

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

MCSI ADVANCED AV SOLUTIONS, LLC and
GERALD F. POLUCH, JR. as President and as one
of the five largest shareholders of MCSI ADVANCED
AV SOLUTIONS, LLC

Prime Contractor,

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 Brockport
in Brockport, New York.

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In the Matter of

MCSI ADVANCED AV SOLUTIONS, LLC and
GERALD F. POLUCH, JR. as President and as one
of the five largest shareholders of MCSI ADVANCED
AV SOLUTIONS, LLC

Prime Contractor,

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 Spencerport Central
School District in Spencerport, New York.

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In the Matter of

MCSI ADVANCED AV SOLUTIONS, LLC and
GERALD F. POLUCH, JR. as President and as one
of the five largest shareholders of MCSI ADVANCED
AV SOLUTIONS, LLC

Prime Contractor,

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 Monroe
Community College in Rochester, New York.

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DEFAULT REPORT
&
RECOMMENDATION

Prevailing Rate
Case No. 2008004772
Monroe County

Prevailing Rate
Case No. 2007006672
Monroe County

Prevailing Rate
Case No. 2008009966
Monroe County

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In the Matter of

MCSI ADVANCED AV SOLUTIONS, LLC and
GERALD F. POLUCH, JR. as President and as one
of the five largest shareholders of MCSI ADVANCED
AV SOLUTIONS, LLC

Prime Contractor,

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 Monroe County
Water Authority in Rochester, New York.

Prevailing Rate
Case No. 2008009958
Monroe County

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In the Matter of

MCSI ADVANCED AV SOLUTIONS, LLC and
GERALD F. POLUCH, JR. as President and as one
of the five largest shareholders of MCSI ADVANCED
AV SOLUTIONS, LLC

Prime Contractor,

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 Capital District
DDSO in Schenectady, New York.

Prevailing Rate
Case No. 2009002655
Schenectady County

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In the Matter of

MCSI ADVANCED AV SOLUTIONS, LLC and
GERALD F. POLUCH, JR. as President and as one
of the five largest shareholders of MCSI ADVANCED
AV SOLUTIONS, LLC

Prime Contractor,

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 New York State
Department of Transportation in Rochester, New York.

Prevailing Rate
Case No. 2008009918
Monroe County

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In the Matter of

MCSI ADVANCED AV SOLUTIONS, LLC and
GERALD F. POLUCH, JR. as President and as one
of the five largest shareholders of MCSI ADVANCED
AV SOLUTIONS, LLC

Prime Contractor,

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 Finger Lakes DDSO
in Rochester, New York.

Prevailing Rate
Case No. 2008010012
Monroe County

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In the Matter of

TESTA CONSTRUCTION, INC.

Prime Contractor,

and

MCSI ADVANCED AV SOLUTIONS, LLC and
GERALD F. POLUCH, JR. as President and as one
of the five largest shareholders of MCSI ADVANCED
AV SOLUTIONS, 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 SUNY, Brockport
in Brockport, New York.

Prevailing Rate
Case No. 2007007649
Monroe County

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To: Honorable Colleen Gardner
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on July 14,
2010. 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 MCSI Advanced Solutions, LLC ("MCSI") complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of eight public work contracts involving audio-visual installations at SUNY Brockport ("Project 1") for the State University of Brockport ("Department of Jurisdiction"); audio-visual installations at Spencerport School ("Project 2") for the Spencerport Central School District ("Department of Jurisdiction"); audio-visual installations at Monroe Community College ("Project 3") for the Monroe Community College ("Department of Jurisdiction"); audio-visual installations in Rochester, New York ("Project 4") for the Monroe County Water Authority ("Department of Jurisdiction"); audio-visual installations in the City of Schenectady ("Project 5") for the New York State Office of Mental Retardation and Developmental Disabilities Capital District DDSO ("Department of Jurisdiction"); audio-visual installations in the City of Rochester ("Project 6") for the New York State Department of Transportation ("Department of Jurisdiction"); audio-visual installations in the City of Rochester ("Project 7") for the Finger Lakes DDSO ("Department of Jurisdiction"); and construction of Swing Spaces in various buildings in Brockport, New York (SUNY) ("Project 8") for the State University of Brockport ("Department of Jurisdiction").

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 any of the named Respondents.

HEARING OFFICER

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

FINDINGS AND CONCLUSIONS

On May 10, 2010, the Department duly served a copy of the Notice of Hearing on the Respondents and the Departments of Jurisdiction, via regular and certified mail, return receipt requested. Signed Return Receipts evidencing receipt of the document by the Departments of

Jurisdiction were entered into evidence as Hearing Officer Exhibit 2. Every certified mailing to the Respondents was returned unclaimed (T. 9). The regular mail envelopes sent to the Respondents were not returned to the Department (T. 10). The Notice of Hearing scheduled a July 14, 2010 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 MCSI underpaid wages and supplements to its workers. The named Respondents failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, MCSI Advanced AV Solutions, LLC, Gerald F. Poluch, Jr., and Testa Construction, Inc. 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 MCSI underpaid its workers on Project 1 in the amount of \$836.64 for the audit period weeks ending 8/9/2008 to 8/23/2008; on Project 2 in the amount of \$1,349.33 for the audit period weeks ending 3/17/2007 to 5/17/2008; on Project 3 in the amount of \$278.88 for the audit period weeks ending 2/10/2008 to 2/10/2008; on Project 4 in the amount of \$108.78 for the audit period weeks ending 8/9/2008 to 8/23/2008; on Project 5 in the amount of \$1,114.98 for the audit period weeks ending 10/3/2007 to 3/1/2008; on Project 6 in the amount of \$2,121.53 for the audit period weeks ending 2/24/2007 to 6/12/2007; on Project 7 in the amount of \$266.95 for the audit period weeks ending 3/2/2008 to 3/16/2008; and that MCSI, as a subcontractor of Testa Construction, Inc., underpaid its workers on Project 8 in the amount of \$785.73 for the audit period weeks ending 5/5/2007 to 5/17/2008. The Department produced further substantial and credible evidence, including the sworn testimony of the Bureau investigator and documents, supporting the Bureau's charges that the underpayments in Project 1, Project 2, and Project 3 were willful based upon MCSI's actual knowledge that these projects were subject to the requirements of Article 8 of the Labor Law, and that the underpayments in Project 4, Project 5, Project 6, Project 7 and Project 8 were non-willful. The Department produced no evidence in support of a finding that MCSI falsified its payroll records in connection with the willful underpayments. Finally, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigator and documents, supporting the Bureau's charges that Gerald F. Poluch, Jr. is an officer of MCSI and that Gerald F. Poluch, Jr knowingly participated in the violation of Article 8 of the Labor Law.

The Department did not issue any Notices to Withhold Payment to the Departments of Jurisdiction in connection with any of the projects that are the subject of this proceeding.

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 MCSI underpaid its workers \$836.64 on Project 1, PRC No. 2008004772; and

DETERMINE that MCSI underpaid its workers \$1,349.33 on Project 2, PRC No. 2007006672; and

DETERMINE that MCSI underpaid its workers \$278.88 on Project 3, PRC No. 2008009966; and

DETERMINE that MCSI underpaid its workers \$108.78 on Project 4, PRC No. 2008009958; and

DETERMINE that MCSI underpaid its workers \$1,114.98 on Project 5, PRC No. 2009002655; and

DETERMINE that MCSI underpaid its workers \$2,121.53 on Project 6, PRC No. 2008009918; and

DETERMINE that MCSI underpaid its workers \$266.95 on Project 7, PRC No. 2008010012; and

DETERMINE that MCSI underpaid its workers \$785.73 on Project 8, PRC No. 2007007649; and

DETERMINE that MCSI is responsible for interest on the total underpayments 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 MCSI to pay the prevailing wage or supplement rate on Project 1, Project 2, and Project 3 was a “willful” violation of Article 8 of the Labor Law in each said Project, resulting in three willful violations of Article 8 of the Labor Law ;

DETERMINE that Gerald F. Poluch, Jr. is an officer of MCSI; and

DETERMINE that Gerald F. Poluch, Jr. knowingly participated in the violation of Article 8 of the Labor Law; and

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

DETERMINE that Testa Construction, Inc. is responsible for the underpayment, interest and civil penalty in Project 8 pursuant to its liability under Article 8 of the Labor Law; and

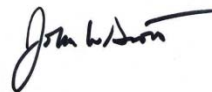
ORDER that the Bureau compute the total amount due (underpayment of wages and supplemental benefits in the eight subject projects, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that upon the Bureau’s notification, MCSI shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at 109 South Union Street Room 312, Rochester, NY 1460; 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 2, 2010
Albany, New York

Respectfully submitted,



John W. Scott, Hearing Officer