

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

Raw Power Electric Corp.; and Romeo Warren, as an officer and/or shareholder of Raw Power Electric Corp; and its successor or substantially owned-affiliated entity Raw Power Construction, 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 Office of General Services.

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AMENDED

DEFAULT REPORT &

RECOMMENDATION

Prevailing Wage Rate
PRC No. 2012003518
Case ID: PW112015007319
Westchester County

Prevailing Wage Rate
PRC No. 2007002523
Case ID: PW112015007388
Dutchess County

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In the Matter of

Raw Power Electric Corp.; and Romeo Warren, as an officer and/or shareholder of Raw Power Electric Corp; and its successor or substantially owned-affiliated entity Raw Power Construction, 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 Croton Harmon Union Free School District.

Prevailing Wage Rate
PRC No. 2012002380
Case ID: PW112015007050
Westchester 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 October 17, 2022, a videoconference hearing was held on December 6, 2022, in Albany, New York with participating parties and/or witnesses attending 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 Raw Power Electric Corp., and Romeo Warren, as an officer and/or shareholder of Raw Power Electric Corp., and its successor or substantially owned-affiliated entity, Raw Power Construction, LLC. (hereafter all known as: "Respondents" or "Raw Power"), complied with the requirements of Article 8 of the Labor Law (§§ 220 et seq.) in the performance of three separate public work contracts it was involved in, those projects consisted of: the furnishing of labor, tools, and

equipment necessary for the electrical work associated with the replacement of the ceiling and roof at the Chapel, Building 31, at Sing Sing Correctional Facility located in Ossining, New York, Westchester County (PRC No.: 20012003518) (“Project 1”) for the State of New York, Office of General Services (“Department of Jurisdiction 1”); the furnishing of labor, tools, and equipment necessary for the replacement of condensate and steam lines from Building 24 to Buildings 2 and 3, at the Green Haven Correctional Facility, located at the Green Haven Correctional Facility, in Stormville, New York, Dutchess County (PRC No: 2007002523) (“Project 2”) for the State of New York, Office of General Services (“Department of Jurisdiction 2”); and the furnishing of labor, tools, and equipment necessary for the electrical work associated with the District Wide Improvements of 2012 Project, located at Croton on Hudson, New York, Westchester County (PRC No.: 2012002380) (“Project 3”) for the Croton Harmon Union Free School District (“Department of Jurisdiction 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 General Counsel, Jill Archambault, (Elina Matot, Senior Attorney, of Counsel).

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

FINDINGS AND CONCLUSIONS

On October 21, 2022, 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. 1, 2 and 3). The Notice of Hearing scheduled a hearing on December 6, 2022 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 falsified payroll records and willfully failed to pay prevailing wages and supplemental benefits to its laborers, workers and mechanics employed in the performance of the three public work contracts it had with the respective named Department of Jurisdictions during the said claim periods.

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 8; and

Project No. 1

Respondents entered into a public work contract with the Department of Jurisdiction 1 to provide the labor, material and/or services necessary to complete Project 1 under the terms of that agreement; and

Respondents willfully underpaid \$9,015.40 to its workers for the audit period from week ending August 4, 2013, through week ending January 19, 2014; and

Respondents falsified payroll records in connection with that willful underpayment on Project 1; and

Project No. 2

Respondents entered into a public work contract with the Department of Jurisdiction 2 to provide the labor, material and/or services necessary to complete Project 2 under the terms of that agreement; and

Respondents willfully underpaid \$18,877.73 to its workers for the audit period from week ending April 28, 2013, through week ending February 16, 2014; and

Respondents falsified payroll records in connection with that willful underpayment on Project 2; and

Project No. 3

Respondents entered into a public work contract with the Department of Jurisdiction 3 to provide the labor, material and/or services necessary to complete Project 3 under the terms of that agreement; and

Respondents willfully underpaid \$19,939.30 to its workers for the audit period from week ending January 27, 2013, through week ending October 27, 2013; and

Respondents falsified payroll records in connection with that willful underpayment on Project 3; and

GENERAL FINDINGS AND CONCLUSIONS

Romeo Warren is an officer of Raw Power.

Romeo Warren is the sole shareholder of Raw Power who owned or controlled at least ten per centum of its outstanding stock.

Romeo Warren knowingly participated in the violation of Labor Law article 8, and this violation included the falsification of payroll records on all three Project.

The Bureau used certified payrolls, work tickets, daily activity sheets, field inspection reports and the PW-4 claim forms and notebooks submitted by workers to determine the hours and days worked, and the wage statements of the workers (when available)¹ to determine the rates paid for each employee, comparing the rates listed on the wage statements 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 projects²; and

¹ The Bureau used the private hourly rate of pay for wages when no wage statements were available for a particular employee, or the public hourly rate of pay for wages if there were some wage statements to support the public rate for other employees. No supplemental benefit credits were given in either case.

² The certified payrolls listed the total benefit package the employee should have received in the form of cash, although the wage statements received by those workers showed that only wages were paid. There was also a mention of a benefit plan, although it wasn't clear if that plan was ever funded, or the employees received a cash benefit from it. Respondents also misclassified some of their workers as laborers, although it was clear that the scope of work consisted of electrical work only, and all workers fell into the electrician category.

The Respondents were an experienced public work contractor, who have a number of open cases for labor law violations currently or previously under investigation by the Bureau.³ Respondents failed to provide any documentation during the course of the investigations of the three Projects to assist the Bureau in determining whether wages or supplemental benefits were properly paid to its workers. Respondents were a medium size employer who had multiple contracts running at the various sites and at various times. The gravity of Respondent's violations was severe, given that Respondents have continuously falsified certified payrolls on the numerous public work projects they were involved in, either indicating on those records that workers were fully paid wages and supplemental benefits, when in fact wage statements reveal that the workers were only receiving their wages (sometimes at a lower pay rate), or misclassifying workers on those payrolls as laborers when in fact the scope of work performed by Respondents was electrical in nature. I find the totality of 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 underpayments of wages and supplemental benefits due as well.

SUBSTANTIALLY OWNED-AFFILIATED ENTITIES

In pertinent part, Labor Law § 220 (5) (g) defines a substantially owned-affiliated entity as one where some indicia of a controlling ownership relationship exists or as "...an entity which exhibits any other indicia of control over the ...subsidiary of the contractor..., regardless of whether or not the controlling party or parties have any identifiable or documented ownership interest. Such indicia shall include, power or responsibility over employment decisions, access to and/or use of the relevant entity's assets or equipment, power or responsibility over contracts of the entity, responsibility for maintenance or submission of certified payroll records, and influence over the business decisions of the relevant entity." The Legislature intended the definition to be read expansively to address the realities of whether entities are substantially

³ This is the fourth recent default hearing held against this contractor to date, and there are twenty-one collection referrals against this contractor.

owned-affiliated entities. *Matter of Bistran Materials, Inc. v. Angello*, 296 AD2d 495, 497 (2d Dept. 2002).

Under Labor Law § 220(5)(k), a “successor” shall mean an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that of the predecessor.

The Department alleges Raw Power Construction, LLC is a substantially owned-affiliated entity or successor of Raw Power Electric Corp. In support of this allegation the Department offered a print-out from the website <https://www.thebluebook.com>, referencing Raw Power Construction, LLC. Under the “Our Story” section of the informational page, it states “Are you looking for an electrician that wants your project done right as much as you do? Well look no further than Raw Power Electric Corp. With over 20 years of experience in the electrical field, you can rest assured that your problem will have a solution when were done with it.” The initial filing for Raw Power Construction, LLC, with the Department of State was in 2019, while the formation for Raw Power Electric Corp. was 2005 according to DOL Ex. 28, making it impossible for the limited liability company to have the level of experience noted and directly binding the two named entities together as one.

Furthermore, both entities perform electrical work, have a shared phone number, a shared address, and the same vehicle is registered to both entities.

The Bureau also discovered that Romeo Warren applied for multiple electrician licenses in various jurisdictions for the new entity Raw Power Construction, LLC. The electrician license applications to the various jurisdictions, namely City of Newburgh, City of Middletown, Sullivan County, and Westchester County, are all submitted by Romeo Warren for Raw Power Construction, LLC. The correspondence is always between the various locales and Romeo Warren. And the license applications for the LLC made numerous references, included information for Raw Power Electric Corp., and included Romeo Warren’s previous electrician licenses for Raw Power Electric Corp.

I find that the record contains sufficient evidence to support a finding that Raw Power Construction, LLC is a substantially owned-affiliated entity and/or successor corporation of Raw Power Electric Corp.

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, and based upon the record as a whole, I recommend that the Commissioner of Labor adopt the within findings of fact and conclusions of law, and make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Respondents, underpaid prevailing wages and supplemental benefits to its laborers, workers and mechanics in the amount of \$9,015.40 on Project 1, PRC No.: 2012003518, for the audit period weeks ending August 4, 2013, through week ending January 19, 2014; and

DETERMINE that Respondents, underpaid prevailing wages and supplemental benefits to its laborers, workers and mechanics in the amount of \$18,877.73 on Project 2, PRC No.: 2007002523, for the audit period weeks ending April 28, 2013, through week ending February 16, 2014; and

DETERMINE that Respondents, underpaid prevailing wages and supplemental benefits to its laborers, workers and mechanics in the amount of \$19,939.30 on Project 3, PRC No.: 2012002380, for the audit period weeks ending January 27, 2013, through week ending October 27, 2013; and

DETERMINE that Romeo Warren is an officer and shareholder of Raw Power who owned or controlled at least ten per centum of the outstanding stock of Raw Power; and

DETERMINE that Romeo Warren is an owner and officer of Raw Power who knowingly participated in the violation of Labor Law Article 8 on the three Projects at issue; and

DETERMINE that the willful violation of Raw Power and Romeo Warren on all three Projects involved the falsification of payroll records under Labor Law article 8; and

DETERMINE that on each of the three Projects the failure of Raw Power and Romeo Warren to pay the prevailing wage or supplement rates was a separate and distinct “willful” violation of Labor Law article 8; and

DETERMINE that Raw Power Construction, LLC. (“Construction, LLC”), is a “substantially owned-affiliated entity and/or successor corporation” of Raw Power Electric Corp. (“Electric Corp.”) as defined in Section 220 (5)(g and k) of the Labor Law.; and

DETERMINE, that as a result of Raw Power’s knowing willful participated in the falsification of payroll records within the meaning of Section 220-b(3)(b) of the Labor Law on the three Projects at issue, both of the entities (Construction, LLC and Electric Corp.) and the individual (Romeo Warren) are ineligible to submit a bid on or be awarded any public work contract with the state, any municipal corporation or public body for a period of five years from the issuance of the Order & Determination associated with this report; and

DETERMINE that Respondents, Raw Power and Romeo Warren, 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 8, Respondents, Raw Power and Romeo Warren, 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 8, Respondents, Raw Power and Romeo Warren, be assessed a civil penalty in the Department’s requested amount of 25% of the underpayment and interest due on all three Projects; and

ORDER that the Bureau compute the total amount due on all three Projects with interest at 16% from date of underpayment to the date of payment and 25% civil penalty; and

ORDER that if any of the Departments of Jurisdictions are withholding any additional funds against any of the named Respondents, that they remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau at: The Maple Building, 3 Washington Ctr., 4th Floor, Newburgh, New York 12550; and

ORDER that if the withheld amount is insufficient to satisfy the total amount due, Raw Power and Romeo Warren, 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 the aforesaid address; 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: February 16, 2023
Albany, New York

Respectfully submitted,

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

Marshall H. Day, Hearing Officer