

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

DELANEY CONSTRUCTION CORPORATION

Prime Contractor

and

THE DELANEY GROUP, INC.

Successor/Substantially owned-affiliated Entity

A & I, INC.,

and

RICELLI ENTERPRISES, INC.

and

M.P. JONES COMPANIES, INC.

Subcontractor

and

MICHAEL P. JONES

Individually as President of

M.P. JONES COMPANIES, 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  
03-06392 Onondaga 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 January 27, 2009. 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 M.

P. Jones Companies, Inc. and Michael P. Jones, individually and as president of M. P. Jones Companies, Inc. (“Sub”) the final subcontractor of Delaney Construction Company (“Prime”) complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of a public work contract involving the terminal apron rehabilitation project at the Syracuse Hancock International Airport (“Project”) for the City of Syracuse (“Department of Jurisdiction”). Sub was a subcontractor of Prime as a result of intervening contracts with A & L, Inc. (“A & L”) and Riccelli Enterprises, Inc. (“Riccelli”).

### **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 Sub. Prime did not appear but submitted an Answer and supporting Affidavit and Riccelli did not appear but submitted an Answer and supporting Affirmation per an agreement with Department Counsel prior to the hearing.

### **FINDINGS AND CONCLUSIONS**

On November 20, 2008, the Department duly served a copy of the Notice of Hearing on Sub and Michael P. Jones individually, via regular and certified mail, return receipt requested. Signed return receipts evidencing receipt of the Notice by Sub and Michael P. Jones were entered into evidence as Hearing Officer Exhibit 1. The Notice of Hearing scheduled a hearing date and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

The Notice of Hearing alleges that the Sub underpaid wages and supplements to its workers and that the Prime is responsible for its subcontractor’s underpayment pursuant to Labor Law § 223.

Prior to the hearing, Prime submitted an Answer and Affidavit of Robert L. Finkle, in which Mr. Finkle, Vice-President of Prime, stated that Prime had met the requirements set forth in 12 NYCRR Section 221.1 for relief from the imposition of a civil penalty by the Department. The Affidavit further set forth an agreement between the Department and Prime that the Department would release any withheld funds in return for Prime’s agreement to pay any underpayment – but not interest or penalty - in

the event the Commissioner found there to be an underpayment of wages and/or supplements found due and Sub failed to pay such amount. Counsel had no objection to the introduction into evidence of the Affidavit or the allegations set forth therein.

Sub and Michael P. Jones individually 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 two witnesses, and documents describing the underpayments, supporting the Bureau's charges that Sub willfully underpaid \$3,721.91 to its workers for the audit period week ending 5/15/2005 through week ending 09/03/2005;

However, the Department failed to show that Michael P. Jones was an officer of Sub who knowingly participated in the violation of Article 8 of the Labor Law.

For the foregoing reasons, the findings, conclusions and determinations of the Bureau, except for those concerning the nature of Michael P. Jones' relationship to Sub, 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 testimony 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 \$3,721.91 on the Project, PRC No. 03-06392; 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 Article 8 of the Labor Law; and

DETERMINE that the Department did not produce evidence sufficient to find that Michael P. Jones was an officer of Sub who knowingly participated in the violation of Article 8 of the Labor Law; 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 the agreement between Prime and the Department as evidenced in Prime's Answer and Affidavit and the Department's acceptance of the allegations contained therein, in the event the Department is unable to collect the total amount due from Sub, Prime will be responsible for the underpayments determined due, but not for interest or, pursuant to 12 NYCRR Section 221.1, civil penalty; and

ORDER that the Bureau compute the total amount due (underpayment of \$3,721.91, interest at 16% from date of underpayment and 25% civil penalty); and

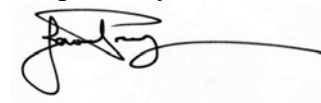
ORDER that upon the Bureau's notification, Sub shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau's office: (SOB 333 East Washington Street Room 419, Syracuse, NY 13202); and

ORDER that if the Sub fails to remit payment as set forth above, Prime, pursuant to its agreement with the Department as set forth in its Answer and Affidavit shall, upon the Bureau's notification of the deficit amount, immediately remit the outstanding balance of underpayment due, without interest or penalty, 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: April 9, 2009  
Albany, New York

Respectfully submitted,



Jerome Tracy, Hearing Officer