

STATE OF NEW YORK: DEPARTMENT OF LABOR  
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In the Matter of

EIF CONSTRUCTION CO. INC., and ELLEN I. FRENCH  
and MICHAEL FRENCH, as officers and/or shareholders of  
EIF CONSTRUCTION CO. INC.,

Prime Contractor,

and

J. LINDSLEY ROOFING, LLC, and JAMES LINDSLEY  
and JENNIFER LINDSLEY, as officers and/or members of  
J. LINDSLEY ROOFING, LLC, and its successor or  
substantially owned-affiliated entity J. LINDSLEY  
ENTERPRISE, LLC,

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 the  
Town of Granby, New York.

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

Pursuant to a Notice of Hearing issued by the Commissioner of Labor on December 13, 2024, a videoconference hearing was held on February 26, 2025 in Albany, New York, with participating parties and witnesses located at various other sites. The purpose of the hearing was to provide all interested 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 J. Lindsley

**REPORT &**

**RECOMMENDATION**

Prevailing Rate Case  
PRC No. 2022013220  
Case ID: PW06 2023006350  
Oswego County

Roofing, LLC, and James Lindsley and Jennifer Lindsley, as officers and/or members of J. Lindsley Roofing, LLC. and its successor or substantially owned-affiliated entity, J. Lindsley Enterprise, LLC.(all “Lindsley Roofing”), a subcontractor of EIF Construction Co. Inc., and Ellen I. French and Michael French as officers and/or shareholders of EIF Construction Co. Inc., (“EIF”), (all “Respondents”) complied with the requirements of Labor Law Article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving the provision of labor, materials, and/or services in furtherance of the construction of the Municipal Building Additions and Renovations project for the Town Hall located in the Town of Granby (“Department of Jurisdiction”), County of Oswego, State of New York (“Project”).

### **HEARING OFFICER**

John Scott was designated as Hearing Officer and conducted the hearing in this matter.

### **APPEARANCES**

The Bureau was represented by Department Deputy Commissioner and General Counsel, Jill Archambault, (Lindsey Fuchs, Assistant Attorney, of Counsel).

Prime appeared *pro se* through Tyler French, Mike French and Susan Mosier.

Sub appeared by and through its attorney, Galli Law, P.C. (Anthony Galli, Esq., of counsel).

### **ISSUES**

1. Did Lindsley Roofing pay the rate of wages or provide the supplements prevailing in the locality, and, if not, what is the amount of underpayment?
2. Was any failure by Lindsley Roofing to pay the prevailing rate of wages or to provide the supplements prevailing in the locality “willful”?
3. Did any of the underpayment of wages and/or supplements by Lindsley Roofing involve the falsification of payroll records?

4. Are James Lindsley and Jennifer Lindsley officers or members of J. Lindsley Roofing, LLC?
5. Did James Lindsley and Jennifer Lindsley knowingly participate in a willful violation of Labor Law article 8?
6. Should interest on the underpayment of wages and/or supplemental benefits be assessed against Lindsley Roofing and, if so, in what amount?
7. Should a civil penalty be assessed and, if so, in what amount?
8. Whether J. Lindsley Enterprise, LLC is a successor or substantially owned-affiliated entity of J. Lindsley Roofing, LLC as defined under Section 225-G and K of the Labor Law?
9. Whether, pursuant to Labor Law Section 223, EIF, as prime contractor on the Project, is liable for non-compliance or evasion by their subcontractor, Lindsley Roofing, of its obligation to pay prevailing wages and/or supplemental benefits?
10. The disposition of any funds being withheld from the EIF by the Town pursuant to the Notices of Withholdings issued by the Bureau of Public Work and Prevailing Wage Enforcement as a result of the underpayments by Lindsley Roofing to the workers as alleged.

### **FINDINGS OF FACT**

The hearing concerned an investigation made by the Bureau involving a public work contract performed by the Respondents<sup>1</sup>.

On December 16, 2024, Department duly served a copy of the Notice of Hearing on all Respondents, via First Class and certified mail, return receipt requested. (HO 1, 2 and 3). The Notice of Hearing scheduled a hearing to commence on February 18, 2025 and required all Respondents to serve an Answer at least fourteen days in advance of the scheduled hearing.

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<sup>1</sup> Documentary evidence will be referenced as follow: Hearing Officer Exhibits, HO X; Department Exhibits, DOL X, Respondents Exhibits R X. Transcript references will be in the format: T p X or T pp X, X or T pp X–Y.

EIF failed to file an Answer to the charges contained in the Notice of Hearing, however Respondents did participate in the administrative proceeding before this agency.

Lindsley Roofing, by and through its attorney, Anthony Galli, Esq., filed an answer dated February 12, 2025 in response to the Notice of Hearing (HO 4).

The Notice of Hearing alleges that Lindsley Roofing underpaid prevailing wages and supplements to its workers and that EIF is responsible for Lindsley Roofing's underpayment of wages and supplements pursuant to Labor Law § 223.

On or about March 7, 2023, Lindsley Roofing submitted an estimate to EIF for the removal and installation of a tapered EPDM roofing system for the Project, that estimate specifically enumerates that the price listed in the estimate is based off of prevailing wage rates (DOL 5).

On or about April 3, 2023, EIF entered into a contract for the Project with the Department of Jurisdiction to furnish materials, labor, tools and equipment necessary for the construction of the Municipal Building Additions and Renovations project for the Town Hall located in the Town of Granby, County of Oswego, State of New York (DOL 2; T pp 23, 24).

The PW-39 screen print, project manual, specifications and Lindsley Roofing project estimate all indicate that the Project was subject to Labor Law article 8 (DOL 1, 5, 6; T pp 21-23, 27- 30).

On or about May 24, 2023, Lindsley Roofing entered into an agreement with EIF to furnish and install all materials, labor and equipment necessary for the installation of an EPDM roof system and associated work for the Project<sup>2</sup> (DOL 4, 5; T pp 25-28).

The subcontract for the Project involved the employment of workers in the Roofer classification (DOL 6; T pp 29, 30, 52, 56).

On or about July 1, 2023, the Bureau issued Prevailing Wage Rate Schedule 2023 for Oswego County. Prevailing Wage Rate Schedule 2023 for Oswego County detailed the amount of wages and supplements that were to be paid to or provided for the workmen, laborers and mechanics performing work on the Project from July 1, 2023 to June 30, 2024 in the Roofer

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<sup>2</sup> The Subcontractor Agreement specifically refers to the March 7, 2023 estimate, under subparagraph 2 of that document: Scope of Work.

classification, with wages of \$32.25 per hour, and supplements of \$25.85 per hour (DOL 9; T pp 51-53).

On or about October 4, 2023, the Bureau conducted a routine site visit on the Project and interviewed multiple workers performing services on the site. When investigators for the Bureau arrived onsite, four of Lindsley Roofing workers came down off the roof of the building and began walking towards their trucks to leave the site. Investigators for the Bureau interviewed seven workers for EIF who informed the investigators that the four workers who walked away towards their trucks were employed by Lindsley Roofing. When the four Lindsley Roofing workers returned to the Project site, investigators for the Bureau gave the workers interview sheets, which were partially completed (DOL 8, 27; T pp 33).

In response to the aforementioned site visit and information obtained which called into question whether workers were being properly paid, the Bureau commenced an investigation of the Project (DOL 27; T pp 40, 41).

On multiple occasions, the Bureau requested that Lindsley Roofing furnish certified payroll records and other documents relating to Project (DOL 10, 11; T pp 41-51).

Lindsley Roofing failed to timely respond to the Bureau's requests for payroll records or other documents (T p 42). However, over the course of the investigation Lindsley Roofing provided the Bureau with the majority of documents/information requested, but still failed to produce all documents requested by the Bureau to complete its investigation (DOL 26; T pp 42-51).

Copies of certified payroll records for Lindsley Roofing related to the Project were provided by Lindsley Roofing, but also were secured from the architect for the Project, King + King Architects, as well as EIF (DOL 12, 17; T pp 69).

The Project Manager for the Town of Granby provided the Bureau with sign-in sheets for the Project that included the names of workers for Lindsley Roofing who worked on the Project (DOL 13; T pp 49, 50), and daily logs that contained information about the number of workers for Lindsley Roofing that worked on the Project each day (DOL 14; T pp 50).

Upon review by the records provided by Lindsley Roofing and the collateral sources mentioned about, the Bureau determined that Lindsley Roofing's certified payroll records for the

Project did not contain all of the Lindsley Roofing workers interviewed by the Bureau during the October 4, 2023 site visit, nor did it contain all of the Lindsley Roofing workers documented on Project Manager's daily logs and sign-in sheets (DOL 17; T pp 36, 37-41).

On or about June 4, 2024, the Bureau issued to Lindsley Roofing a Notice of Labor Law Inspection Findings notifying Lindsley Roofing of the Bureau's findings on the Project (DOL 18; T pp 76).

Based on its investigation, the Bureau determined that Lindsley Roofing underpaid eight (8) workers on the Project in the Roofer classification and failed to pay or provide prevailing wages and/or supplements to those eight (8) workers in accordance with the prevailing wage schedule in effect at the time work was performed on the Project (DOL 15; T 56, 61).

The Bureau determined that Lindsley Roofing willfully underpaid \$11,045.80 to its workers for the audit period weeks ending September 23, 2023 through weeks ending February 17, 2024 (DOL 16; T 60, 61).

Lindsley Roofing falsified its payroll records in connection with that willful underpayment (DOL 13, 17; T pp 49, 63-77).

James Lindsley and Jennifer Lindsley are officers and/or members of Lindsley Roofing (DOL 7, 11; T pp 31, 32, 47, 53).

James Lindsley and Jennifer Lindsley knowingly participated in the violation of Labor Law article 8, and this violation included the falsification of payroll records on the Project.

During the period work was performed on the Project, Ellen I. French and Michael French are officer and/or shareholders of EIF, who owned or controlled at least ten percent of the outstanding stock or were each one of the five largest shareholders of EIF.

J. Lindsley Enterprise, LLC is a substantially owned, affiliated entity or successor corporation to J. Lindsley Roofing, LLC, as defined under Section 225-G and K of the Labor Law (DOL 24; T pp 90).

## CONCLUSIONS OF LAW

### JURISDICTION OF ARTICLE 8

New York State Constitution, article 1, § 17 mandates the payment of prevailing wages and supplements to workers employed on public work projects<sup>3</sup>. This constitutional mandate is implemented through Labor Law article 8. Labor Law §§ 220, *et seq.* “Labor Law § 220 was enacted to ensure that employees on public works projects are paid wages equivalent to the prevailing rate of similarly employed workers in the locality where the contract is to be performed and authorizes the [Commissioner of Labor] to ascertain said prevailing wage rate, as well as the prevailing ‘supplements’ paid in the locality.” (*Matter of Beltrone Constr. Co. v McGowan*, 260 AD2d 870, 871-872 [1999]). Labor Law § 220.2 establishes that the law applies to a contract for public work to which the State, a public benefit corporation, a municipal corporation or a commission appointed pursuant to law is a party. Labor Law §§ 220 (7) and (8), and 220-b (2) (c), authorize an investigation and hearing to determine whether prevailing wages or supplements were paid to workers on a public work project.

In 1983, the New York State Court of Appeals established what was, until somewhat recently, the test for whether a project was subject to the Labor Law public work provisions. *Matter of Erie County Indus. Dev. Agency v. Roberts*, 94 A.D.2d 532 (4th Dept. 1983), *affd* 63 N.Y.2d 810 (1984). *Erie* involved a construction contract on a project financed by an industrial development agency, and established the now-familiar two-prong test:

- (1) the public agency must be a party to a contract involving the employment of laborers, workmen, or mechanics, and
- (2) the contract must concern a public works project. *Id at 537.*

In 2013, the New York State Court of Appeals adopted a new, three-prong test to determine whether a particular project constitutes a public work project. *De La Cruz v. Caddell Dry Dock & Repair Co., Inc.*, 21 NY3d 530 (2013). The Court states this test as follows:

First, a public agency must be a party to a contract involving the employment of laborers, workmen, or mechanics. Second, the contract must concern a

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<sup>3</sup> This section derives ultimately from the 1905 amendment of section 1 of article XII of the New York State Constitution of 1894.

project that primarily involves construction-like labor and is paid for by public funds. Third, the primary objective or function of the work product must be the use or other benefit of the general public. *Id at 538.*

The Department of Jurisdiction, a public entity, is a party to the instant public work contract. The contract involved the addition and renovation to a municipal building for the Town, which required construction-like labor paid for by public funds. The work product, here renovating or expanding a publicly owned facility, is clearly for the use or other benefit of the general public. Additionally, the Department of Jurisdiction applied for a PRC number and the project manual specifically outlines the labor rates to be used on the Project stating the New York State, Oswego County schedule of prevailing wage rates and supplements was provided by the Department.

### **CLASSIFICATION OF WORK**

Labor Law § 220 (3) requires that the wages to be paid and the supplements to be provided to laborers, workmen or mechanics working on a public work project be not less than the prevailing rate of wages and supplements for the same trade or occupation in the locality where the work is performed. The trade or occupation is determined in a process referred to as “classification.” (*Matter of Armco Drainage & Metal Products, Inc. v State of New York*, 285 AD 236, 241 [1954]). Classification of workers is within the expertise of the Department. (*Matter of Lantry v State of New York*, 6 NY3d 49, 55 [2005]; *Matter of Nash v New York State Dept of Labor*, 34 AD3 905, 906 [2006], *lv denied*, 8 NY3d 803 [2007]; *Matter of CNP Mechanical, Inc. v Angello*, 31 AD3d 925, 927 [2006], *lv denied*, 8 NY3d 802 [2007]). The Department’s classification will not be disturbed “absent a clear showing that a classification does not reflect ‘the nature of the work actually performed.’ ” (*Matter of Nash v New York State Dept of Labor*, 34 AD3 905, 906, *quoting Matter of General Electric, Co. v New York State Department of Labor*, 154 AD2d 117, 120 [3d Dept. 1990], *affd* 76 NY2d 946 [1990], *quoting Matter of Kelly v Beame*, 15 NY 103, 109 [1965]). Workers are to be classified according to the work they perform, not their qualifications and skills. (*See, Matter of D. A. Elia Constr. Corp v State of New York*, 289 AD2d 665 [1992], *lv denied*, 80 NY2d 752 [1992]).

The record contains ample evidence from the contract documents, specifications, worker interviews, certified payrolls, project manager daily logs, sign-in sheets, interview sheets and investigator testimony to justify the classifications used in this instance. The Department classified the workers on the Project pursuant to the scope of work performed on the Project, and acknowledged that classification through the Project specifications, estimate prepared by Lindsley Roofing for the Project and the classifications listed on the certified payrolls, I find the classification used by the Bureau should not be disturbed.

### **UNDERPAYMENT METHODOLOGY**

“When an employer fails to keep accurate records as required by statute, the Commissioner is permitted to calculate back wages due employees by using the best available evidence and to shift the burden of negating the reasonableness of the Commissioner’s calculations to the employer...” (*Matter of Mid Hudson Pam Corp. v Hartnett*, 156 AD2d 818, 821 [1989] (citation omitted)). “The remedial nature of the enforcement of the prevailing wage statutes ... and its public purpose of protecting workmen ... entitle the Commissioner to make just and reasonable inferences in awarding damages to employees even while the results may be approximate....” *Id.* at 820 (citations omitted). Methodologies employed that may be imperfect are permissible when necessitated by the absence of comprehensive payroll records or the presence of inadequate or inaccurate records. (*Matter of TPK Constr. Co. v Dillon*, 266 AD2d 82 [1999]; *Matter of Alphonse Hotel Corp. v Sweeney*, 251 AD2d 169, 169-170 [1998]).

The Bureau received certified payrolls, as well as other relevant material including employee interview sheets, project manager daily logs and sign-in sheets and wage statements, and used those documents to conduct the Bureau’s audit. The Bureau investigator derived the days and hours worked directly from either the certified payroll records, daily logs and/or sign-in sheets, with emphasis on the latter documents. It determined the classification of work based on the scope of work performed and verified those classifications through the specifications, job estimate and listing on the certified payrolls. The investigator obtained the hourly wage rates paid to the employees either directly from the employee interview forms, from wage statements or from the rates listed in the certified payrolls. He got the rates that should have been paid from the prevailing wage rate schedules applicable in that county of jurisdiction during the period the

work was performed. He broke the laborers, workmen and mechanics down into three categories: unidentified workers (John Does), identified workers not listed on the certified payrolls and identified workers that were listed on the certified payrolls. If the site manager's daily logs on any particular day showed more workers on the site than were listed in the certified payrolls, those unidentified workers would be listed as John Does in the audit and those workers would be given zero credit for wages and supplements paid. The investigator would derive the hours worked by the John Does for that particular day by utilizing the minimum amount of hours listed as worked by employees who were identified on the certified payrolls. If he could identify the worker, but still had no payroll information for that worker, that worker would be given zero credit for wages and supplements paid in the audit. If he had payroll information, he would use the hourly wage rate listed on their wage statement for their rate paid in the audit. He again derived their hours from the certified payroll using the same method used for the John Does. If workers were identified and listed in the certified payrolls, the investigator utilized the hours and payrates contained therein, and if those identified and listed worker were paid in full for all hours worked according to the prevailing wage scheduled in affect at that time, those workers would not be included in the audit.

Evidence in the record established that the certified payrolls of Lindsley Roofing did not accurately reflect the wages and supplemental rates paid to the workers who performed services on the Project. There is a clear absence of comprehensive payroll and time records on which the Bureau could rely to credit Lindsley Roofing with the full payment of wages and supplemental benefits to its workers, and there was an absence of time records to assist the bureau in determining what days or hours, if any, the workers may have been performing work on other jobs, and therefore should not have been included on the certified payrolls. Under those circumstances, it was permissible and reasonable for the investigator to reach the conclusions made and employ the methodology he used, although it may have been imperfect, to determine the days and hours worked, as well as rates paid to the workers.

Labor Law § 661 requires an employer to establish, maintain, and preserve for not less than six years, contemporaneous, true, and accurate payroll records showing for each week worked the hours worked, the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages for each employee, plus such other

information as the commissioner deems material and necessary. In June 2024, Lindsley Roofing was put on notice of its violation of the labor law for its failure to pay prevailing wage and supplemental benefits to its employees, and that they were required and failed to produce accurate payroll records although given the time to do so.

Furthermore, pursuant to Labor Law section 220 3-a (a) (ii) every sub-contractor is required to notify all laborers, workers or mechanics in their employ in writing of the prevailing rates of wages and supplements for their particular job classification, this notification shall be given to every laborer, worker or mechanic upon hire, with their first pay stub and every pay stub thereafter. There is nothing contained in the record which shows the Lindsley Roofing adhered to this requirement. The wage statements that were in the record were devoid of listing of hourly rates paid, and although when the wages divided by the hours listed on those statements did add up to the combined prevailing wage package for a roofer for some of the hours listed on those records, there is just too much discrepancy between the wage statements and certified payrolls for the investigator to reach an alternate conclusion that the certified payrolls were not true and accurate. The wage statements did attempt to break down rates and hours between public and private work, however those hours did not always correlate to the hours and rates listed on the certified payrolls making it impossible to properly credit the employer with payments without the time records to back up the information contained in the certified payrolls.

Evidence in the record established that the Lindsley Roofing's certified payrolls did not accurately reflect the wages paid to the workers who performed services on the Project. Also, as just referenced, there is a clear absence of comprehensive payroll and time records on which the Bureau could rely to credit Lindsley Roofing with the full payment of wages and supplemental benefits to its workers. There was a mention in the record that time records were kept on a whiteboard in the shop, and after those hours were written on that board, a photo of the board was captured, sent to Jennifer Lindsley, who noted the hours and locations worked (public or private – prevailing wage rate hours worked were circled on the board) and then those records were then forwarded on to a payroll service via email<sup>4</sup> to generate payroll. Although this may be

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<sup>4</sup> None of the weekly emails breaking down the days, hours and sites worked by the Lindsley Roofing's employees (public or private) were produced during the course of the investigation or at trial to negate the assumptions made by the investigator.

a historical practice of how the office tracked its employees' days and hours, it did not meet the statutory requirements of how those records should be maintained according to the labor law and made it impossible to rebut the conclusions made by the Bureau's investigator on the Project. Since multiple versions of certified payroll records<sup>5</sup> were submitted to the Bureau, it was permissible and reasonable for the investigator to reach the conclusions made and employ the methodology he used to determine the days and hours worked, as well as rates paid to the workers.

Since Lindsley Roofing failed to adhere to this statute and failed to maintain the time and payroll records required under the labor law to negate the reasonableness of the Bureau's calculations, the Bureau's audits should be sustained.

### **INTEREST RATE**

Labor Law §§ 220 (8) and 220 b (2) (c) require that, after a hearing, interest be paid from the date of underpayment to the date of payment at the rate of 16% per annum as prescribed by section 14-a of the Banking Law. (*Matter of CNP Mechanical, Inc. v Angello*, 31 AD3d 925, 927 [ 2006], *lv denied*, 8 NY3d 802 [2007]).

Lindsley Roofing is responsible for the interest on the balance of underpayments at the 16% per annum rate from the date of underpayment to the date of payment.

### **WILLFULNESS OF VIOLATION**

Pursuant to Labor Law §§ 220 (7-a) and 220-b (2-a), the Commissioner of Labor is required to inquire as to the willfulness of an alleged violation, and in the event of a hearing, must make a final determination as to the willfulness of the violation. For the purpose of Labor

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<sup>5</sup> In some instances, the employer had two separate certified payrolls for the same week listing different workers on the Project, and then those two sets of payrolls were ultimately combined into one (creating a third set – amended version). Even though they condensed these versions into one payroll for a particular week, it still didn't make up for the discrepancies between the hours and rates listed on the wage statements when they were compared to the certified payrolls. Information contained on the wage statements showed that workers received pay rates less than the prevailing wages on some dates, and/or showed prevailing wage rates paid when the employees were not on the certified payrolls. Without the time records and listing of where the employees worked each day there was no clear way for the investigator to reconcile the accuracy of the records that were provided.

Law article 8, willfulness “does not imply a criminal intent to defraud, but rather requires that [the contractor] acted knowingly, intentionally or deliberately” – it requires something more than an accidental or inadvertent underpayment. (*Matter of Cam-Ful Industries, Inc. v Roberts*, 128 AD2d 1006, 1006-1007 [1987]). “Moreover, violations are considered willful if the contractor is experienced and ‘should have known’ that the conduct engaged in is illegal (citations omitted).” (*Matter of Fast Trak Structures, Inc. v Hartnett*, 181 AD2d 1013, 1013 [1992]; see also, *Matter of Otis Eastern Services, Inc. v Hudacs*, 185 AD2d 483, 485 [1992]). The violator’s knowledge may be actual or, where he should have known of the violation, implied. (*Matter of Roze Assocs. v Department of Labor*, 143 AD2d 510 [1988]; *Matter of Cam-Ful Industries, supra*) An inadvertent violation may be insufficient to support a finding of willfulness; the mere presence of an underpayment does not establish willfulness even in the case of a contractor who has performed 50 or so public works projects and is admittedly familiar with the prevailing wage law requirement. (*Matter of Scharf Plumbing & Heating, Inc. v Hartnett*, 175 AD2d 421 [1991]).

The weight of the evidence in the record as a whole demonstrates that Respondents knew of the requirements to pay the prevailing rate of wages and supplements on the public work project at issue and in fact did not pay the prevailing rates as required, and therefore the violations which occurred on the project can only be considered a willful violation. There was clear evidence presented that Lindsley Roofing failed to account for additional workers on the project, even though the contractor was made aware of the workers after the work was performed. There was direct testimony from Jennifer Lindsley in which she confirmed that they called in an individual to help them and that individual called in two other workers without her knowledge, and that she later found out that one of the girls were not legal, had no paperwork, let alone not able to collect a check if it came time to do payroll. The employer admitted that she had the ability to submit alternate certified payrolls, and she could have adjusted the certified payrolls to account for those workers and chose not to do so. Once she was made aware that additional workers were on the Project, adjustments to the certified payrolls should have been made. The knowing failure to include these workers in the certified payrolls is clear evidence of a willful violation of the statute.

The Bureau sent Lindsley Roofing numerous records requests for the project at issue and Lindsley Roofing either delayed their response or did not send in all the documents requested. The Bureau had to rely on collateral resources to secure the documents necessary to conduct its

investigation, which included certified payrolls received from the architect and prime contractor, project sign-in sheets and project daily logs in which hours and manpower listed were inconsistent with the certified payrolls submitted. Lindsley Roofing did not supply time records, or specific paystub information detailing the classification of the worker or what pay rates were provided as required. Concluding that the days and hours contained in the sign-in sheet and project daily logs had merit, the Department reviewed the records it had and used that information to compile its audit.

While the certified payrolls did not appear to be reliable with respect to what workers were actually on the Project or what hours they in fact worked during the period the work was performed, the Department did rely on them; as well as the daily log maintained by the project manager to determine what class of work employees were doing and what prevailing rate was therefore required. In case of conflict between Lindsley Roofing's records and the collateral information provided by third parties who contemporaneously maintained their records while the work was performed, the Department relied on the latter to determine how many hours or what days an employee had worked on a Project.

The substantial evidence in this matter warrants a finding of willfulness by Lindsley Roofing.

### **FALSIFICATION OF PAYROLL RECORDS**

Labor Law § 220-b (3) (b) (1) further provides that if a contractor is determined to have willfully failed to pay the prevailing rates of pay, and that willful failure involves a falsification of payroll records, the contractor shall be ineligible to bid on, or be awarded any public work contract for a period of five (5) years from the first final determination. For this section of the law to be meaningful, the term "falsification of payroll records" must mean more than a mere arithmetic error; if it did not, in any case where the certified payrolls did not perfectly match the payments to workers such payrolls could be deemed falsified, and the contractor debarred. The definition of the word falsify generally involves the intent to misrepresent or deceive ("falsify." *Merriam-Webster*, 2011, <http://www.merriam-webster.com/dictionary/falsify>). In the absence of a statutory definition, the meaning ascribed by lexicographers is a useful guide. *De La Cruz v.*

*Caddell Dry Dock & Repair Co., Inc.*, 21 NY3d 530, 537-538; *Quotron Systems v. Gallman*, 39 NY2d 428, 431 (1976).

It is clear from the record that Lindsley Roofing failed to meet its obligation to maintain true and accurate payroll records, and I find the evidence set forth, such as conflicts between the certified payrolls provided and other wage information concerning hours worked and payments made to workers on the Project, shows deliberate, intentional falsification, and, therefore, that Lindsley Roofing's willful failure to pay or provide prevailing wages and/or supplements involved the falsification of payrolls.

### **PARTNERS, SHAREHOLDERS OR OFFICERS**

Labor Law § 220-b (3) (b) (1) further provides that any such contractor, subcontractor, successor, or any substantially owned-affiliated entity of the contractor or subcontractor, or any of the partners or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, or any officer of the contractor or subcontractor who knowingly participated in the willful violation of Labor Law article 8 shall likewise be ineligible to bid on, or be awarded public work contracts for the same time period as the corporate entity.

The record shows that James Lindsley and Jennifer Lindsley were officers, members and/or owners of Lindsley Roofing or its substantially owned affiliated entity who knowingly participated in the underpayment of wages on the Project and are therefore personally subject to the willful violations in this matter.

### **CIVIL PENALTY**

Labor Law §§ 220 (8) and 220-b (2) (d) provide for the imposition of a civil penalty in an amount not to exceed twenty-five percent (25%) of the total amount due (underpayment and interest). In assessing the penalty amount, consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations, and the failure to comply with record-keeping and other non-wage requirements. The contractor was a medium sized contractor employing eight laborers, workmen

and mechanics, was an experienced public work contractor who had previous interaction with the Bureau and was educated on the requirements associated with prevailing wage projects and was a local contractor in the upstate New York area working there for multiple decades. Lindsley Roofing failed to show good faith during the investigation, failed to comply with mandatory record keeping requirements and declined to cooperate with the Department's investigation by promptly providing records when requested and failed to maintain a clear set of certified payrolls on the project even though it was clear they were required to do so. The record shows a failure to cooperate, serious violations due to the falsification of records and numerous record-keeping violations. Under these circumstances, the Department's request for 25% civil penalty is reasonable.

### **LIABILITY UNDER LABOR LAW § 223**

A prime contractor is responsible for its subcontractor's failure to comply with, or evasion of, the provisions of Labor Law Article 8. (Labor Law § 223; *Konski Engineers PC v Commissioner of Labor*, 229 AD2d 950 [1996], *lv denied* 89 NY2d 802 [1996]). Such contractor's responsibility not only includes the underpayment and interest thereon, but also includes liability for any civil penalty assessed against the subcontractor, regardless of whether the contractor knew of the subcontractor's violation. (*Canarsie Plumbing and Heating Corp. v Goldin*, 151 AD2d 331 [1989]). Lindsley Roofing performed work on the Project as a subcontractor of EIF. Consequently, EIF, pursuant to Labor Law § 223, in its capacity as the prime contractor on the Project, is vicariously liable for the total amount found due, including interest and penalty, from Lindsley Roofing on that Project if in fact Lindsley Roofing doesn't make full restitution to its workers.

### **RECOMMENDATIONS**

Based upon the sworn and credible testimonial and documentary evidence adduced at hearing in support of the Department's charges, and based on the weight of the evidence set forth in the record as a whole, I recommend that the Commissioner of Labor adopt the within findings

of fact and conclusions of law, and make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Lindsley Roofing underpaid prevailing wages and supplemental benefits to its workers in the amount of \$11,045.80 on the Project for the audit period week ending September 23, 2023 through week ending February 14, 2024; and

DETERMINE that James Lindsley and Jennifer Lindsley are officers and members of Lindsley Roofing who knowingly participated in the violation of Labor Law Article 8 on the Project; and

DETERMINE that the failure of Lindsley Roofing to pay the prevailing wages and supplement rates on the Project was a “willful” violation of Labor Law Article 8; and

DETERMINE, that as a result of the Lindsley Roofing’s knowing willful participation in the falsification of payroll records within the meaning of Section 220-b(3)(b) of the Labor Law on the Project, both the entities (J. Lindsley Roofing, LLC and J. Lindsley Enterprises, LLC) and the individuals (James Lindsley and Jennifer Lindsley) are ineligible to submit a bid on or be awarded any public work contract with the state, any municipal corporation or public body for a period of five years from the issuance of the Order & Determination associated with this report; and

DETERMINE that J. Lindsley Roofing Enterprises, LLC is a “substantially owned-affiliated entity, subsidiary and/or successor corporation” of J. Lindsley Roofing, LLC as defined in Section 220 (5)(g, j and k) of the Labor Law.; and

DETERMINE that Lindsley Roofing is responsible for any underpayment of wages or supplemental benefits determined to be owed on the Project; and

DETERMINE that based on the statutory factors set forth in Labor Law Article 8, Lindsley Roofing is responsible for interest on the total underpayments on the Project at the statutorily mandated rate of 16% per annum from the date of underpayment to the date of payment; and

DETERMINE that based on the statutory factors set forth in Labor Law Article 8, Lindsley Roofing is assessed a civil penalty in the amount of 25% of the underpayment and interest due on this Project; and

DETERMINE that EIF is vicariously liable for non-compliance or evasion by Lindsley Roofing of its obligation to properly pay wages and supplemental benefits pursuant to Labor Law § 223 on this Project; and

ORDER that the Bureau compute the total amount due with interest at 16% from date of underpayment to the date of payment and 25% civil penalty; and

ORDER that if the Department of Jurisdiction is withholding funds against EIF, and Lindsley Roofing fails to make their workers whole, that they 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 at: State Office Building Campus, Bldg. 12, Room 130, Albany, NY 12226; and

ORDER that if the withheld amount is insufficient to satisfy the total amount due, Lindsley Roofing, 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 the aforesaid address; 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 18, 2025  
Albany, New York

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marshall H. Day".

Marshall H. Day, Hearing Officer