

STATE OF NEW YORK: DEPARTMENT OF LABOR

-----X

In the Matter of

NICKERSON CORPORATION, and STEPHANIE  
KELLER and BRUCE PACI, as officers and/or  
shareholders of NICKERSON CORPORATION;

Prime Contractor,

and

STURDISTEEL, and JOHNNY BLEDSOE, SALLY  
BLEDSOE and TAYLOR BLEDSOE, as officers and/or  
shareholders of STURDISTEEL; and SCHULTZ  
INDUSTRIES, INC, a successor or substantially owned-  
affiliated entity of STURDISTEEL;

Subcontractor,

and

JUAN CASTILLO;

Sub-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 Riverhead  
Central School District, in Riverhead, New York.

-----X

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

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

Prevailing Wage Rate  
PRC No. 2016000841  
Case ID: PW12 2016000576  
Suffolk County

Pursuant to a Notice of Hearing issued on February 5, 2018, a hearing was held on May 9, 2018 in Albany, New York and by videoconference with Patchogue, New York<sup>1</sup>. 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.

---

<sup>1</sup> The video camera did not operate properly during the hearing, but all parties agreed to proceed using audio only.

The hearing concerned an investigation conducted by the Bureau of Public Work ("Bureau") of the New York State Department of Labor ("Department") into whether Juan Castillo ("Sub") a subcontractor of intermediate contractor Sturdisteel ("Sturdisteel") which was in turn a subcontractor to Nickerson Corporation ("Prime"), complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving the installation of bleachers and other work ("Project") for the Riverhead Central School District ("Department of Jurisdiction").

### **APPEARANCES**

The Bureau was represented by Department Counsel, Pico Ben-Amotz, Dawa Jung-Acosta, of counsel.

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

Prime appeared through its attorneys, Littler, Mendelson, Kurt Rose, of counsel.

Sturdisteel appeared through its attorneys, Gleason, Dunn, Walsh and O'Shea.

### **FINDINGS AND CONCLUSIONS**

On February 13, 2018, the Department duly served copies of the Notice of Hearing on Sub, via regular and certified mail, return receipt requested using the last known addresses of Sub. One return receipt card was signed and returned and none of the regular mail envelopes were returned. (HO Ex 5, Tr. p. 7) The Notice of Hearing scheduled a May 9, 2018 hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

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, pursuant to a stipulation entered into between Prime, Sturdisteel, and the Department, Prime paid the amount of the underpayment the Bureau had determined Sub owed with interest - \$16,142.58 - which payment the Bureau deemed sufficient to resolve Prime's Article 8 liability. Furthermore, Prime submitted evidence sufficient to meet the standard set

forth in 12 NYCRR §221.1, and therefore no penalty was assessed by the Department against Prime. (HO Ex. 15, 16, 17)

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

Sturdisteel entered into a subcontract with Prime for work on the Project; and

Sub entered into a subcontract with Sturdisteel for work on the Project; and

Sub willfully underpaid \$12,418.88 to its workers for the audit period weeks ending 3/5/15 to 5/24/15; and

Juan Castillo is the sole owner of Sub; and

Juan Castillo knowingly participated in Sub's violation of Labor Law article 8.

On May 8, 2017, the Department issued a Notice to Withhold Payment to the Department of Jurisdiction in the amount of \$10,000.

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

### **RECOMMENDATIONS**

Based upon the default of 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 \$12,418.88 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 Juan Castillo is the sole owner of Sub; and

DETERMINE that Juan Castillo knowingly participated in the violation of Labor Law article 8 by Sub; 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 Prime stipulated to pay the underpayment and interest set at 10% in complete satisfaction of its liability under Labor Law article 8, and submitted payment to the Department at the hearing, which consisted of the underpayment of \$12,418.88, interest at 10% amounting to \$3725.70, and no penalty; and

ORDER that the Bureau compute the total amount due (underpayment of \$12,418.88, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that Prime has fully satisfied its liability under Labor Law article 8;

ORDER that Sub shall receive a credit for the \$16,142.58 paid by Prime; and

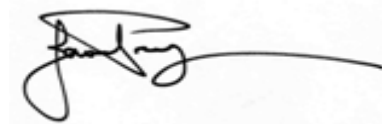
ORDER that the Bureau shall calculate the difference between an interest amount of 10% and one of 16% and also calculate the amount of penalty at 25%, thereby arriving at the outstanding balance that remains unpaid; and

ORDER that Sub, upon the Bureau’s notification, shall immediately remit the outstanding balance, made payable to the Commissioner of Labor, to the Bureau at the aforesaid address; and

ORDER that the Department of Jurisdiction shall release any withheld funds to Prime.

Dated: September 13, 2018  
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