

IN THE MATTER OF

GENERATION II PLUMBING & HEATING, INC.
Prime Contractor

and

JOHN HUBNER
Individually as President and as one who owns or control
ten percent of the stock of
GENERATION II PLUMBING & HEATING, INC.

A proceeding pursuant to Article 8 of the Labor Law to
determine whether a contractor paid the rates of wages or
provided the supplements prevailing in the locality to
workers employed on a public work project.

**DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Rate Case
00-04298 New York County

IN THE MATTER OF

GENERATION II PLUMBING & HEATING, INC.
Prime Contractor

and

JOHN HUBNER
Individually as President and as one who owns or control
ten percent of the stock of
GENERATION II PLUMBING & HEATING, INC.

A proceeding pursuant to article 8 of the Labor Law to
determine whether a contractor paid the rates of wages or
provided the supplements prevailing in the locality to
workers employed on a public work project.

Prevailing Rate Case
02-05955 Westchester County

To: Honorable M. Patricia Smith
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on July
7, 2009, in White Plains, 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 Generation II Plumbing & Heating, Inc. ("Generation") and John Hubner, as president and as one who owns or controls ten percent of the stock of Generation ("Hubner") complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of two public work contracts for the Dormitory Authority of the State of New York ("DASNY"). The first, bearing prevailing rate case ("PRC") number 00-04298, involved toilet renovations and asbestos abatement at Hunter College ("Project 1"). The second, bearing PRC number 02-05955, involved plumbing work at St. Christopher School in Dobbs Ferry, New York ("Project 2").

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito (Richard Cucolo, Senior Attorney, of Counsel). There were no appearances made by, or on behalf of, Generation or Hubner.

FINDINGS AND CONCLUSIONS

On April 27, 2009, the Department duly served a copy of the Notice of Hearing on Generation and Hubner, via regular and certified mail, return receipt requested. A signed a Return Receipt evidencing receipt of the document by Hubner was entered into evidence as Hearing Officer Exhibit 1. The Notice of Hearing scheduled a July 7, 2009 hearing and required that the Respondents serve an Answer at least 14 days in advance of the scheduled hearing.

The Notice of Hearing alleges that the Generation underpaid wages and supplements to its workers. Generation and Hubner failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, they are in default in this proceeding.

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 Generation willfully underpaid \$5,964.72 to one worker for the audit period weeks ending February 24, 2009 to March 2, 2002 on Project 1; that it willfully underpaid \$26,304.72 to three workers for the audit period weeks ending December 18, 2003 to September 8, 2005 on Project 2; and that Hubner is an officer of Generation who knowingly participated in the violations of Article 8 of the Labor Law.

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

RECOMMENDATIONS

Based upon the default of the Respondents 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 Generation underpaid its workers \$5,964.72 on Project 1, PRC No. 00-04298;

DETERMINE that Generation underpaid its workers \$26,304.72 on Project 2, PRC No. 02-05955;

DETERMINE that Generation 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;

DETERMINE that the failure of Generation to pay the prevailing wage or supplement rate on Projects 1 and 2 constitutes two separate and distinct "willful" violations of Article 8 of the Labor Law;

DETERMINE that John Hubner is an officer of Generation;

DETERMINE that John Hubner knowingly participated in the violation of Article 8 of the Labor Law;

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

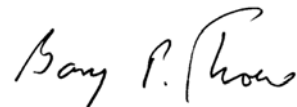
ORDER that the Bureau compute the total amount due (underpayment, interest and civil penalty);

ORDER that upon the Bureau's notification, Generation shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at 75 Varick Street, 7th floor, New York, New York 10013; 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 8, 2009
Albany, New York

Respectfully submitted,

A handwritten signature in cursive script that reads "Gary P. Troue".

Gary P. Troue, Hearing Officer