

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 providing security
services for Central New York Regional Transit Authority
(CNYRTA) in the County of Onondaga, New York.

DEFAULT REPORT &

RECOMMENDATION

Prevailing Rate Case
No.: 2012900782
Case ID: PW072016009309
Onondaga County

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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 August 27, 2019, and an adjournment at the request of the Respondents of the original hearing dates, a hearing was held on November 19, 2019, in Albany, New York and by videoconference with Utica, New York. 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 at various locations ("Project") for the Central New York Regional Transit Authority ("Department of Jurisdiction") in the County of Onondaga, New York.

HEARING OFFICER

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

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz, (Erin Hayner, Senior Attorney, of Counsel).

The Respondents were originally represented by The Law Offices of David A. Fallon (David A. Fallon, Esq., of counsel). Mr. Fallon noticed his appearance on or about September 29, 2019, however subsequent to the requested adjourn date he served a Notice of Withdrawal on the Administrative and Adjudication Unit, and Counsel's Office indicating he was discharged as counsel¹.

FINDINGS AND CONCLUSIONS

On August 27, 2019, the Department duly served a copy of the Notice of Hearing on Respondents, via regular and certified mail, return receipt requested (Hearing Officer Ex. 2). The Notice of Hearing scheduled a hearing on October 1, 2019 and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing. The Respondents responded to the Notice with Mr. Fallon's Notice of Appearance and Request to Adjourn Hearing, dated September 12, 2019 (Hearing Officer Ex. 3), his request was granted, and new hearing dates were set for November 19, 2019 and November 20, 2019 (Hearing Officer Ex. 4).

As noted above, counsel originally filed an appearance, then subsequently withdrew prior to the rescheduled hearing, and he and/or Respondents, although on notice, failed to either file an Answer or appear at subsequent hearing dates, and as a consequence, Respondents are in default in this proceeding.

The Notice of Hearing alleges that Respondents willfully failed to pay prevailing wages and supplemental benefits to its workers performing security services pursuant to a public

¹ The Notice of Withdrawal dated October 25, 2019, that was received by the Hearing Officer on October 29, 2019, and entered into evidence as Hearing Officer Ex. 6.

building service contract with Central New York Regional Transit Authority 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 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 five-year contract to provide unarmed security guards at various locations for the Central New York Regional Transportation Authority as a woman-owned business in a contract amount of \$1,250,516.85; and

The Bureau used all the PW-4 claim forms submitted by a number of workers to determine the days and hours worked by each employee, in conjunction 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 workers²; and

Respondents willfully underpaid \$17,762.56 to its workers for the audit period weeks ending 09/04/2016 to 10/23/2016³; 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.⁴; and

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

² According to the claim forms (Department Exs. 1a through 1h), the Respondents left New York state without telling any of their employees that the business ceased to exist. The employees continued to work for the company providing security services at the Project believing they were still employed, but later learned the company shut down the business, the Respondents' contract was terminated, and they would not be paid for their last few 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.

³ On or about November 11, 2016, the Bureau received a phone call from one of the workers stating that he had in fact been paid for the week ending October 2, 2016, although he listed in his claim form, he had not been paid for that week. That week should be removed from the audit. All the interest shall run from the date of underpayment to the date this Order is filed and should be calculated on the sub-total of wages and supplemental benefits of \$17,762.56, not the \$18,373.76 originally calculated by the Bureau.

⁴ Department Ex. 2, Notice to Award the contract, accompanying bid sheets and financial statements, indicates that Ms. Chahales is president and sole shareholder of PEC Group of N.Y., Inc.

The Department of Jurisdiction is currently withholding \$24,044.38 on the Project: and

The Respondents were an experienced public work contractor, who had no Labor Law violations prior to the investigation, however they have thirteen open cases currently under investigation by the Bureau. Respondents were uncooperative during the investigation, providing none of the information requested by the Bureau. Respondent PEC Group of N.Y., Inc. was a large size employer (132 employees according to the bid sheets contained in Department Ex. 2) 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 few weeks of work. I find the totality of the evidence sufficient enough 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 as well.

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 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 \$17,762.56 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 payment⁵; 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

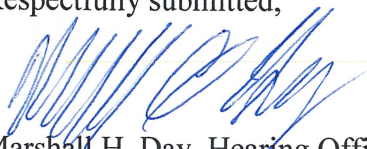
ORDER that the Bureau compute and pay the appropriate amount due for each employee on the Project (underpayment of \$17,762.56, interest at 16% from date of underpayment and 25% civil penalty), and that any balance of the total amount due shall be forwarded for deposit to the New York State Treasury; 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.

Dated: January 15, 2020
Albany, New York

Respectfully submitted,



Marshall H. Day, Hearing Officer

⁵ The Bureau’s audit summary ran interest to January 31, 2019, the interest needs to be adjusted to conform to the end date of the Notice of Filing of the Order associated with the matter.