

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

PEC GROUP OF N.Y., INC., and PAULINE  
CHAHALES, as an officer, director, and/or  
managing member of PEC GROUP OF N.Y., INC.,

Prime Contractor,

for a determination pursuant to Article 9 of the  
Labor Law as to whether prevailing wages and  
supplements were paid to or provided for the  
building service employees employed on  
a public work project for Albany County Airport  
Authority at the Albany International Airport.

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**DEFAULT REPORT &**

**RECOMMENDATION**

Prevailing Rate Case  
No.: 2011900229  
Case ID: PW072014004217

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

Pursuant to a Notice of Hearing issued by the Commissioner of Labor on November 10, 2020, a videoconference hearing was held on January 12, 2021, in Albany, New York and at various locations among the participating parties and witnesses. 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 PEC Group of N.Y., Inc. and Pauline Chahales (hereafter known as "Respondents"), complied with the requirements of Article 9 of the Labor Law (§§ 230 *et seq.*) to pay or provide the prevailing rates of wages and supplements to building service employees employed in the performance of a public building service contract for the Albany County Airport Authority ("Department of Jurisdiction") to provide security services at the Albany International Airport, in Albany County, State of New York ("the Project").

## **HEARING OFFICER**

Marshall H. Day was designated as Hearing Officer and conducted the hearing in this matter.

## **APPEARANCES**

The Bureau was represented by Department Acting General Counsel, Jill Archambault, (Larissa Bates, Senior Attorney, of Counsel).

There was no appearance made by, and on behalf of the Respondents.

## **FINDINGS AND CONCLUSIONS**

On December 9, 2020, the Department duly served a copy of the Notice of Hearing on Respondents, via regular and certified mail, return receipt requested (Hearing Officer Exs. 2, 3). The Notice of Hearing scheduled a hearing on January 12, 2021 and required the Respondents to serve an Answer at least fourteen days in advance of the scheduled hearing.

Respondents failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. Consequently, Respondents are in default in this proceeding.

The Notice of Hearing alleges that Respondents willfully failed to pay prevailing wages and supplemental benefits to the workers performing security services pursuant to a public building service contract with the Department of Jurisdiction during the claim period.

At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigator and documents describing the wage and supplemental underpayments, which supported the Bureau's charges that:

Project was subject to Labor Law Article 9; and

Respondents entered into a contract for the Project with Department of Jurisdiction, agreeing in 2012 to a three-year contract<sup>1</sup> to provide unarmed security guards at the Albany International Airport, in Albany County, State of New York; and

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<sup>1</sup> The contract could be extended for two additional one-year terms at the option of the Department of Jurisdiction and was extended for 2016. In consideration of the contract the Respondents agreed to accept as full compensation, a 16.25% markup of the New York State Department of Labor hourly prevailing wage rates in effect for Guards and Watchman under PR#

The Bureau used certified payrolls (when available), emails and the PW-4 claim forms submitted by workers to determine the days and hours worked and rates paid for each employee, and compared these rates with the prevailing wage schedule applicable in the county at issue for the rates that should have been paid, to ultimately determine the amount of unpaid prevailing wages and supplements due to the workers<sup>2</sup>; and

Respondents willfully underpaid \$41,619.05 to workers for the audit period weeks ending 11/18/2012 to 10/23/2016; and

Respondent, PEC Group of N.Y., Inc., is an incorporated business owned by Pauline Chahales, who is an officer (President) and shareholder of PEC Group of N.Y., Inc.<sup>3</sup>; and

Pauline Chahales as an officer knowingly participated in the violation of Labor Law article; and

The Department of Jurisdiction is currently withholding \$19,812.85 on the Project: and

The Respondents were an experienced public work contractor, who have thirteen total open cases for labor law violations currently under investigation by the Bureau.<sup>4</sup> Respondents did initially provide some payroll information during the investigation, however as the investigation progressed failed to offer any evidence of payment of the supplemental benefits that were owed to its workers. Respondent PEC Group of N.Y., Inc. was a large size employer who had multiple service contracts running at the same time. The gravity of Respondents' violations was severe, as the Respondents closed their business and left the state without notifying their employees that the business was no longer viable, and without paying their employees the wages and supplements owed for the last six weeks of work. I find the totality of

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20119002229, multiplied by the actual hours of service provided. Billing rates would be adjusted to reflect changes in the applicable Prevailing Wage Rate Schedule as announced each year by the New York Department of Labor.

<sup>2</sup> According to the claim forms (Department Exs. 1 through 6), the Respondents failed to pay the workers for their last six weeks of work. The audit detail outlines the days and hours worked by each individual employee during this period of non-payment and gives zero credit to the Respondents for wages and supplements paid during that time. The certified payrolls (Department Ex. 16) show that the workers were paid their full wages but did not receive the supplement benefits as required by the wage schedule. The investigator used the days and hours contained in the certified payrolls, in conjunction with the supplemental rates listed in the wage schedule to determine the supplements owed to those workers during the time the certified payrolls were maintained.

<sup>3</sup> The contract and the NYS Department of State printout (Department Exs. 9, and 21) indicates that Ms. Chahales is president and chief executive officer of PEC Group of N.Y., Inc., and a previous default hearing against this same individual disclosed Ms. Chahales was the sole shareholder of the corporation as well.

<sup>4</sup> This is the second default hearing held against this contractor to date.

the evidence sufficient to support the Department's request that the Commissioner assess a 25% civil penalty on the underpayments and interest assessed in this case, and based on the same totality of evidence, that 16% interest per annum be assessed on all underpayment of wages and supplemental benefits due.

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

### **RECOMMENDATIONS**

Based upon the default of the Respondent 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, and based on the record as a whole, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Pauline Chahales is an officer, chief executive officer and shareholder of PEC Group of N.Y., Inc.; and

DETERMINE that Pauline Chahales was the owner and officer of PEC Group of N.Y., Inc. who knowingly participated in the violation of Labor Law article 9 on the Project; and

DETERMINE that Respondents underpaid prevailing wages and supplemental benefits its workers in the amount of \$41,619.05 on the Project; and

DETERMINE that the failure of Respondents to pay the prevailing wages and supplement rates on the Project was a "willful" violation of Labor Law article 9; and

DETERMINE that Respondents are 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 9, Respondents are 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 9, Respondents be assessed a civil penalty in the Department's requested amount of 25% of the underpayment and interest due on this Project; and

ORDER that the Bureau compute the total amount due (underpayment of \$41,619.05, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that the Department of Jurisdiction shall release any withheld funds directly to the Bureau to cover any underpayments, interest and civil penalty due by the Respondents; and

ORDER that if any withheld amount is insufficient to satisfy the total amount due, Respondents, 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: 207 Genesee Street, Room 603B, Utica, NY 13501; 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: February 24, 2021  
Albany, New York

Respectfully submitted,

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

Marshall H. Day, Hearing Officer