

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 and/or shareholder
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 at Union Station, located in the City of Utica,
New York, for the County of Oneida.

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In the Matter of

PEC GROUP OF N.Y., INC., and PAULINE
CHAHALES, as an officer and/or shareholder
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 Oneida County DSS for the County of
Oneida, New York.

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DEFAULT REPORT &
RECOMMENDATION

Prevailing Rate Case
No.: 2013900903
Case ID: PW07 2015007739
Oneida County

Prevailing Rate Case
No.: 2013900903
Case ID: PW07 2014003490
Oneida County

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In the Matter of

SUMMIT SECURITY SERVICES, INC., and
THOMAS J. USHER, ROBERT AULETTA and
NICHOLAS M. AULETTA as officers and/or
shareholders of SUMMIT SECURITY SERVICES, INC.,

Prime Contractor,

and

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

Subcontractor,

Prevailing Rate Case
No.: 201190091
Case ID: PW07 2016009147
New York County

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 New York State Insurance
Fund in the County of New York, New York.

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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 November 10, 2020, a videoconference hearing was held on January 28, 2021, in Albany, New York with participating parties and/or witnesses participating remotely at various other locations. 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: "PEC Group"), 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 three separate public building service contracts it was involved in. The first captioned matter involved a building service contract between PEC Group and County of Oneida ("Oneida") for the unarmed security services at the Union Station in the City of Utica, New York ("Project 1"). The second captioned matter involved a building service contract between PEC Group and Oneida for the unarmed security services at Oneida County Department of Social Services ("Project 2"). The third captioned matter involved a building service contract between Summit Security Services, Inc. ("Summit") and the New York State Insurance Fund ("NYSIF") for unarmed security services for NYSIF in which PEC Group performed the security services required as a subcontractor on the project ("Project 3").

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 Counsel, Jill Archambault, (Larissa Bates, Senior Attorney, of Counsel). The prime contractor on Project 3, Summit, is represented by Lewis, Brisbois, Bisgaard & Smith, LLP (Brian Pete, Esq., of counsel).

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

FINDINGS AND CONCLUSIONS

On December 22, 2020, the Department duly served a copy of the Notice of Hearing on all Respondents, via regular and certified mail, return receipt requested (Hearing Officer Exs. 2, 3). The Notice of Hearing scheduled a hearing on January 28, 2021 and required the Respondents to serve an Answer at least fourteen days in advance of the scheduled hearing.

Respondents, PEC Group, 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.

Respondents, Summit, filed an Answer¹, on or about, January 14, 2021. Prior to the hearing, Summit entered into a stipulation with the Department satisfying its responsibilities and obligations as outlined in the Notice of Hearing and as a prime contractor on Project 3. (Hearing Officer Ex. 4) Summit and the Department, agreed that Summit would make restitution of the wages and supplements due and owing by PEC Group to its workers (\$2,851.98), with interest at 6% (\$956.42) and civil penalty at 10% (\$380.84) for a total of \$4,189.24, the payment of, the Bureau deemed would be sufficient to resolve Summit's Article 9 liability.

The Notice of Hearing alleges that Respondents, PEC Group, willfully failed to pay prevailing wages and supplemental benefits to its workers performing security services pursuant to the public building service contracts with the named Department of Jurisdictions during the claim periods, and that the Respondent Prime, Summit, on Project 3 is responsible for PEC Group's underpayment pursuant to Labor Law § 223.

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:

All three projects were subject to Labor Law Article 9; and

Project No. 1

PEC Group entered into a building service contract with Oneida for unarmed security services on Project 1, PRC No. 2013900903; and

PEC Group willfully underpaid \$8,494.89 to its workers for the audit period from week ending January 5, 2014 through week ending October 28, 2016; and

¹ Due to the COVID restrictions and office access for Department staff, the Prime's Answer was not presented until after the default hearing had occurred. As such, the record was opened for the express purpose of entering this document into evidence as Hearing Officer Exhibit 5. Both parties were notified via email to the opening of the record for this specific purpose, and no objections were received. Prime's Answer was received into evidence as Hearing Officer Exhibit 5 and made part of the record of this proceeding.

Project No. 2

PEC Group entered into a building service contract with Oneida for unarmed security services on Project 2, PRC No. 2013900903; and

PEC Group willfully underpaid \$10,022.76 to its workers for the audit period from week ending September 4, 2016 through week ending October 30, 2016; and

Project No. 3

Summit entered into a contract with the New York State Insurance Fund to provide unarmed security services on project 3, PRC No. 2011900911; and

PEC Group entered into a contract with Prime, Summit, for work on Project 3; and

PEC Group willfully underpaid \$2,851.98 to its workers for the audit period from week ending October 13, 2013 through week ending September 25, 2016; and

GENERAL

Pauline Chahales is an officer and shareholder of PEC Group; and

Pauline Chahales as an officer knowingly participated in the violation of Labor Law Article 9; 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.²; and

The Bureau used certified payrolls (when available) 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 on all three projects³; and

² Communications from PEC Group and the NYS Department of State printout (Department Exs. 11 and 30, and 15, respectively) indicates that Ms. Chahales is president and chief executive officer of PEC Group of N.Y., Inc., and previous default hearings against this same individual disclosed Ms. Chahales was the sole shareholder of the corporation as well.

³ According to the claim forms (Department Exs. 1, 16, 17, 18, 28, 29), PEC Group either failed to pay the workers their proper supplemental benefit rates or failed to pay them for their last four weeks of work. The audit detail outlines the days and hours worked by each individual employee during the period of non-payment and gives zero credit to the Respondents for wages and

The Respondents, PEC Group, was an experienced public work contractor, who has thirteen total open cases for labor law violations currently or previously under investigation by the Bureau.⁴ Respondents, PEC Group, 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 or missing wages that were owed to its workers. 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, PEC Group's violations was severe, as the PEC Group walked off the projects they were servicing and stopped paying their employees the wages owed for the last four weeks of work. (T. p. 14, 20) 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, PEC Group, 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:

supplements paid during that time. The certified payrolls (Department Exs. 9, 10, 11, 21 through 24) show that the workers were paid their full wages, but did not receive the full or correct supplemental benefit amounts as required by the wage schedule (According to a December 30, 2015 correspondence from PEC Group to the Bureau, PEC Group advised that at some point it changed its payment policy and included supplemental benefits in the employees' pay checks, however once that change over occurred, the total package provided to each individual worker still did not match what should have been paid according to the wage schedule, for regular and/or overtime hours, and a underpayment still occurred). In these incidents, the investigator used the wages, days and hours contained in the certified payrolls, in conjunction with the wages and supplemental rates listed in the wage schedule to determine the wages and supplements owed to those workers during the time the certified payrolls were maintained.

⁴ This is the third default hearing held against this contractor to date.

DETERMINE that Respondents, PEC Group, underpaid prevailing wages and supplemental benefits its workers in the amount of \$8,494.89 on the Project 1, PRC No. 2013900903; and

DETERMINE that Respondents, PEC Group, underpaid prevailing wages and supplemental benefits its workers in the amount of \$10,022.76 on the Project 2, PRC No. of

DETERMINE that Respondents, PEC Group, underpaid prevailing wages and supplemental benefits its workers in the amount of \$2,851.98 on the Project 3, PRC No. 2011900911; and

DETERMINE that Pauline Chahales is an officer, chief executive officer and shareholder of PEC Group of N.Y., Inc., who owned or controlled at least ten per centum of the outstanding stock 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 three Projects at issue; and

DETERMINE that on each of the three projects the failure of PEC Group to pay the prevailing wage or supplement rates was a separate and distinct “willful” violation of Labor Law article 9; and

DETERMINE that as a result of PEC Group and Pauline Chahales’ knowing willful participation in in the violation of Labor Law article 9 on the three separate and distinct projects, both the entity and the individual are ineligible to submit a bid, on or be awarded any public contract with the state, any municipal corporation or public body for a period of five years; and

DETERMINE that Respondents are responsible for any underpayment of wages or supplemental benefits determined to be owed on all three projects; 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 all three projects 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 all three projects; and

DETERMINE that, pursuant to a Stipulation, Respondents, Summit has agreed to pay \$4,189.24 in underpayment, interest, and penalty in full satisfaction of its vicarious liability under Labor Law article 8; and

ORDER that the Bureau compute the total amount due on each of the three projects taking into effect the credits for moneys to be paid by Respondents, Summit, on Project 3, (interest accrued at 16% interest from date of underpayment to the date of payment and 25% civil penalty); and

ORDER that, upon payment of \$4,189.24 and complete performance of the stipulation entered into between Prime, Summit and the Department, Summit will have fully satisfied its vicarious liability under Labor Law article 8;

ORDER that PEC Group shall receive a credit for the \$4,189.24 paid by Summit on Project 3; and

ORDER that the Bureau shall calculate the difference between the interest amount of 6% paid by Summit and the interest amount owed by PEC Group of 16% and also calculate the difference between the civil penalty amount of 10% paid by Summit and the civil penalty amount owed by PEC Group of 25%, thereby arriving at the outstanding balance that remains unpaid by PEC Group on Project 3; and

ORDER, PEC Group, upon the Bureau's notification of the deficit amount, shall immediately remit the outstanding balance due on all three projects, 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 all three projects, and that any balance of the total amount due shall be forwarded for deposit to the New York State Treasury.

Dated: May 12, 2021
Albany, New York

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marshall H. Day". The signature is written in a cursive style with a large initial "M".

Marshall H. Day, Hearing Officer