affiliated entity  
or successor corporation to Deanco Services, 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 SUNY Orange-Kaplan  
Hall.

-----X

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

**DEFAULT**  
**REPORT**  
**&**  
**RECOMMENDATION**

Prevailing Rate Case  
PRC No.: 2008007312  
Case ID: PW112010023654  
Orange County

Pursuant to a Notice of Hearing issued on September 17, 2019, a hearing was held on  
October 23, 2019 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 Deanco  
Services Inc., and Andrew DiPaul, as an officer, director, and/or managing member of Deanco

Services Inc., and Consolidated Industrial Services, Inc. (“Sub”), a subcontractor of Ben Ciccone, Inc., and Brandon Ciccone, Sr., as an officer, director, and/or managing member of Ben Ciccone, Inc. (“Prime”), complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract for the site preparation of Kaplan Hall (“Project”) for the County of Orange (“Department of Jurisdiction”).

### **APPEARANCES**

The Bureau was represented by Department Counsel, Pico Ben-Amotz, (Erin Hayner, Senior Attorney, of Counsel)

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

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

### **FINDINGS AND CONCLUSIONS**

On September 17, 2019, the Department duly served a copy of the Notice of Hearing on Sub, via regular and certified mail, return receipt requested. The regular mail envelope was not returned to the Department. The Notice of Hearing scheduled a hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

Additionally, the Department duly served a copy of the Notice of Hearing on Prime, via regular and certified mail, return receipt requested. Two signed Return Receipts evidencing receipt of the document by Prime were entered into evidence as Hearing Officer Exhibit 3. Prior to the hearing, Prime entered into a Stipulation with the Department in which Prime agreed to make restitution of wages and supplements, interest, and a penalty in the total amount of \$17,548.38, which amount represents the wages and supplements found by the Department to be due to workers by Sub on the Project, interest of 10% and a civil penalty of 10%.

Sub failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, Sub is in default in this proceeding.

The Notice of Hearing alleges that Sub underpaid wages and supplements to its workers and that Prime is responsible for Sub’s underpayment 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 Project was subject to Labor Law article 8; and

Prime entered into a contract for the Project with the Department of Jurisdiction; and

Sub entered into a contract with Prime for work on the Project; and

Sub willfully underpaid \$11,213.83 to its workers for the audit period weeks ending 11/22/08 to 2/21/09; and

Andrew Depaul is an officer of Sub; and

Andrew Depaul is a shareholder of Sub who owned or controlled at least ten per centum of its outstanding stock; and

Andrew Depaul knowingly participated in the violation of Labor Law article 8; and

Consolidated Industrial Services, Inc. was a “substantially owned-affiliated entity” of Sub on the Project; and

Andrew Depaul knowingly participated in the violation of Labor Law article 8.

### **RECOMMENDATIONS**

Based upon the default of the Sub 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 Sub underpaid its workers \$11,213.83 on the Project; and

DETERMINE that Sub 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 Sub to pay the prevailing wage or supplement rate was a “willful” violation of Labor Law article 8; and

DETERMINE that the willful violation of Sub did not involve the falsification of payroll records under Labor Law article 8; and

DETERMINE that Consolidated Industrial Services, Inc. was a “substantially owned-affiliated entity” of Sub on the Project;

DETERMINE that Andrew Depaul is an officer of Sub; and

DETERMINE that Andrew Depaul is a shareholder of Sub who owned or controlled at least ten per centum of the outstanding stock of Sub; and

DETERMINE that Andrew Depaul knowingly participated in the violation of Labor Law article 8; and

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

DETERMINE that, pursuant to a Stipulation Prime has agreed to pay \$17,548.38 in underpayment, interest, and penalty in full satisfaction of its vicarious liability under Labor Law article 8; and

ORDER that the Bureau compute the total amount due (underpayment, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that, upon payment of \$17,548.38 and complete performance of the stipulation entered into between Prime and the Department, Prime will have fully satisfied its liability under Labor Law article 8;

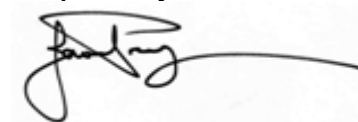
ORDER that Sub shall receive a credit for the \$17,548.38 paid by Prime; and

ORDER that upon the Bureau's notification, Sub shall immediately remit payment of the total remaining 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: November 20, 2019  
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerome Tracy", written over a horizontal line.

Jerome Tracy, Hearing Officer